

**SOCIAL SECURITY (EMPLOYMENT  
INJURIES INSURANCE) ACT**

**Principal Act**

<b>Act. No. 1952-10</b>	<i>Commencement</i>	7.7.1952
	<i>Assent</i>	31.3.1952
Amending enactments	Relevant current provisions	Commencement date
Act. 1954-01	ss. 2, 3(2), 14(1), 15(2), (5), (7), 19(3), 20, 22, 26(3), 29(1)-(2), 30(1)	
1954-04	s. 32	
1956-10	–	
1957-05	ss. 2, 30(1), 44-45, Sch.6	
1959-06	ss. 2, 29(1), 33-42	
1961-01	ss. 16(1), 20, 22(1)	
1966-08	ss. 2, 16(2), 20, 22(1), 24, 27(1)	
1966-27	–	
Regs.of 29.5.1970	s. 2	
Act. 1970-12	–	
LN. 1971/008	–	
1971/021	–	
Act. 1973-15	ss. 5, 6(3), 7(2), 16(2), 19(1)-(2), (4), 20, 21(4), 22(1), 23(2), 43(4), 46(1), 47	
1973-28	ss. 16(2), 19(1)-(2), (4), 20, 21(4), 22(1)	
1974-31	ss. 4A, 16(2), 19(1)-(2), (4), 20, 21(4), 22(1)	
1975-27	ss. 2, 16(2), 19(1)-(2), (4), 20, 21(4), 22(1), Sch. 1	
1976-31	Schs.1, 6	
1976-32	ss. 15(6)-(7), 16(2), 19(1)-(2), 20, 21(4), 22(1)	
1977-21	ss. 19(1)-(2), 51(1), 55, Schs.1, 2	
LN. 1977/136	ss. 16(2), 19(1)-(2), 20, 21(4), 22(1), Sch.1	
1978/104	ss. 16(2), 19(1)-(2), 20, 21(4), 22(1), Sch.2	
1979/095	ss. 16(2), 19(1)-(2), 20, 21(4), 22(1), Sch.1	

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1980/109	ss. 16(2), 19(1)-(2), 20, 21(4), 22(1)	
Act. 1981-02	ss. 4(4), 6(3), 43(4), 46(1), 47, 50(2)	
LN. 1981/107	Sch.2	
1982/104	Schs.2-5	
Act. 1983-09	s. 24	
LN. 1983/097	ss. 16(2), 19(1)-(2), 20, 21(4), 22(1), Schs.2-5	
1986/131	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.1-5	1.1.1987
1987/026	ss. 3, 4B	29.10.1987
1987/164	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.1-5	1.1.1988
1988/122	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.2-5	1.1.1989
Act. 1989-40	ss. 2, 51(1), (5), 55	21.12.1989
LN. 1989/115	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.1-5	1.1.1990
1990/188	Sch. 1	7.1.1991
Act. 1997-18	ss. 2, 3, 10	5.6.1997
LN.1997/165	Sch.1	5.1.1998
Act. 1999-21	Sch.1	5.7.1999
LN. 1999/097	s. 43	12.8.1999
Act. 2001-04	ss. 2, 4(2)(a)-(c), (3)-(5), 6(3), 7(2), 9, 31(2), (8), 32, 35(1)-(2), (4), 38(1)-(2), 39, 43(1), (4), 46(1), (a)- (c), (2), 47, 50(1)-(2), 51(4), 52, 54	14.3.2001
LN. 2002/004	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.2-5	1.1.2002
2004/129	Sch.1	3.1.2005
Act. 2007-22	s. 5(1)-(3)	1.7.2006
LN. 2007/052	Sch.1	1.4.2007
Act. 2007-17	s. 51(3)-(4)	14.6.2007
LN. 2007/132	ss. 16(2), 19(1)-(2), (a)-(b), 20, 21(4)(a)-(b), 22(1), Schs.2-5	1.9.2007
2008/045 <sup>1</sup>	Sch.1	1.7.2008
2009/041 <sup>2</sup>	Sch.1	16.7.2009
2010/114 <sup>3</sup>	Sch.1	1.7.2010

<sup>1</sup> LN. 2008/45 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Employment Injuries Insurance) (Amendment of Contributions) Regulations 2008 (LN. 2008/42)

<sup>2</sup> LN. 2009/041 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Employment Injuries Insurance) (Amendment of Contributions) Regulations 2008 (LN. 2008/42)

<sup>3</sup> LN. 2010/114 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Open Long-Term Benefits Scheme) (Contributions) (Amendment) Order 2008 (LN. 2008/46).

# Social Security (Employment Injuries Insurance)

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Act. 2013-27	ss. 5(1), 6(4), 45A, 48(3)-(4), 55(1), Sch.1	28.11.2013
2014-10	ss. 2, 3(2)(iv), 18(1)(a)-(b), 19(1), (2)(a)-(b), (3), 20(b), 21(2), 22(1), 27(3)	28.3.2014

(The corresponding enactment in the United Kingdom appears under the title National Insurance Act 1965).

English source

National Insurance (Industrial Injuries) Act 1946 (9 & 10 Geo.6 c.62)

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AN ACT TO MAKE PROVISION FOR INSURANCE AGAINST PERSONAL INJURY CAUSED BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF AN INSURED PERSON'S EMPLOYMENT AND AGAINST PRESCRIBED DISEASES AND INJURIES DUE TO THE NATURE OF SUCH A PERSON'S EMPLOYMENT AND FOR PURPOSES CONNECTED THEREWITH.

**PART I.**  
GENERAL.

**Short title.**

1. This Act may be cited as the Social Security (Employment Injuries Insurance) Act.

**Interpretation.**

2. In this Act, unless the context otherwise requires,—

“actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries of Great Britain.

“beneficiary”, in relation to any benefit, means the person entitled to that benefit;

“benefit” means benefit under this Act;

“Board” means the Employment Injuries Appeals Board constituted under section 38;

“child” means a person under the age of—

- (a) fifteen years; or
- (b) nineteen years and over the age of fifteen years who is receiving full time instruction at any university, college, school or other educational establishment,

being the child, adopted child or step child of an injured person, and includes, in relation to a man, an illegitimate child, whether his or his wife's or civil partner's, wholly or mainly maintained by him at the time of the relevant accident, or in relation to a woman, her illegitimate child or the child of her civil partner wholly or mainly maintained by her at the time of the relevant accident. Any child born to the wife or civil partner of the insured person within three

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hundred days of the relevant accident shall be deemed to be a child of the insured person in the absence of evidence to the contrary;

“contribution” means a contribution paid or payable under this Act;

“contribution week” means the period of seven days, commencing from midnight between Sunday and Monday;

“deceased” means, in relation to death benefit, a person in respect of whose death the benefit is claimed or payable;

“dependant” means a member of the insured person's family, being father, stepfather, mother, stepmother, grandfather, grandmother, father-in-law, mother-in-law, grandchild, brother, sister, son or daughter;

“Director” means such public officer as the Minister may designate to administer the provisions of this Act;

“employed person,” means a person occupied in employment being employment under a contract of service whether written or oral and whether expressed or implied, or in employment by or under the Government of Gibraltar and includes apprentices and learners under agreement whether written or oral and whether expressed or implied;

“essential services” means the Royal Gibraltar Police, the Gibraltar Service Police, the City Fire Brigade, the Defence Fire Service, the Gibraltar Health Authority, the Customs Department and the Port Department;

“Fund” means the Employment Injuries Insurance Fund established under sections 51;

“insurable employment” has the meaning set out in section 3;

“insurance year” means the period of fifty-two or fifty-three contribution weeks commencing on the first day of the contribution week first following the 31st day of December of each year and ending on the last day of the contribution week occurring on the 31st day of December next following, provided that if such day is not the last day of contribution week then on the first following last day of a contribution week;



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“insured person” means a person employed in insurable employment and the expression “insurance”, in relation to a person so insured, shall be construed accordingly;

“Medical Appeals Tribunal” means the Medical Appeals Tribunal constituted under section 35;

“Medical Board” means the Medical Board constituted under section 35;

“Minister” means Minister with responsibility for social affairs;

“orphan” means a child both of whose parents are dead and “orphaned” shall be construed accordingly;

“prescribed” means prescribed by the Minister by regulations;

“regulations” means regulations made by the Minister under this Act;

“relevant injury” and “relevant accident” mean respectively, in relation to any benefit, the injury and the accident in respect of which that benefit is claimed or payable;

“relevant loss of faculty” means the loss of faculty resulting from the relevant injury;

“remuneration” includes wages paid to the insured person by the employer and the value of any food, fuel, or quarters supplied to the insured person by the employer and any overtime payments, or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or any ex gratia payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of an insured person towards any pension or provident fund, or a sum paid to an insured person to cover any special expenses entailed by the nature of his employment; and

“secretary” means the person appointed to be secretary to the Medical Board, the Medical Appeals Tribunal and the Board under section 39.

## **PART II.** **INSURED PERSONS.**

**Insurable employment.**

3.(1) For the purposes of this Act "insurable employment" means any employment, in Gibraltar whether by the Crown or otherwise by virtue whereof a person is an employed person under this Act, unless such employment is an excepted employment under subsection (2).

(2) The following employments shall not be insurable under this Act:-

- (i) service in the Armed Forces of the Crown;
- (ii) persons in the civil employment of Her Majesty otherwise than in the Government of Gibraltar, who have been engaged outside Gibraltar;
- (iii) *Repealed.*
- (iv) employment in the service of the husband or wife or civil partner of the employed person;
- (v) employment as an agent paid by commission or fees or a share in the profits or partly in one and partly in another of such ways, where the person so employed is ordinarily so employed as such agent by more than one employer and his employment under no one of such employers is that on which he is mainly dependent for his livelihood;
- (vi) employment by the father, mother, grandfather, grandmother, father-in-law, mother-in-law, son, daughter, grandson, grand-daughter, brother or sister of the employed person in so far as the employment—
  - (a) is employment in a private dwelling house in which both the employed person and the employer reside;
  - (b) is not employment for the purposes of any trade or business carried on there by the employer; and
  - (c) does not involve the payment to the employed person by the employer of wages or other pecuniary remuneration; or
- (vii) employment in or about temporary premises in connection with a public fair or entertainment where the duration of employment does not exceed an aggregate of twenty-one days in any one year.

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(3) Employment outside Gibraltar shall be deemed to be insurable employment for the purpose of this Act if it is employment by virtue whereof a person would be an employed person under this Act had the employment been in Gibraltar and, in any event, shall be deemed to include employment outside Gibraltar with the essential services:

Provided that such employment outside Gibraltar is employment in any capacity on board any aircraft registered in Gibraltar or of which the owner (or managing owner if there is more than one owner) or manager resides or has his principle place of business in Gibraltar.

## **Entry into insurance.**

4.(1) Subject to the provisions of this Act, every person who has attained the age of fifteen years and is employed in insurable employment shall be insured in the manner hereafter provided against personal injury caused by accident arising out of and in the course of such employment.

(2) Every such person—

- (a) shall, before first entry into insurable employment, register himself in such manner as may be prescribed in such place as may be prescribed, and shall obtain from such person as may be prescribed such certificates as may be prescribed;
- (b) shall, before commencing work at the beginning of his employment produce a prescribed certificate to his employer; and
- (c) *Omitted*

(3) The prescribed certificate shall remain the property of the Government and shall be produced on demand to any inspector appointed under section 43.

(4) An insured person who fails to comply with the requirement of subsection (2) is guilty of an offence and is liable on conviction to a fine at half of level 1 on the standard scale and to a further fine equivalent to one tenth of level 1 on the standard scale for every week or part thereof during which the default continues.

(5) Regulations may provide for the replacement of any prescribed certificate lost or destroyed subject to such conditions as may be prescribed.

**Previous exemption.**

4A. A person shall be required to be insured under this Act notwithstanding that he may at any time have been issued with a certificate of exemption from insurability in which it was stated that he was exempted from the payments of contributions under this Act and the Social Security (Insurance) Act throughout his lifetime.

**Provisions with respect to mariners.**

4B.(1) Notwithstanding the provisions of this section 3, the provisions of this section shall have effect with respect to mariners.

(2) Where a mariner—

- (a) is employed as such and-
  - (i) the employment is on board a Gibraltar registered ship; or
  - (ii) the employment is on board a ship and the contract in respect of the employment is entered into in Gibraltar with a view to its performance (in whole or in part) while the ship is on her voyage; and
  - (iii) in case to which head (ii) applies, the person by whom the mariner's earnings are paid, or, in the case of employment as a master or member of the crew of a ship or vessel, either that person or the owner of the ship or vessel (or the managing owner if there is more than one owner) has a place of business in Gibraltar; or
- (b) is employed as a master or member of the crew on board any ship or vessel, not being a mariner to whom the last preceding paragraph applies, and the contract is not entered into in Gibraltar, the employer or person paying the earnings has his principle place of business in Gibraltar, then, notwithstanding the provisions of section 3(1), the employment of that mariner as aforesaid shall be treated as insurable employment.

(3) As respects any employment of a person as a mariner and liability for payment of any contributions under this Act as an insured person by, or on behalf or in respect of, that mariner in respect of that employment—

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- (a) it shall be a condition of liability to pay a contribution under this Act that the mariner is domiciled or resident in Gibraltar; and
  - (b) it shall be a condition of liability to pay an employer's contribution under this Act that the employer is resident or has a place of business in Gibraltar.
- (4) In this section—

“Gibraltar registered ship,” means any ship or vessel whose port or registry is the port of Gibraltar;

“managing owner” means the owner of any ship or vessel who, where there is more than one such owner, is responsible for the control and management of that ship or vessel;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purpose of that ship or vessel or her crew or any passengers or cargo or mails carried thereby, and
- (b) the contract is entered into in Gibraltar with a view to its performance (in whole or in part) while the ship or vessel is on her voyage,

but does not include a person in so far as his employment is as a serving member of the forces;

“owner” in relation to any ship or vessel, means the person to whom the ship or vessel belongs and who, subject to the right of control of the captain or master of the ship or vessel, is entitled to control of that ship or vessel, and references to the owner of a ship or vessel shall, in relation to a ship or vessel which has been demised, be construed as referring to the person who for the time being is entitled as charterer to possession and, subject as aforesaid, control of the ship or vessel by virtue of the demise or any sub-demise.

### **PART III. CONTRIBUTIONS.**

#### **Rates of contributions.**

5.(1) Every insured person and every employer of any such person shall be liable to pay weekly contributions at the respective rates set out in Schedule 1.

(2) No insured person over the age of 60 or one who has retired at age 55 by operation of law shall be liable to make contributions pursuant to the provisions of this Act. For the avoidance of doubt, nothing in this subsection affects the application of sub-section (1) as it applies to employers.

(3) An insured person whose retirement age is 55 by operation of law and who retires at a prior age shall continue to be liable to make contributions pursuant to the provisions of this Act until age 55 is reached.

**Payment of contributions by employer.**

6.(1) Except where regulations may otherwise prescribe, the employer shall, in the first instance, be liable to pay both the contribution payable by himself and also, on behalf of and to the exclusion of the insured person, the contribution payable by that person; and for the purposes of this Act contributions paid by an employer on behalf of an insured person shall be deemed to be contributions by the insured person.

(2) A weekly contribution shall be payable for each contribution week during the whole or any part of which an insured person is employed:

Provided that—

- (a) where one weekly contribution has been paid in respect of an insured person for any week, no further contribution shall be payable in respect of him for the same week; and
- (b) where, as respects any insurable employment, no services have been rendered by an insured person during any week, and no remuneration is paid wholly or partly in respect of any day in that week other than a day on which he either—
  - (i) has been rendered incapable of work by reason of some specific disease or bodily or mental disablement and would but for the incapacity have been working; or
  - (ii) does not work in a normal week, then, as respects that employment, no contribution shall be payable in respect of the insured person for that week.

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(3) An employer or insured person who fails to pay any contribution which he is liable under this Act to pay, is guilty of an offence and is liable on summary conviction to a fine at half of level 1 on the standard scale.

(4) *Deleted*

## **Employer's contribution irrecoverable from insured person.**

7.(1) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages or other remuneration of, or otherwise to recover from, the insured person, the employer's contribution.

(2) An employer who deducts or attempts to deduct from the wages or other remuneration of an insured person the whole or any part of the employer's contribution, is guilty of an offence and is liable on summary conviction to a fine equivalent to one quarter of level 1 on the standard scale.

## **Recovery by employer of insured person's contributions.**

8.(1) Subject to the provisions of this section, and subject to any regulations, the employer shall be entitled to recover from the insured person in accordance with the provisions of this section the amount of any contributions paid or to be paid by him on behalf of that person:

Provided that the amount of any contribution not yet paid shall not be recoverable except under and in accordance with subsection (2).

(2) Where the insured person receives any wages or other pecuniary remuneration from the employer, the amount of any contribution paid or to be paid by the employer on behalf of the insured person shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages of that person or from any other remuneration due from the employer to that person and not otherwise:

Provided that—

- (a) no such deduction may be made from any wages or remuneration other than such as are paid wholly or partly in respect of the contribution week or part of the contribution week for which the contribution is payable or may become payable, as the case may be;

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- (b) no such deduction may be made of any contribution not yet paid except where it is not payable until after the date when the wages or remuneration are paid.

(3) Where the insured person does not receive any wages or other pecuniary remuneration from the employer, but receives such remuneration from some other person, the amount of any contribution paid by the employer on behalf of the insured person shall (without prejudice to any other means of recovery) be recoverable from the insured person summarily as a civil debt, if proceedings for the purpose are instituted within three months from the date on which the contribution was payable.

(4) Where the insured person does not receive any wages or other pecuniary remuneration either from his employer or from any other person, the employer shall be liable to pay the contributions payable both by himself and the insured person and shall not be entitled to recover any part thereof from the insured person.

#### **Method of payment of contribution.**

9. Subject to the provisions of this Act, regulations may provide for any matters incidental to the payment and collection of contributions under this Act, and in particular but without prejudice to the generality of the foregoing-

- (a) for assessing the amount of contributions liable to be paid by any person,
- (b) for the payment of contributions by such means as the Minister shall deem appropriate, and for regulating the manner, times, and conditions in, at and under which such payments are to be made; and
- (c) for the issue, replacement, custody, production and delivery up of prescribed certificates,

and any such regulations relating to the time of payment of contributions may require or authorise an employer, where an insured person's remuneration is paid in advance and in such other cases as may be prescribed, to pay contributions in advance and in connection therewith may make provision for the event of contributions so paid proving not to be payable.

#### **PART IV. BENEFITS.**



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## **Right to and description of benefit.**

10.(1) Subject to the provisions of this Act, where an insured person suffers personal injury caused by accident arising out of and in the course of his employment, being insurable employment, then—

- (a) injury benefit shall be payable to the insured person if during such period as is hereinafter provided, he is, as the result of the injury, incapable of work;
- (b) disablement benefit shall be payable to the insured person if at a time not falling within the said period he suffers, as the result of the injury, from such loss of physical or mental faculty as is hereinafter provided; and
- (c) death benefit shall be payable to such persons as are herein after provided if the death of the insured person results from the injury.

(2) In this Act references to loss of physical faculty shall be construed as including references to disfigurement, whether or not accompanied by any actual loss of faculty.

(3) Subject to the provisions of section 3(3) relating to insured persons on ships, vessels and aircraft, benefit shall not be payable in respect of an accident happening while the insured person is outside Gibraltar.

(4) For the purposes of this Act, an accident arising in the course of an insured person's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment.

(5) Nothing contained in subsection (3) shall prejudice the right of an insured person in employment with the essential services to claim benefit in respect of accidents occurring while he is outside Gibraltar in the course of his duties.

## **Accidents happening while acting in breach of regulations, etc.**

11. An accident shall be deemed to arise out of and in the course of an insured person's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if—

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- (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be ; and
- (b) the act is done for the purposes of and in connection with the employer's trade or business.

**Accidents happening while travelling in employer's transport.**

12.(1) An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-

- (a) the accident would have been deemed so to have arisen had he been under such an obligation; and
- (b) at the time of the accident, the vehicle—
  - (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and
  - (ii) is not being operated in the ordinary course of a public transport service.

(2) In this section references to a vehicle include references to a ship, vessel or aircraft.

**Accidents happening while meeting emergency.**

13. An accident happening to an insured person in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

**Injury benefit.**

14.(1) An insured person shall be entitled to injury benefit at the rates specified in Part I of Schedule 2 in respect of any day on which, as the result of the relevant injury, he is incapable of work during the injury benefit period.

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(2) In determining whether the insured person is incapable of work on the day of the accident, any part of that day before the happening of the accident shall be disregarded.

(3) For the purposes of this Act, the expression “the injury benefit period” means, in relation to any accident, the period of one hundred and eighty-two days beginning with the day of the accident:

Provided that, if on any of such days the insured person is not incapable of work as the result of the relevant injury, he may elect to treat the injury benefit period as having come to an end, subject to and in accordance with the following provisions, that is to say:—

- (a) he shall be deemed to have so elected if, but only if, on any such day on which he is not so incapable he makes a claim for disablement benefit in respect of the accident;
- (b) if after making such a claim he withdraws it before it is finally determined, he shall be deemed also to have withdrawn his election; and
- (c) where by making a claim as aforesaid he elects to treat the injury benefit period as having come to an end, it shall be deemed to have come to an end with the last day thereof before the making of the claim on which he was incapable of work or with the third day thereof, whichever is the later.

## **Disablement benefit.**

15.(1) Subject to the provisions of this section, an insured person shall be entitled to disablement benefit if, as the result of the relevant injury,—

- (a) at the end of the injury benefit period he is suffering from loss of physical or mental faculty which either—
  - (i) is likely to be permanent; or
  - (ii) is substantial, that is to say, is such that the extent of the resulting disablement assessed in accordance with the following provisions of this section amounts to not less than thirty-five per cent; or
- (b) at some time after the end of the injury benefit period he becomes subject to a loss of physical or mental faculty, which is substantial and likely to be permanent:

Provided that for the purposes of this section there shall be deemed not to be any loss of faculty at any time when the extent of the resulting disablement would be assessed in accordance with the following provisions of this section as not amounting to one per cent.

(2) For the purposes of this section, the extent of disablement shall be assessed, by reference to the disabilities incurred by the claimant as a result of the relevant loss of faculty, in accordance with the following general principals:—

- (a) save as hereafter provided in this subsection, the disabilities to be taken into account shall be all disabilities (whether or not involving loss of earning power or additional expense) to which the claimant may be expected, having regard to his physical and mental condition at the date of the assessment, to be subject during the period taken into account by the assessment as compared with a person of the same age and sex whose physical and mental condition is normal;
- (b) any such disability shall be treated as having been incurred as a result of the relevant loss of faculty except that, subject to the provisions of any regulations made under subsection (3), it shall not be so treated in so far as the claimant either—
  - (i) would in any case have been subject thereto as the result of a congenital defect or of an injury or disease received or contracted before the relevant accident; or
  - (ii) would not have been subject thereto but for some injury or disease received or contracted after, and not directly attributable to, that accident;
- (c) the assessment shall be made without reference to the particular circumstances of the claimant other than age, sex, and physical and mental condition; and
- (d) the disabilities resulting from such loss of faculty as may be prescribed shall be taken as amounting to one hundred per cent disablement and other disabilities shall be assessed accordingly.

(3) Provision may be made by regulations for further defining the principles on which the extent of disablement is to be assessed and such regulations may in particular direct that a prescribed loss of faculty shall be treated as resulting in a prescribed degree of disablement ; and, in

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connection with any such direction, nothing in paragraph (c) of subsection (2) shall be taken to prevent the making of different provision, in the case of loss of faculty in or affecting hand or arm, for right handed and for left handed persons.

(4) The period to be taken into account by an assessment of the extent of a claimant's disablement shall be the period (beginning not earlier than the end of the injury benefit period, and limited by reference either to the claimant's life or to a definite date) during which the claimant has suffered and may be expected to continue to suffer from the relevant loss of faculty:

Provided that if on any assessment the condition of the claimant is not such, having regard to the possibility of changes therein (whether predictable or not), as to allow of a final assessment being made up to the end of the said period,-

- (a) a provisional assessment shall be made, taking into account such shorter period only as seems reasonable having regard to his condition and the possibility aforesaid; and
- (b) on the next assessment the period to be taken into account shall begin with the end of the period taken into account by the provisional assessment.

(5) An assessment shall state the degree of disablement in the form of a percentage and shall also specify the period taken into account thereby and, where that is limited by reference to a definite date, whether the assessment is provisional or final:

Provided that-

- (a) the percentage and period shall not be specified more particularly than is necessary for the purpose of determining in accordance with this section the claimant's rights as to disablement benefit; and
  - (b) a percentage between thirty-five and one hundred which is not a multiple of five shall be treated for the purpose of payment of a disablement pension as being the nearest percentage, which is a multiple of five.
- (6) (a) Where the extent of the disablement is assessed for the period taken into account as amounting to less than thirty-five per cent, disablement benefit shall be a disablement gratuity.

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- (b) If the period taken into account by the assessment is limited by reference to the claimant's life or is not less than seven years, the amount of the gratuity shall be that specified in the second and fourth columns of Schedule 3 as being appropriate to the degree of disablement.
- (c) The scale prescribed for the purposes of this subsection shall be the same for all persons except that a lower amount may be fixed thereby for cases where at the beginning of the period taken into account by the assessment the beneficiary has attained the age of fifteen but is under eighteen and may be made to depend on the date on which he will attain that age, but the lower amount shall not in any case be less than four-fifths of the amount to which the beneficiary would be entitled if at the beginning of the period he were over that age.

(7) Where the extent of the disablement is assessed for the period taken into account as amounting to thirty-five per cent or more, disablement benefit shall be either-

- (a) a disablement pension for that period payable, for the several degrees of disablement set out in the first column of Schedule 4 at the rates set out for that class of person in the second and third columns of that Schedule respectively:

Provided that where that period is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date; or

- (b) at the option of the claimant if the period taken into account by the assessment is limited by reference to the claimant's life or is not less than seven years, a disablement gratuity of the amount specified in Schedule 5 as being appropriate to the degree of disablement.

**Increase of disablement pension where constant attendance needed.**

16.(1) The weekly rate of a disablement pension payable in respect of an assessment of one hundred per cent shall be increased by such amount as is hereinafter mentioned, if as the result of the relevant loss of faculty the beneficiary requires constant attendance.

(2) The amount by which a pension is to be increased under this section shall be determined in accordance with regulations by reference to the extent and nature of the attendance required by the beneficiary, but shall not exceed

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£36.90 except in cases of exceptionally severe disablement, or £73.80 in any case.

(3) An increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time:

Provided that no such increase shall be payable in respect of a period for which the beneficiary is receiving free of charge medical treatment as an in-patient in a hospital or similar institution.

### **Increase of disablement pension during approved hospital treatment.**

17. Where a beneficiary entitled to a disablement pension enters any hospital or similar institution for the purpose of receiving approved hospital treatment, then if the degree of disablement in respect of which the pension is payable was assessed at less than one hundred per cent, it shall be treated for the period for which he receives such treatment as if it had been assessed at one hundred per cent.

### **Increase of injury benefit and disablement pension in respect of dependants and children.**

18.(1) The weekly rate of injury benefit or disablement pension payable to a beneficiary shall be increased by dependants allowances at the rates specified in Part II of Schedule 2 for any period during which—

- (a) the beneficiary is residing with or is wholly or mainly maintaining his wife or civil partner;
- (b) the beneficiary is wholly or mainly maintaining her husband or civil partner who is incapable of self support;
- (c) the beneficiary has residing with him and is wholly or mainly maintaining any other adult dependant; or
- (d) the beneficiary has residing with him and is wholly or mainly maintaining a child or children.

(2) The beneficiary shall not be entitled to an increase of benefit under this section in respect of more than one dependant adult for the same period.

### **Widows, widowers, surviving civil partners and children.**

19.(1) Where the relevant injury results in the death of the insured person, the widower or widow, or surviving civil partner, as the case may be, of the

deceased shall be entitled to death benefit if at his or her death he or she either was residing with him or her or was receiving or entitled to receive, or would but for the relevant accident have been receiving or entitled to receive from him or her periodical payments for his or her maintenance of not less than £49.50 a week.

(2) Death benefit shall be either—

- (a) a pension commencing from the death of the deceased and payable at the weekly rate of £53.80 for life or until he or she remarries or enters into a civil partnership or a civil partnership subsequent to his or her marriage or civil partnership and a gratuity payable on the termination of the pension in consequence of his or her marriage equal to such sum as the total amount paid by way of pension is less than £24,770; or
- (b) at the option of the widower or widow or surviving civil partner and subject to the approval of the Director, a gratuity of £24,770.

(3) Where the deceased leaves a child or children the widow, widower or surviving civil partner, as the case may be, shall for any period during which such child or children is or are wholly or mainly maintained by the widow, widower or surviving civil partner, in addition to any death benefit to which he or she may be entitled under this section, be entitled in respect of such child or children to a dependant's allowance at the rates specified in Part II of Schedule 2.

### **Orphans.**

20. Every person who becomes an orphan as a result of the death of—

- (a) an insured person caused by a relevant injury; or
- (b) a widow, widower or civil partner in receipt of a pension,

shall during his lifetime and while a child be entitled to an orphan's pension at the rate of £24.70 per week.

### **Parents.**

21.(1) A parent of the deceased shall be entitled to death benefit, if at the deceased's death he or she was being to a substantial extent maintained by the deceased, or would but for the relevant accident have been so maintained.



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- (2) In the case of a parent who, at the deceased's death was being wholly or mainly maintained by the deceased, or would but for the relevant accident have been so maintained, death benefit shall be a pension commencing from the death of the deceased and payable for life or, in the case of the mother, until she remarries or marries or enters into a civil partnership.
- (3) In the case of a parent entitled to death benefit under subsection (1) but not to a pension under sub-section (2), death benefit shall be a gratuity.
- (4) Subject to the following provisions of this Part—
- (a) the weekly rate of a pension payable to a parent under subsection (2) shall be £25.30 for any period for which the parents are living together and are both entitled to such a pension (whether in respect of the same or another death) and £37.60 for any other period; and
  - (b) the amount of a gratuity payable to a parent under subsection (3) shall be £2,770.
- (5) In this section the expression “parent” includes a step-parent and, in a case where the deceased was illegitimate, his mother, and the expression “mother” shall be construed accordingly.

## **Dependants.**

22.(1) Where an insured person dies as a result of a relevant accident and is not survived by a widow, widower, civil partner, child or parent, a death benefit of £2,770 shall be payable to the dependants of the deceased if at the time of death the dependant was substantially maintained by the deceased or would, but for the relevant accident, have been so maintained.

(2) If, in any case, there is more than one dependant, the gratuity shall be divided between them in such manner as the Director, having regard to all the circumstances of the case, may direct.

## **Payment of benefit.**

23.(1) Benefit shall be paid in such manner and subject to such conditions as to identification or otherwise as may be prescribed.

- (2) Except where regulations otherwise provide, no benefit shall be payable—
- (a) to or in respect of any beneficiary while such beneficiary is absent from Gibraltar, or in cases where the beneficiary

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normally resides within the Campo district and is absent from that district and from Gibraltar;

- (b) to or in respect of any beneficiary while he is detained in prison in pursuance of a sentence passed on him on his conviction for an offence; or
- (c) if payment of the sum is not obtained within the period of fifty-two weeks following the date on which the payment becomes due.

(3) Where a person suffers two or more successive accidents against which he is insured under this Act-

- (a) he shall not for the same period be entitled to receive benefit, either by way of injury benefit and a disablement pension or pensions or by way of two or more disablement pensions, at an aggregate weekly rate exceeding the rate specified in Part I of Schedule 2;
- (b) regulations may provide for adjusting injury benefit or disablement benefit, or the conditions for the receipt thereof, in any case where he has received or may be entitled to a disablement gratuity.

**Payment of benefit where beneficiary is an orphan.**

24. Where any beneficiary is an orphan, benefit shall be paid, as the Director shall in each case direct, either to the beneficiary or to his lawful representative or to some fit and proper person or persons to the intent that such benefit shall be applied to the advantage of the orphan.

**Benefit to be inalienable.**

25. Every assignment of, or charge on, benefit, and every agreement to assign or charge benefit, shall be void, and, on the bankruptcy of a beneficiary, the benefit shall not pass to any trustee or other person acting on behalf of his creditors.

**Claim for benefit.**

26.(1) Subject to the provisions of this Act, a claim to benefit shall not be maintainable unless it is made in the first place within twenty-four hours of the occurrence of the accident, by means of notice thereof given in the prescribed form to a prescribed medical officer or practitioner.

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(2) Any such officer or practitioner, as the case may be, to whom notice of an accident is given as aforesaid shall inform the Director accordingly and shall certify the nature of the injury in writing within such time and in such manner as may be prescribed.

(3) Notwithstanding the provisions of subsection (1), the Director may in his discretion allow a claim to benefit in cases where notice has not been given within the aforesaid limit of time if a reasonable cause for the omission is shown to his satisfaction. In any such case, however, benefit shall not begin to accrue except from such date as may, in each case, be determined by the Director.

## **Disqualifications.**

27.(1) A claimant or beneficiary shall forfeit the right to benefit or have such right suspended for such time as the Director may decide if he refuses or neglects to submit himself to such medical treatment or to such medical examination as may be required to establish the degree and nature of the injury or if he behaves in any manner calculated to retard his recovery. For the purposes of this subsection the term “medical treatment” shall mean medical, surgical or rehabilitative treatment and shall include any course or diet or other regimen.

(2) A claim to benefit shall not be maintainable by any insured person who at the time of the accident has failed to comply regularly with the provisions of section 4(2).

(3) For the purpose of any provision of this Act providing that benefit shall not be payable to a woman after her marriage or civil partnership or remarriage or civil partnership, references to marriage or civil partnership shall include references to “cohabitation” with a man as his wife or with a woman as her civil partner respectively.

## **Repayment of benefits.**

28.(1) If it is found at any time that a person has been in receipt of any benefit under this Act without being lawfully entitled thereto, he shall be liable to repay the amount of that benefit to the Director:

Provided that repayment shall not be required in any case where the beneficiary is shown to the satisfaction of the Director to have acted in good faith in all respects as to the obtaining and receipt of the benefit.

(2) Any sums paid on account of benefits to or on behalf of persons not lawfully entitled thereto, so far as not recovered, shall be treated, to such

extent and subject to such conditions as may be prescribed, as expenditure on benefits and charged on the Fund.

**Recovery of benefit.**

29.(1) Where benefit has been paid or is payable in circumstances creating a legal liability in some person (other than the insured person) to pay damages, then such person shall be liable to pay one half of the amount of such benefit to the Director.

(2) Nothing in this section shall affect prejudicially any right to recover damages which the insured person or those claiming on his behalf may have, but in assessing the amount of such damages the court shall take into account the amount of any benefit recovered or recoverable by the Director under the provisions of subsection (1).

(3) Any amount recovered under subsection (1) or under section 28(1) shall be carried to the credit of the Fund.

**Insured persons entitled to free medical treatment.**

30.(1) An insured person who suffers personal injury by accident arising out of and in the course of his employment, being insurable employment, or contracts a prescribed occupational disease shall be entitled to receive free of charge such medical, surgical and pharmaceutical aid at a hospital in Gibraltar, as is considered by a prescribed medical officer or practitioner to be necessary in consequence of the relevant injury and such other aid as may be prescribed.

(2) For the purposes of this section surgical aid shall be deemed to include the supply of artificial limbs or other like appliances.

**Occupational diseases and injuries not caused by accident.**

31.(1) Subject to the provisions of this Act, a person who is under this Act insured against personal injury caused by accident arising out of and in the course of his employment shall be insured also against any prescribed disease and against any prescribed personal injury not so caused, being a disease or injury due to the nature of that employment and developed on or after the 7th day of July, 1952.

(2) A disease or injury may be prescribed for the purposes of this section in relation to any insured persons, if the Minister is satisfied that—

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- (a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(3) Regulations prescribing any disease or injury for the purposes of this section may provide that a person who developed the disease or injury on or at any time after a date specified in the regulations, being a date before the regulations came into force but not before the 7th day of July, 1952, shall be treated for the purposes of this section, subject to any prescribed modifications, as if the regulations had been in force when he developed the disease or injury.

(4) Provision may be made by regulations for determining the time at which a person is to be treated for the purposes of this Act as having developed any disease or injury prescribed for the purposes of this section, and, where the person in question has previously suffered from any such disease or injury, the circumstances in which that disease or injury is to be treated as having recrudesced or as having been contracted or received afresh.

(5) Nothing in this section shall affect the right of any person to benefit in respect of a disease which is a personal injury by accident within the meaning of this Act, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment.

(6) The benefit payable under this section in respect of a prescribed disease or injury, and the conditions for receipt of such benefit, shall be the same as in the case of personal injury by accident arising out of and in the course of a person's employment, subject, however, to the power to make different provision by regulations as respects any matter which is to be prescribed and to the following provisions of this section.

(7) Regulations may provide, in relation to prescribed diseases and injuries, for modifying the provisions of this Act relating to injury benefit and disablement benefit and for adapting references in this Act to accidents, and shall provide for applying in relation to claims for benefit under this section in respect of a prescribed disease or injury, and in relation to questions arising in connection therewith or with an award of benefit, the provisions of this Act relating to questions and claims in respect of personal

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injury by accident arising out of and in the course of a person's employment, subject to any prescribed additions and modifications.

(8) Without prejudice to the generality of subsection (7), regulations may in particular include provision—

- (a) for presuming any prescribed disease or injury—
  - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury; and
  - (ii) not to be due to the nature of a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury; and
- (b) for such matters as appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this section.

**Disqualifications, etc to be disregarded for certain purposes.**

32. The Minister may direct that a person who is not entitled to benefit in consequence of the operation of any of the foregoing provisions of this Part shall in cases of hardship be treated as if he were entitled thereto for the purpose of any rights or obligations under this Act.

**PART V.**

**DETERMINATION OF QUESTIONS AND CLAIMS.**

**Persons to determine claims.**

33.(1) All questions and claims for benefit arising under this Act other than those detailed in subsection (2) shall be determined by the Director.

- (2) Any question—
  - (a) whether the relevant accident has resulted in a loss of faculty;
  - (b) whether a loss of faculty is likely to be permanent;

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- (c) at what degree the extent of disablement resulting from a loss of faculty is to be assessed, and what period is to be taken into account by the assessment,

shall be determined by the Medical Board or the Medical Appeals Tribunal and any such question shall be referred to as a disablement question.

## **Appeal from, and review of Director's decision.**

34.(1) Any question of law arising in consequence of the determination of any question mentioned in section 33(1) may, if the Director thinks fit, be referred at the instance of the Attorney-General for decision to the Supreme Court.

(2) The Chief Justice may make provision by rules of court for regulating references and appeals to the Supreme Court under this Act, and such rules shall provide for limiting the time within which appeals may be brought.

(3) The Director shall be entitled to appear and be heard on any such reference.

(4) Any person who considers himself aggrieved by any decision of the Director may appeal to the Employment Injuries Appeals Board in the prescribed manner and within the prescribed time:

Provided that where a disablement question has arisen in connection with the decision and has been determined as required by this Act and the Director certifies that the decision on the disablement question is the sole ground of his decision no appeal shall lie without the leave of the Chairman of the Board.

## **Constitution of Medical Board and Medical Appeals Tribunal.**

35.(1) There shall be and there is hereby constituted a Medical Board, which shall consist of two or more medical practitioners\* appointed by the Minister, one of whom shall be chairman.

(2) There shall be and there is hereby constituted a Medical Appeals Tribunal, which shall consist of the following persons:—

- (a) the person for the time being appointed chairman of the Employment Injuries Appeals Board under section 38, who shall be chairman of the Tribunal;

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\* Listed under Schedule 6 Notice of Appointments LN 1999/097

(b) two medical practitioners appointed by the Minister.

(3) Subject to any regulations made under this Act in that behalf the Medical Board and the Medical Appeals Tribunal may regulate their proceedings in such manner as they think fit provided that neither the Medical Board nor the Medical Appeals Tribunal shall be competent to decide any question or appeal unless all members are present and give their opinion thereon.

(4) The Minister may also appoint supplementary members of the Medical Board or the Medical Appeals Tribunal being duly qualified medical practitioners to surrogate any member of the Board or the Medical Appeals Tribunal.

**References to Medical Board and appeals and references to Medical Appeals Tribunal.**

36.(1) The case of any claimant for disablement benefit shall be referred by the Director to the Medical Board for determination of the disablement questions in accordance with the following provisions of this Part relating to the determination of claims, and if, on that or any subsequent reference, the extent of the disablement is provisionally assessed, shall again be so referred not later than the end of the period taken into account by the provisional assessment.

(2) If the claimant is dissatisfied with the decision of the Medical Board, he may appeal in the manner and within the time hereinafter provided and the case shall be referred to the Medical Appeals Tribunal:

Provided that an appeal shall not lie against a provisional assessment of the extent of disablement before the expiration of two years from the date of the first reference of the case to the Medical Board under subsection (1) nor where the period taken into account by the assessment falls wholly within the said two years.

(3) If the Director is of the opinion that any decision of the Medical Board ought to be considered by the Medical Appeals Tribunal, he shall refer the case to the Medical Appeals Tribunal within the prescribed time for their consideration, and the Tribunal may confirm, reverse or vary the decision in whole or in part as on an appeal.

**Review of decisions of Medical Board and Medical Appeals Tribunal.**

37.(1) Any decision under this Act of the Medical Board or the Medical Appeals Tribunal may be reviewed at any time by the Medical Board if



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satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).

(2) Any assessment of the extent of the disablement resulting from the relevant loss of faculty may also be reviewed by the Medical Board, if satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

Provided that an assessment shall not be revised under this subsection unless the Medical Board are of opinion that, having regard to the period taken into account by the assessment and the probable duration of the aggravation, substantial injustice will be done by not revising it.

(3) Except with the leave of the Medical Appeals Tribunal, an assessment shall not be reviewed under subsection (2) on any application made less than five years, or, in the case of a provisional assessment, six months, from the date thereof, and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(4) Subject to the foregoing provisions of this section, the Medical Board may deal with a case on a review in any manner in which they could deal with it on an original reference to them, and in particular may make a provisional assessment notwithstanding that the assessment under review was final; and section 36 shall apply to an application for a review under this section and to a decision of the Medical Board in connection with such an application as it applies to an original claim for disablement benefit and to a decision of the Medical Board in connection with such a claim.

## **Constitution of Employment Injuries Appeals Board.**

38.(1) There shall be and there is hereby constituted an Employment Injuries Appeals Board which shall consist of the following persons appointed by the Minister—

- (a) a person entitled to practise in Gibraltar as a legal practitioner who shall be chairman;
- (b) a person deemed to be representative of the interests of insured persons; and
- (c) a person deemed to be representative of the interests of employers of insured persons.

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(2) The Minister may also appoint supplementary members of the Board having the respective qualifications prescribed in subsection (1) to surrogate the chairman or other member of the Board as occasion may require.

(3) The Board shall not be competent to decide any question on appeal unless all members are present and give their opinion thereon.

(4) Subject to the provisions of this Act and of any regulations prescribed the Board may regulate their proceedings in such manner as they think fit.

#### **Appointment of secretary.**

39. The Minister shall appoint a fit and proper person to be secretary to the Medical Board, the Medical Appeals Tribunal and the Employment Injuries Appeals Board.

#### **Procedure on appeal to Medical Appeals Tribunal or Board.**

40.(1) Any person desiring to appeal under the provisions of section 34 or 36 shall give notice in writing of his intention so to do setting out the grounds of his appeal, to the secretary within twenty-one days of the date of communication to him of the decision of the Director or the Medical Board as the case may be:

Provided that in the case of an appeal to the Medical Appeals Tribunal either the Medical Board or the Medical Appeals Tribunal, or in the case of an appeal to the Board either the Director or the Board may, if they think the interests of justice so require, enlarge such period of limitation notwithstanding that the time for appealing has elapsed.

(2) The Director or person authorized on his behalf and the appellant shall be entitled to appear and be heard and to call witnesses on the hearing of any appeal.

(3) On an appeal the Board or the Medical Appeals Tribunal, as the case may be, may give such directions and make such decisions in the matter as they think proper including directions as to the cost of the appeal.

(4) Subject to any provisions of this Act relating to the review of any decision of the Medical Appeals Tribunal a decision of the Medical Appeals Tribunal shall be final and not subject to appeal.

(5) Subject to any provisions of this Act relating to the review of any decision of the Board and save as provided under section 41, a decision of the Board shall be final and not subject to appeal.

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(6) The Board and the Medical Appeals Tribunal shall have power to summon any person to appear before them to give evidence on oath or to produce documents and for this purpose shall have all the powers of the magistrates' court.

(7) Any summons shall be sent by the chairman of the Board or of the Medical Appeals Tribunal, as the case may be, and may be served either personally or by post.

## **Appeal to Supreme Court.**

41.(1) Any person considering himself aggrieved by a decision of the Board on any question of law or on any question of mixed fact and law may appeal to the Supreme Court within fourteen days of the date when the decision against which he appeals is communicated to him, in manner provided by rules of court made by the Chief Justice.

(2) On an appeal the Supreme Court may give such direction and make such decisions in the matter as it shall think proper including directions as to the costs of the appeal.

(3) The Board shall be entitled to appeal and be heard on any appeal either by counsel or in the person of any member.

## **Review.**

42.(1) Any decision of the Director, the Supreme Court, or the Board may be reviewed at any time by the Director, the court or the Board as the case may be if-

- (a) it can be proved that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been any relevant change of circumstances:

Provided that a decision shall not be reviewed while an appeal is pending against the decision of the Director or the Board, as the case may be, or before the time for lodging such appeal has expired.

(2) Any question of law arising in connection with any such review by the Director may if the Director thinks fit, at the instance of the Attorney-General, be referred for decision to the Supreme Court, and the provisions of section 34(1) and (2) shall apply, mutatis mutandis, in relation to any such reference.

**PART VI.****ADMINISTRATION AND ENFORCEMENT.****Appointment of inspectors and officers.**

43.(1) The Minister may appoint such inspectors\* or other officers as may be considered necessary for the purposes of this Act.

(2) An inspector appointed under this Act shall for the purposes of the execution of this Act, have power to do all or any of the following things, namely :-

- (a) to enter at all reasonable times any premises or place liable to inspection under this section;
- (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place or for investigating the circumstances in which any injury or disease which has given or may give rise to a claim for benefit was or may have been received or contracted;
- (c) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Act on which he may reasonably require information, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an insured person or employed by the employer of any insured person, and to require every such person to be so examined;
- (d) to exercise such other powers as may be necessary for carrying this Act into effect.

(3) The occupier of any premises or place liable to inspection under this section and any person who is or has been employing any insured person, and the servants and agents of any such occupier or other person, and any insured person, shall furnish to any inspector all such information, and produce for his inspection all such documents, as the inspector may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person, or whether benefit is or was payable to or in respect of any person.

(4) A person who—

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\* Listed under Schedule 6 Notice of Appointments LN 2000/40, 2000/39 and 1999/154.

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- (a) wilfully delays or obstructs an inspector in the exercise of any power under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section,

is guilty of an offence and is liable on summary conviction to a fine at half of level 1 on the standard scale:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to incriminate himself.

(5) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Act shall, if so required, produce such certificate.

(6) The premises and places liable to inspection under this section are any premises or places where an inspector appointed under this Act has reasonable grounds for supposing that any insured person is employed, or that any injury or disease has been or may have been received or contracted which has given or may give rise to a claim for benefit, except that they do not include any private dwelling house not used by or by permission of the occupier for the purposes of a trade or business.

## **Employment Injuries Insurance Advisory Committee.**

44.(1) There shall be constituted a committee to be called “the Employment Injuries Insurance Advisory Committee”, to give advice and assistance to the Director in connection with the discharge of his functions under this Act and to perform any other duties allotted to them under this Act.

(2) The provisions of Schedule 6 shall have effect with respect to the constitution of the Committee and other matters relating to the Committee.

(3) The Director may from time to time refer to the Committee for consideration and advice such questions relating to the operation of this Act as he thinks fit, (including questions as to the advisability of amending this Act).

(4) The Director shall furnish the Committee with such information as they may reasonably require for the proper discharge of their functions under this Act.

## **Proceedings in court,**

*This version is out of date*

45.(1) All offences under this Act shall be triable by the magistrates' court.

(2) In any proceedings instituted before the magistrates' court for an offence against the provisions of this Act, the Director or any officer deputed by him may, notwithstanding the provisions of any law to the contrary, lay the charge before the court.

**Civil proceedings to recover sums.**

45A.(1) All sums due to the Fund shall be recoverable as debts due to the Crown, and without prejudice to any other remedy may be recovered summarily as a civil debt.

(2) Notwithstanding section 65 of the Magistrates' Court Act or any other law to the contrary, proceedings for the summary recovery as civil debts of sums due to the Fund may be brought at any time.

(3) Proceedings for the recovery as civil debts of sums due to the Fund may be instituted by the Director or any person authorised by him in writing.

**Penalties for certain offences.**

46.(1) A person who—

- (a) *Repealed.*
- (b) *Repealed.*
- (c) *Repealed.*
- (d) for the purpose of obtaining any benefit or payment under this Act, wilfully causes to himself, or permits to be caused to himself by any other person, any disablement or disease leading to incapacity for work; or
- (e) for the purpose of obtaining or continuing any benefit or other payment under this Act, whether for himself or for some other person, or for any other purpose under this Act, knowingly or recklessly makes any false statement or representation or produces or furnishes or causes or knowingly allows to be produced or furnished any document or information which is false in a material particular,

is, saving the provisions of any other law where the facts constitute a more serious offence under any such law, guilty of an offence and is liable on

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conviction to imprisonment for three months and to a fine equivalent to twice level 2 on the standard scale.

(2) *Repealed.*

## **General penalty.**

47. A person guilty of an offence against this Act in respect of which no special penalty is prescribed is liable on conviction to imprisonment for two months and to a fine equivalent to level 2 on the standard scale.

## **Payment by employer of unpaid contributions.**

48.(1) In any case where an employer is convicted of the offence of failing to pay a contribution, he shall, in addition to any other penalty, which may be imposed under this Act, be liable and may be ordered by the court to pay to the Fund a sum equal to the amount, which he failed to pay. Any sum ordered to be paid to the Fund under this subsection shall be recoverable as a civil debt.

(2) Any sum paid by an employer under subsection (1) shall be treated as a payment in satisfaction of the unpaid contributions and, notwithstanding anything contained in section 8(2) and (3), the employer shall not be entitled to recover from the insured person the part of the sum so paid that corresponds to the unpaid contributions which were payable by the employer on behalf of the insured person.

(3) Nothing in this section shall be construed as preventing the Director or such other person authorised by him in writing from recovering any sum due under this Act by means of civil proceedings.

(4) If the employer, being a body corporate, fails to pay to the Fund any sum which the employer has been ordered to pay under this Act, that sum, or such part thereof as remains unpaid, shall be a debt to the Fund jointly and severally from any directors of the body corporate.

## **Limitation.**

49.(1) Notwithstanding any provision in any other law, proceedings for an offence under this Act may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Director to justify a prosecution for the offence, comes to his knowledge or within the period of two years after the commission of the offence whichever be the later.

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(2) For the purposes of subsection (1) a certificate purporting to be signed by or on behalf of the Director as to the date on which such evidence came to his knowledge shall be conclusive evidence thereof.

**General power to make regulations.**

50.(1) The Minister may make regulations for the purpose of carrying this Act into effect, and in particular, but without prejudice to the generality of the foregoing power—

- (a) providing for any matter, which is required or authorized by this Act to be prescribed;
- (b) prescribing the manner of notifying entry into insurance;
- (c) prescribing the manner of the payment and collection of contributions payable under this Act;
- (d) prescribing the manner in which claims to benefit may be made;
- (e) prescribing the form of notices and proof of incapacity;
- (f) prescribing conditions as to behaviour during disease or disablement and providing for the visiting of sick and disabled persons;
- (g) prescribing the manner and time of payment of benefit, and providing for the suspension of benefit for such time and under such conditions as may be prescribed in respect of non-compliance with the provisions of this Act;
- (h) enabling a person to be appointed as administrator with power to exercise on behalf of any beneficiary who, by reason of any mental or other incapacity, is unable to act, any right to which that beneficiary may be entitled under this Act, and to authorize any administrator so appointed to receive any benefit on behalf and for the benefit of the beneficiary;
- (i) prescribing the method of payment of amounts of benefit due on the death of the beneficiary;
- (j) prescribing the fees payable out of the Fund to medical officers and practitioners and to members of the Board;
- (k) *Omitted.*



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(2) Subject to any provision of this Act prescribing any other penalty there may be prescribed in respect of a breach of any regulations imprisonment for one month and a fine at half of level 1 on the standard scale and to a further fine equivalent to one tenth of level 1 on the standard scale for every day on which the offence has continued.

(3) All Regulations made under this Act shall be laid on the Table of the Parliament as soon as may be after they are made.

## **PART VII.** **FINANCE.**

### **Employment Injuries Insurance Fund.**

51.(1) For the purposes of this Act, there shall be established, under the control of the Director, a fund called "Employment Injuries Insurance Fund" into which shall be paid all contributions, all fines imposed under the terms of this Act otherwise than upon criminal proceedings, and all fees levied under this Act, and out of which shall be paid without the necessity of any further appropriation all benefits including, notwithstanding the provisions of section 5 of the European Communities Act, claims for such benefits payable by reason of Gibraltar's obligations under the Regulations of the Council of the European Communities on the application of social security schemes to employed persons and their families moving within the Community and all expenses incurred in connection with the administration of this Act.

(2) If at any time the balance to the credit of the Fund be insufficient to meet wholly or in part the payments chargeable to the Fund, such balance shall be supplemented by temporary advances from the Consolidated Fund.

(3) Annual accounts of the Fund shall be prepared in such form and in such manner as the Financial Secretary may direct, and the Principal Auditor shall examine and certify every such account.

(4) Any moneys standing to the credit of the Fund may from time to time be invested in accordance with such directions as may be given by the Financial Secretary and any interest received from such investments shall be credited to the Fund.

### **Report by actuary.**

52. As soon as may be after the 31st day of December of every successive fifth year a report to the Director shall be made by an actuary appointed by the Minister on the financial condition of the Fund and on the adequacy or

otherwise of the contributions payable under this Act to support the benefits payable thereunder having regard to the liabilities of the Fund:

Provided that the Minister may at any time direct that the period to be covered by any report under this subsection shall be reduced to some lesser period than five years not being less than one year.

**Exemption from stamp duty.**

53. Notwithstanding the provisions of the Stamp Duties Act no stamp duty shall be charged on claims and applications made by persons under or for the purposes of this Act, or on receipts given for or upon the payment of sums in respect of benefit, or on powers of attorney which grant a mandate solely to claim benefit or to receive and give acquittance for payments in respect of benefit.

**Reciprocal agreements.**

54.(1) For the purpose of giving effect to any agreement with the Government of the United Kingdom, or of any part of Her Majesty's dominions, or the Government of any foreign country, providing for reciprocity in matters relating to the payment of compensation or benefit to insured persons in respect of industrial or similar injuries, it shall be lawful for the Minister, by order, to make provision for modifying or adapting this Act in its application to cases affected by the agreement.

(2) The modifications of this Act, which may be made by virtue of subsection (1), shall include provision—

- (a) for securing that acts, omissions and events having any effect for the purpose of the law of the country in respect of which the agreement is made shall have the corresponding effect for the purpose of this Act (but not so as to confer the right to double benefit) ;
- (b) for determining in cases where rights accrue both under this Act and under the law of such country, which of these rights shall be available to the person concerned;
- (c) for making any provisions as to administration and enforcement contained in this Act or in any regulations applicable also for the purposes of the law of that country;
- (d) for making any necessary financial adjustments by payments into or out of the Fund.

**Review of contributions, benefits, etc.**

55.(1) The Minister shall, at such intervals as he deems appropriate review and determine by notice published in the Gazette the sums specified in the following sections and Schedules to this Act:

section 16(2);  
section 19;  
section 20;  
section 21(4);  
section 22(1);  
Schedule 1;  
Schedule 2;  
Schedule 3;  
Schedule 4;  
Schedule 5,.

**SCHEDULE 1****Combined Social Insurance and Other Contribution Rates.****Rate of Contribution for an Employed Person.****Employee - 10% of Gross Earnings.**

Subject to a maximum contribution of £1,308.32 per annum.

Contributions are payable weekly subject to a minimum of £5.00 per week and a maximum of £25.16 per week.

**Married Women.\***

£13.10 per week.

\*This rate only applies to those married women who prior to 1 January 1985 elected not to pay contributions to the Social Insurance Scheme.

**Employer - 20% of Gross Earnings.**

Subject to a maximum contribution of £1,714.44 per annum.

Contributions are payable weekly subject to a minimum of £15.00 per week and a maximum of £32.97 per week.

Where the person employed is 60 years or over or one who has retired at age 55 by operation of law, only the employer's share of the contribution is payable.

**Rate of Contribution for a Self-Employed Person - 20% of Gross Earnings.**

Subject to a maximum contribution of £1,568.84 per annum.

Contributions are payable weekly subject to a minimum of £10.00 per week and a maximum of £30.17 per week.

**Gibraltar Regiment.**

Employee Contributions: £14.69 per week.

Employer Contributions: £20.54 per week.

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## Apportionment of Contributions.

All contributions shall be deemed to be collected as follows–

Social Security (Employment Injuries Insurance) Act	0.6%
Social Security (Insurance) Act	1.2%
Social Security (Open Long-Term Benefits Scheme) Act	28.2%
Medical (Group Practice Scheme) Act	70%

All contributions collected with effect from 1 July 2010 shall be apportioned as follows:

Gibraltar Health Authority – GPMS	70.00%
Statutory Benefits Fund	30.00%
Total	100.00%

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**SCHEDULE 2**

**PART I**

**INJURY BENEFIT**

Section 14

<b>Rates of Injury Benefit</b>		
<b>Class of Insured Persons</b>	<b>Per week</b>	<b>Per day</b>
Persons who have attained the age of 18 years.	£87.64	£12.52
Persons who have attained the age of 15 but are under 18.	£65.80	£9.40

**PART II**

**DEPENDANTS' ALLOWANCE**

Section 18

<b>Class of Dependent</b>	<b>Per week £</b>	<b>Per day £</b>
Dependent adult	£18.69	£2.67
Allowance for first dependent child.	£10.15	£1.45
Allowance for second dependent child	£6.51	£0.93

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## SCHEDULE 3

## DISABLEMENT GRATUITY

Section 15 (6)

(1) Degree of disablement per centum	(2) Amount of gratuity	(3) Degree of disablement per centum	(4) Amount of gratuity
	£		£
1	510	18	4,710
2	740	19	4,940
3	970	20	5,190
4	1,220	21	5,390
5	1,460	22	5,670
6	1,680	23	5,940
7	1,930	24	6,170
8	2,160	25	6,410
9	2,400	26	6,640
10	2,630	27	6,880
11	2,900	28	7,150
12	3,170	29	7,380
13	3,410	30	7,610
14	3,690	31	7,840
15	3,940	32	8,090
16	4,180	33	8,330
17	4,440	34	8,560

## SCHEDULE 4

## RATES OF DISABLEMENT PENSION

Section 15 (7) (a)

	Weekly Rates	
1. Degree of disablement per centum	2. Persons who have attained the age of 18	3. Persons who have attained the age of 15 but are under 18
	£	£
100	87.64	65.80
95	83.80	63.10
90	79.50	59.50
85	74.90	56.30
80	70.30	53.00
75	66.00	49.50
70	61.70	46.30
65	57.50	43.20
60	52.90	39.90
55	48.60	36.80
50	44.10	33.30
45	39.90	29.90
40	35.30	26.80
35	31.00	23.20



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## SCHEDULE 5

## DISABLEMENT GRATUITY

Section 15 (7) (b)

Degree of disablement per centum	Amount of gratuity	Degree of disablement per centum	Amount of gratuity
1.	2.	3.	4.
	£		£
35	8,890	68	17,060
36	9,110	69	17,340
37	9,350	70	17,590
38	9,630	71	17,860
39	9,870	72	18,100
40	10,120	73	18,330
41	10,380	74	18,570
42	10,610	75	18,800
43	10,860	76	19,070
44	11,110	77	19,330
45	11,380	78	19,560
46	11,650	79	19,810
47	11,870	80	20,070
48	12,110	81	20,330
49	12,340	82	20,580
50	12,620	83	20,810
51	12,850	84	21,050
52	13,100	85	21,330
53	13,360	86	21,540
54	13,620	87	21,770
55	13,850	88	22,030
56	14,120	89	22,270
57	14,340	90	22,530
58	14,590	91	22,770
59	14,870	92	23,040
60	15,100	93	23,270
61	15,350	94	23,510
62	15,570	95	23,770
63	15,810	96	24,040
64	16,090	97	24,270
65	16,330	98	24,530
66	16,600	99	24,770
67	16,830	100	24,770

## SCHEDULE 6

Section 44.

CONSTITUTION, ETC., OF EMPLOYMENT INJURIES  
INSURANCE ADVISORY COMMITTEE.

1. The Employment Injuries Insurance Advisory Committee (in, this Schedule referred to as the Committee) shall consist of a chairman appointed by the Minister and six other members so appointed. At least one member of the Committee shall be a woman.
2. The chairman and other members shall hold office for a period which, in the cases of each of the members first appointed and of any member appointed to fill a causal vacancy shall be of such duration not exceeding five years as may be determined by the Minister, and in the case of all other members shall be a period of five years:

Provided that any member may by notice in writing to the Minister resign office at any time and shall be eligible for reappointment from time to time on or after the expiration of his term of office.

3. Of the members, other than the chairman, there shall be appointed—
  - (a) two after consultation with organisations representative of employers;
  - (b) two after consultation with organisations representative of workers;
  - (c) one representative of the Director; and
  - (d) one independent member.
4. Notwithstanding anything contained in paragraph 2, the Minister may, in his discretion, terminate the appointment of any member of the Committee at any time.
5. The Minister shall appoint a secretary to the Committee, and may appoint other officers and servants to the Committee.
6. There may be paid as part of the expenses of the Committee to persons attending its meetings at the request of the Committee such allowances (including compensation for loss of remunerative time) as may be prescribed.

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7. The Committee may act notwithstanding any vacancy among the members of the Committee.
8. The Committee may make rules for regulating the procedure (including the quorum) of the Committee.