

No. S 37

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

EMPLOYMENT ORDER, 2009

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**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

EMPLOYMENT ORDER, 2009

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Employment Order, 2009.

(2) The long title of this Order is "An Order relating to employment and for matters connected therewith or incidental thereto".

Interpretation.

2. In this Order, unless the context otherwise require —

"apprentice" means any person who has contracted to serve an employer and to learn and to be taught any business, trade, manufacture, undertaking, calling or employment in which employees are employed;

"Assistant Commissioner" means an Assistant Commissioner of Labour appointed under section 3(1);

"authorised officer" means any person appointed as such under section 5;

"basic rate of pay" means the total amount of money (including salary adjustments and increments) to which an employee is entitled under his contract of service either for working for a period of time, that is, for one hour, one day, one week, one month or for such other period as may be stated or implied in his contract of service, or for each completed piece or task of work but does not include —

(a) additional payments by way of overtime payments;

(b) additional payments by way of bonus payments or annual salary supplements;

(c) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(d) productivity incentive payments; and

(e) any allowance however described;

"child" means a person who has not attained the age of 15 years;

"collective agreement" means an agreement relating the regulation of the relations of employers and employees;

"commencement of this Order" means the date of commencement of the main substantive provisions of this Order;

"Commissioner" means the Commissioner of Labour appointed under section 3(1);

"confinement" means the delivery of a child;

"contract of service" means, subject to section 10, any agreement, whether in writing or oral and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve him as an employee, and includes a contract of apprenticeship;

"contractor" means any person who contracts with a principal to supply labour or to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal's trade or business;

"day" means a period of 24 hours beginning at midnight;

"dependant" means the following members of an employee's family —

(a) the wife;

(b) the husband;

(c) the father;

(d) the mother; and

(e) any child and any adopted child, living with or dependent on him;

"Deputy Commissioner" means a Deputy Commissioner of Labour appointed under section 3(1);

"domestic worker" means any house, stable or garden worker or motor vehicle driver employed in, or in connection with the domestic services of, any private premises and not in connection with any trade, business or profession carried on by the employer in such premises;

"employee" means a person who has entered into or who works under a contract of service with an employer, and includes a workman and any public officer or employee of the Government included in a category, class or description of such officers or employees declared by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, to be employees for the purposes of this Order or any Part thereof; but does not include any seaman, domestic worker or any person employed in a managerial, executive or confidential position or any person belonging to any other class of person whom the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by notification published in the *Gazette*, declare not to be employees for the purposes of this Order;

"employer" means any person who employs another person under a contract of service and includes —

(a) the Government, in respect of such categories, classes or descriptions of public officers or employees of the Government as are declared by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, to be employees for the purposes of this Order;

(b) any statutory body;

(c) the duly authorised agent or manager of the employer;

(d) the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work in which the employee is engaged;

"gross rate of pay" means the total amount of money including allowances to which an employee is entitled under his contract of service either for working for a period of time, that is, for one hour, one day, one week, one month or for such other period as may be stated or implied in his contract of service, or for each completed piece or task of work but does not include —

(a) additional payments by way of overtime payments;

(b) additional payments by way of bonus payments or annual salary supplements;

(c) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(d) productivity incentive payments; and

(e) travelling, food or housing allowances:

Provided that in the case of employee on piece rates, the ordinary rate of pay shall be calculated by dividing the period of 14 days immediately preceding the day on which the rate of pay is required to be calculated by the number of days on which such employee actually worked during such period;

"health officer" means the Director-General of Health Services, and includes any officer to whom he has delegated the exercise or performance of any power or duty conferred or imposed on him by this Order to the extent of the power or duty so delegated;

"hours of work" means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements, exclusive of any intervals allowed for rest and meals;

"immigrant employee" means any employee who is normally resident outside Brunei Darussalam who has come to Brunei Darussalam for the purpose of performing work in Brunei Darussalam;

"industrial undertaking" means —

(a) mines, quarries and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, assembled altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship-building and the generation, transformation and transmission of electricity and motive power of any kind;

(c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterworks or other work of construction, as well as the preparation for or the laying of the foundation of any such work or structure;

(d) the transport of passengers or goods by road, rail sea, air or inland waterway, including the handling of goods at docks, quays, wharves, warehouses and airports, but excluding transport by hand:

Provided that if, having regard to the nature of the work involved in any occupation which forms part of the industrial undertaking, His Majesty

the Sultan and Yang Di-Pertuan considers that such occupation should be excluded from the provisions of this Order relating to industrial undertakings, he may declare by order published in the *Gazette* that employment in such occupation shall be deemed not to be employment in an industrial undertaking for the purposes of this Order:

Provided further that any undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

"licence" means a licence granted under this Order;

"medical practitioner" means a medical practitioner registered under the Medical Practitioners and Dentists Act (Chapter 112);

"mine" includes any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth;

"Minister" means the Minister of Home Affairs;

"overtime" means the number of hours worked in any one day or in any one week in excess of the limits specified in Part VII;

"place of employment" means any place where work is carried on, for or on behalf of an employer, by an employee;

"principal" means any person who, in the course of or for the purposes of his profession, business, trade or work, contracts with a contractor for the supply of labour or for execution by the contractor of the whole or any part of any work undertaken by the principal;

"public holiday" means the days specified in the Third Schedule;

"repatriation" means the return of an employee to his country of domicile or origin, and includes the return to his house of an employee who has been brought to a place of employment by an employer from any other place within Brunei Darussalam;

"salary" means all remuneration including allowances payable to an employee in respect of work done under his contract of service, but does not include —

(a) the value of any accommodation or the supply of any food, fuel, electricity, water or medical attendance, or of any amenity or service excluded by order of the Minister published in the *Gazette*;

(b) any contribution paid by the employer on his own account to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(e) any gratuity payable on discharge or retirement; and

(f) any retrenchment benefit payable on retrenchment;

"shift work" means work which by reason of its nature requires to be carried on continuously by 2 or more shifts;

"sub-contractor" means any person who contracts with a contractor for the supply of labour or for the execution by the sub-contractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a sub-contractor to supply labour or to carry out the whole or any part of any work undertaken by the sub-contractor for a contractor;

"sub-contractor for labour" means any person who contracts with a contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be;

"workman" means —

(a) any person who has entered into a contract of service with an employer in pursuance of which he is engaged in manual labour, including any artisan or apprentice, but excluding any seaman or domestic worker;

(b) any person, other than clerical staff, employed in the operation or maintenance of mechanically-propelled vehicles used for the transport of passengers for hire or for commercial purposes;

(c) any person employed partly for manual labour and partly for the purpose of supervising in person any workman in and throughout the performance of his work:

Provided that when any person is employed by any one employer partly as a workman and partly in some other capacity or capacities, that person shall be deemed for the purposes of this Order to be a workman unless it can be established that the time during which he has been required to work as a workman in any one salary period as defined in

Part IV has on no occasion amounted to or exceeded one-half of the total time during which he has been required to work in such salary period;

(d) any other person specified in the First Schedule;

(e) any person whom the Minister may, by notification published in the *Gazette*, declare to be a workman for the purposes of this Order.

"young person" means a person who has attained the age of 15 years but who has not attained the age of 18 years.

Appointment of officers.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Commissioner of Labour and such number of Deputy Commissioners of Labour, Assistant Commissioners of Labour and other officers as may be necessary for the purpose of carrying into effect the provisions of this Order.

(2) The Commissioner shall have the general responsibility of all matters to which this Order relates.

Delegation of powers and appeals.

4. (1) The Commissioner may delegate the exercise of any power or the performance of any duty conferred or imposed on him by this Order to a Deputy Commissioner, Assistant Commissioners or to such other person as he may think fit.

(2) A delegation under subsection (1) may be made subject to such conditions as may be determined by the Commissioner in the instrument of delegation.

(3) The power of delegation under subsection (1) shall only be exercised by the Commissioner personally.

(4) If any employer is dissatisfied with any decision or order of a Deputy Commissioner or an Assistant Commissioner made or given by virtue of the provisions of subsections (1) and (2), he may appeal from such decision or order to the Commissioner within 14 days of the date of the decision or order being communicated to him.

(5) If any employer is dissatisfied with any decision or order made or given by the Commissioner under any provision of this Order or by virtue of subsection (4), he may appeal from such decision or order to the Minister within 14 days of the date of the decision or order being communicated to him, and the decision of the Minister shall be final.

Appointment of authorised officers.

5. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint such number of authorised officers to carry into effect any specific provisions of this Order or of any regulations made thereunder.

Effect of Order on other written laws.

6. Nothing in this Order shall be construed —

(a) to relieve any person who has entered into a contract of service, either as an employee or as the employer, of any duty or liability imposed upon him;

(b) to limit any power which may be exercised by any public officer;
or

(c) to limit any right conferred upon any person referred to in paragraph (a),

under or by virtue of any other written law.

PART II

CONTRACTS OF SERVICE

Certain contracts excluded.

7. This Part does not apply to contracts of apprenticeship.

Minister may prohibit employment other than under contract of service.

8. (1) The Minister may, by order published in the *Gazette*, prohibit the employment or contracting of any person or class of person to carry out work in any occupation in any agricultural or industrial undertaking, constructional work, statutory body, the Government or any other trade, business or place of work, unless under a contract of service entered into with —

(a) the principal or owner of that agricultural or industrial undertaking, constructional work, trade, business or place of work; or

(b) the statutory body or the Government.

(2) Upon the commencement of any such order, the person or class of person employed or contracted to carry out any such work shall be deemed to be an employee or employees and —

(a) the principal or owner of that agricultural or industrial undertaking, constructional work, trade, business or place of work; or

(b) the statutory body or the Government,

shall be deemed to be the employer for the purposes of such provisions of this Order and of any other written law as may be specified in such order.

(3) Notwithstanding subsection (1), Minister may, by order published in the *Gazette*, approve the employment of any person or class of person by such other person or class of person (not being the principal or owner) as he may specify, subject to such conditions as he may impose.

(4) Any person who contravenes any order made under this section is guilty of an offence.

Contractual age.

9. (1) A person who has not attained the age of 16 years shall not be capable of entering into a contract of service.

(2) Notwithstanding anything contained in any other written law, a person who has attained the age of 16 years but who has not attained the age of 18 years shall be capable of entering into a contract of service in an occupation approved by the Commissioner as not being injurious to the moral and physical development of youths.

Contract of service to be in writing and to include provision for termination.

10. (1) A contract of service for —

(a) a specified period of time exceeding one month; or

(b) the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month,

shall be in writing and signed by both parties:

Provided that an employee unable to sign may indicate his consent by affixing his thumbprint thereto.

{2} Every contract of service shall set out the manner in which the contract of service may be terminated by either party in accordance with this Part.

Contents of contract of service.

11. Every contract of service shall clearly define the rights and obligations of the parties thereto, and without prejudice to the generality thereof shall include the following particulars —

(a) the name of the employer or group of employers and, where practicable, the undertaking and place of employment;

(b) the name and place of origin of the employee, his place of engagement and any other particulars necessary for his identification;

(c) where possible, the names and addresses of the next of kin of the employee;

(d) the nature of employment;

(e) the duration of employment and the method of calculation thereof;

(f) the appropriate period of notice to be given by the party wishing to terminate the contract of service, due regard being had to sections 24, 25 and 26 and to the fact that such provisions refer to an equitable settlement of monetary and other questions;

(g) the rates of salary and the method of calculation thereof, the manner and times of payment of salary, the advances of salary, if any, and the manner of repayment of any such advances;

(h) the measures to be taken to provide for the welfare of the employee and any dependant who may accompany him under the terms of the contract of service;

(i) the conditions of repatriation, if the employee is not a citizen of Brunei Darussalam; and

(j) any special conditions of the contract of service.

Illegal terms of contract of service.

12. Every term of a contract of service, whether made before or after the commencement of this Order, which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Order shall be illegal and not valid to the extent that it is so less favourable.

Contract of service not ordinarily binding on dependants.

13. No contract of service shall be binding on the dependants of an employee, unless it contains an express provision to that effect.

Maximum duration of contracts of service.

14. (1) The duration which may be stipulated or implied in any contract of service involving a journey from the place of recruitment to the place of employment shall not exceed 2 years if the employee is not accompanied by his dependants, or shall not exceed 3 years if the employee is accompanied by his dependants.

(2) The Commissioner may, after consultation with any employers' and employees' organisations and representatives of the interests concerned, exempt from the application of this section contracts of service entered into between employers and literate employees whose freedom of choice in employment is in the opinion of the Commissioner satisfactorily safeguarded.

(3) The exemption under subsection (2) may apply generally, or to employees in any specified industry or undertaking or to special groups of employees.

Forms of contract of service.

15. (1) The Commissioner may approve a standard form of contract of service to be used by any person.

(2) Every employer shall furnish the Commissioner with a quarterly report of all persons newly-employed during each quarter under the approved form of contract of service, together with a certificate to indicate that the conditions thereof were read over to and understood by the employee before he signed it.

Medical examinations.

16. (1) Every employee who enters into a contract of service shall be medically examined by a medical practitioner at the expense of the employer.

{2} A medical certificate shall be obtained before the contract of service is signed.

Termination by Commissioner of contract of service.

17. A contract of service may be terminated by the Commissioner if the employee has been mistreated in person or property, and in such event the Commissioner may order the employer to award the employee reasonable compensation for such mistreatment.

Termination by employee threatened by danger.

18. An employee may terminate his contract of service with his employer without notice where he or his dependant is immediately threatened by danger to the person by violence or disease such as the employee did not by his contract of service undertake to run.

When contract of service deemed to be breached by employer and employee.

19. (1) An employer shall be deemed to be in breach of his contract of service with the employee if he fails to pay his salary in accordance with this Order.

(2) An employee shall be deemed to be in breach of his contract of service with the employer if he has been continuously absent from work for more than 2 days —

(a) without prior leave from his employer or without reasonable excuse; or

(b) without informing or attempting to inform his employer of the reason for the absence.

Liability on breach of contract of service.

20. Subject to any provision in the contract of service to the contrary for the payment of a greater sum, the party who is in breach of the contract of service shall be liable to pay to the other party a sum equal to the amount he would have been liable to pay under section 23 had he terminated the contract of service without notice or with insufficient notice.

Termination of contract of service.

21. (1) A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in

accordance with this Part, terminate when the period of time for which such contract of service was made has expired or when the piece of work specified in such contract of service has been completed.

(2) A contract of service for an unspecified period of time shall continue in force until terminated in accordance with this Part.

Notice of termination of contract of service.

22. (1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

(2) The length of such notice shall be determined by the contract of service or, in the absence of any provision, in accordance with subsection (3).

(3) Subject to subsection (2), the notice to terminate a contract of service shall be not less than —

(a) one day's notice, if the employee has been employed for less than 26 weeks;

(b) one week's notice, if the employee has been employed for at least 26 weeks but less than 2 years;

(c) 2 week's notice, if the employee has been employed for at least 2 years but less than 5 years;

(d) 4 week's notice, if the employee has been employed for at least 5 years.

(4) This section does not prevent either party from waiving his right to notice on any occasion.

(5) The notice to terminate shall be in writing and may be given at any time, and the day on which the notice is given shall be included in calculating the period of the notice.

Termination of contract of service without notice.

23. (1) Either party to a contract of service may terminate the contract of service without notice or, if notice has already been given in accordance with section 22, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay which would have accrued to the employee during the period of the notice and in the case of a monthly-rated employee where the period of the notice is less than a month, the amount payable for any one day shall be the gross rate of pay for one day's work.

(2) Either party to a contract of service may terminate the contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

Transfer to other employment.

24. (1) The transfer of any contract of service from one employer to another shall be subject to the consent of the employee and the endorsement of the transfer on the contract of service by the Commissioner.

(2) Before endorsing the contract of service, the Commissioner —

(a) shall ascertain that the employee has consented to the transfer, and that his consent has not been obtained by coercion, undue influence or as the result of misrepresentation or mistake; and

(b) may require the employee to be medically examined or re-examined, as the case may be, by a medical practitioner in any case in which by such transfer the employee —

(i) will change his form of employment; or

(ii) will be subject to such change in conditions of his employment as in the opinion of the Commissioner renders the examination advisable.

Change of employer.

25. (1) If by or under any written law, whether enacted before or after the commencement of this Order, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer, the employee's period of employment at the time when the modification takes effect shall count as a period of employment with such other body corporate and the change of employer shall not break the continuity of the period of employment.

(2) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased, the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees, and the death of the employer shall not break the continuity of the period of employment.

(3) If there is a change in the partners, personal representatives or trustees who employ any person, the employee's period of employment at the time of the change shall count as a period of employment with the partners, personal

representatives or trustees after the change, and the change shall not break the continuity of the period of employment.

Misconduct of employee.

26. (1) An employer may after due inquiry dismiss without notice an employee employed by him on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service except that instead of dismissing an employee an employer may —

(a) instantly down-grade the employee; or

(b) instantly suspend him from work without payment of salary for a period not exceeding one week.

(2) Notwithstanding subsection (1), where an employee considers that he has been dismissed without just cause or excuse by his employer, he may, within one month of the dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(3) The Minister may, before making a decision on any such representations, by writing under his hand request the Commissioner to inquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse.

(4) If, after considering the report made by the Commissioner under subsection (3), the Minister is satisfied that the employee has been dismissed without just cause or excuse, he may, notwithstanding any rule of law or agreement to the contrary —

(a) direct the employer to reinstate the employee in his former employment and to pay the employee an amount that is equivalent to the salaries that the employee would have earned had he not been dismissed by the employer; or

(b) direct the employer to pay such amount of salaries as compensation as may be determined by the Minister,

and the employer shall comply with the direction of the Minister.

(5) The decision of the Minister on any representation made under this section shall be final and shall not be challenged in any court.

(6) Any direction of the Minister under subsection (4) shall operate as a bar to any action for damages by the employee in any court in respect of the wrongful dismissal.

(7) An employer who fails to comply with the direction of the Minister under subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(8) Where any amount to be paid by an employer under subsection (4) is not paid in accordance with the direction of the Minister and the employer has been convicted of an offence under subsection (7), the amount or so much thereof as remains unpaid shall be recoverable by the court as if it were a fine and the amount so recoverable shall be paid to the employee entitled to payment under the direction of the Minister.

(9) For the purpose of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding one week but shall pay him not less than one-half of his salary for such period.

(10) If the inquiry does not disclose any misconduct on the part of the employee, the employer shall forthwith restore to the employee the full amount of the salary so withheld.

Offences.

27. Any employer who —

(a) fails to comply with any order or requirement made by the Commissioner in pursuance of the provisions of this Part; or

(b) enters into a contract of service contrary to any provision of this Part,

is guilty of an offence and liable on conviction to a fine not exceeding \$3,000, imprisonment for a term not exceeding one year or both.

PART III

CONTRACTS OF APPRENTICESHIP

Contracts of apprenticeship of persons under age 16.

28. (1) The parent or guardian of a person who has not attained the age of 16 years may, with his consent, enter into a written contract of apprenticeship, apprenticing him to an employer to train him or to have him trained systematically for an agreed trade or employment for a period not exceeding 5 years.

(2) Whenever any person who has not attained the age of 16 years is without a known parent or guardian, the Commissioner may authorise his apprenticeship, and may appoint any fit and proper person to sign the contract of apprenticeship and act generally as his guardian.

Contracts of apprenticeship of persons age 16 and above.

29. Any person who has attained the age of 16 years and any person who is above the age of 18 years, not being under any contract of apprenticeship, may apprentice himself to an employer in any agreed trade or employment for a period not exceeding 5 years.

Assignment.

30. Every contract of apprenticeship may, with the consent of the parties thereto, be assigned.

Attestation.

31. Every contract of apprenticeship and any assignment thereof shall be in writing and no such contract shall be valid unless made with the approval of and attested by the Commissioner in writing on the contract of apprenticeship or assignment (as the case may be).

Duties of Commissioner as attesting officer.

32. Before attesting any contract of apprenticeship, the Commissioner shall satisfy himself —

(a) that the employer is a fit, able and proper person and has facilities sufficient to instruct the apprentice in the agreed trade or employment;

(b) that the apprentice has consented to such contract and that his consent has not been obtained by coercion, undue influence or as the result of misrepresentation or mistake;

(c) that the apprentice has been medically examined and certified by a medical practitioner to be physically and mentally fit to be employed and trained in the agreed trade or employment;

(d) that the parties to such contract have fully understood the terms of the contract before signing it, or otherwise indicating assent;

(e) that provision has been made in such contract as to how any remuneration in cash or otherwise due to the apprentice shall be

determined and as to the scale of increase in remuneration during the course of the apprenticeship;

(f) that provision has been made in such contract for payment of such remuneration to the apprentice during illness and during holidays;

(g) that the terms of such contract are in accordance with the provisions of this Part.

Certificate of service on discharge.

33. (1) Whenever for any reason, including the completion of his contract of apprenticeship, an apprentice ceases to be employed by the employer, the employer shall supply the apprentice with a statement, in such form as the Commissioner may determine, setting forth the service of the apprentice.

(2) The employer shall forward a copy of such statement to the Commissioner, who shall endorse a note of the service on the contract of apprenticeship.

Retention of apprentices after expiry of contracts.

34. If any person to whom an apprentice has been apprenticed retains him in his service after the agreed period of apprenticeship has expired without any arrangement between them for the payment of salary, the apprentice shall be entitled to recover from him salary at the current rate payable for services similar to that performed by such apprentice.

Suspension and discharge.

35. (1) In any case where an apprentice so misconducts himself or proves himself to be so incapable that, if he were an employee other than an apprentice, it would have been reasonable for his employer to discharge him, the employer may suspend the apprentice and apply to the Commissioner for leave to discharge him.

(2) The Commissioner shall enquire into the circumstances and where he grants such leave the employer shall be entitled to discharge the apprentice as from the date on which he was suspended and as from such date the contract of apprenticeship shall be deemed to be terminated.

(3) Where such leave is refused, the Commissioner may make such order as he thinks fit with respect to payment to be made to the apprentice in respect of the period of his suspension.

(4) If no such order is made, the employer shall pay to the apprentice all the salary that would have been payable to him in respect of such period as if he had not been suspended.

(5) If the employer, notwithstanding that leave to discharge the apprentice has been refused by the Commissioner, discharges the apprentice, such discharge shall for all purposes be deemed to be a breach by the employer of the contract of apprenticeship.

(6) Where an employer —

(a) without proceeding in accordance with subsections (1), (2), (3), (4) and (5), discharges or purports to discharge an apprentice; or

(b) having suspended him, does not within 3 days thereafter make application under subsection (1) for leave to discharge him,

the apprentice may, within 7 days after such discharge or purported discharge or within 10 days after such suspension (as the case may be) apply to the Commissioner for relief from such discharge, purported discharge or suspension and thereupon the provisions of this section shall apply in like manner as if the employer had proceeded in accordance with subsection (1).

(7) The Commissioner may fix an amount that shall be payable to the apprentice as damages for breach or deemed breach of the contract of apprenticeship if the employer discharges him contrary to the provisions of this section, and such amount shall be in addition to the amount of salary payable in respect of the period of suspension.

Offences.

36. Any employer who —

(a) fails to comply with any order made by the Commissioner under this Part; or

(b) enters into a contract of apprenticeship contrary to the provisions of this Part,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,500, imprisonment for a term not exceeding 6 months or both.

PART IV

PAYMENT OF SALARIES

Fixation of salary period.

37. (1) An employer may fix periods, which for the purpose of this Order shall be called salary periods, in respect of which salary earned shall be payable.

(2) No salary period shall exceed one month.

(3) In the absence of a salary period so fixed, the salary period shall be deemed to be one month.

Computation of salary for incomplete month's work.

38. (1) If a monthly-rated employee has not completed a whole month of service because —

(a) he commenced employment after the first day of the month;

(b) his employment was terminated before the end of the month; or

(c) he took leave of absence without pay for one or more days of the month,

the salary due to him for that month shall be calculated in accordance with the following formula —

$$\frac{\text{Monthly gross rate of pay}}{\text{Number of days on which the employee is required to work in that month}} \times \text{Number of days the employee actually worked in that month.}$$

(2) In calculating the number of days actually worked by an employee in a month under subsection (1), any day on which an employee is required to work for 5 hours or less under his contract of service shall be regarded as half a day.

Time of payment.

39. (1) Salary earned by an employee under a contract of service, other than additional payments for overtime work, shall be paid before the expiry of the 7th. day after the last day of the salary period in respect of which the salary is payable.

(2) Additional payments for overtime work shall be paid not later than 14 days after the last day of the salary period during which the overtime work was performed.

(3) The total salary due to an employee on completion of his contract of service shall be paid to him on completion of the contract.

Payment on termination by employee.

40. (1) Subject to the provisions of this Order, the total salary due to an employee who terminates his contract of service with his employer under section 26, or after giving prior notice to the employer as required under section 22, shall be paid to him on the day on which the contract of service is terminated.

(2) Subject to the provisions of this Order, the total salary due to an employee who —

(a) terminates his contract of service without giving prior notice to his employer as required under section 22; or

(b) has already given prior notice under section 22, but the employee terminates his contract of service without waiting for the expiry of the notice,

shall be paid to him not later than 7 days after the day on which the contract of service is terminated.

(3) The employer may, subject to any order made by a court or the Commissioner to the contrary, deduct from the salary due to the employee such sum as the employee is liable to pay in lieu of prior notice under section 23(1).

Payment on dismissal or termination by employer.

41. Subject to the provisions of this Order, the salary and any other sum due to an employee who has been dismissed or whose contract of service has been terminated by his employer shall be paid on the day of dismissal or termination, as the case may be, or, if this is not possible, within 3 days thereafter, not including rest days and public holidays.

Payment to be made during working hours.

42. (1) Payment of salary shall be made on a working day and during working hours at the place of work or at any other place agreed to between the employer and the employee.

{2} Subsection (1) shall not apply where the salary is paid into an account with a bank in Brunei Darussalam, being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons.

Salaries not due for absence from work through imprisonment etc.

43. Salary shall not be payable to or recoverable by an employee from his employer in respect of —

- (a) the term of any sentence of imprisonment undergone by him;
- (b) any period spent by him in lawful custody;
- (c) any period spent by him in going to or returning from prison or any other place of lawful custody;
- (d) any period spent by him in going to, attending before or returning from, a court, otherwise than as a witness on his employer's behalf.

No unauthorised deductions to be made.

44. No deductions other than deductions authorised under the provisions of this Order shall be made by an employer from the salary of an employee unless they are required to be made by order of a court or other authority competent to make such order.

Authorised deductions.

45. (1) The following deductions may be made from the salary of an employee —

- (a) deductions for absence from work;
- (b) deductions for damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;
- (c) deductions for the actual cost of meals supplied by the employer at the request of the employee;
- (d) deductions for house accommodation supplied by the employer;

(e) deductions for such amenities and services supplied by the employer as the Commissioner may authorise;

(f) deductions for recovery of advances or loans or for adjustment of over-payments of salary;

(g) deductions for income tax payable by the employee;

(h) deductions of contributions payable by an employer on behalf of an employee under and in accordance with the provisions of the Tabung Amanah Pekerja Act (Chapter 167);

(i) deductions made at the request of the employee for the purpose of a superannuation scheme or provident fund or any other scheme which is lawfully established for the benefit of the employee and is approved by the Commissioner;

(j) deductions made with the written consent of the employee and paid by the employer to any co-operative society registered under any written law in respect of subscriptions, entrance fees, instalments of loans, interest and other dues payable by the employee to such society; and

(k) any other deductions which may be approved by the Minister.

(2) For the purposes of subsection (1)(e), "services" does not include the supply of tools and raw materials required for the purposes of employment.

Deductions for absence.

46. (1) Deductions may be made under section 45(1)(a) only on account of the absence of an employee from the place where, by the terms of his employment, he is required to work, the absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of any deduction referred to in subsection (1) shall in no case bear to the salary payable at the gross rate of pay to the employee in respect of the salary period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such salary period, during which he was required to work by the terms of his employment, and in the case of a monthly-rated employee the amount of deduction in respect of any one day shall be the gross rate of pay for one day's work.

(3) If any employee absents himself from work otherwise than as provided by this Order or by his contract of service, the employer may, subject to any order which may be made by a court or by the Commissioner on complaint of either

party, deduct from any salary due to the employee the cost of food supplied to him during his absence.

Deductions for damages or loss.

47. (1) A deduction under section 45(1)(b) shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employee and, except with the approval of the Commissioner, shall in no case exceed one-quarter of one month's salary and shall not be made until the employee has been given an opportunity of showing cause against the deduction.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the employer in such form as the Commissioner may determine.

Deductions for accommodation, amenity and service.

48. A deduction under sections 45(1)(d) or (e) shall not be made from the salary of an employee unless the house accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and the deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and, in the case of a deduction under section 45(1)(e), shall be subject to such conditions as the Commissioner may impose.

Recovery of advances and loans.

49. (1) The recovery of an advance of money made to an employee before the commencement of a contract of service shall begin from the first payment of salary in respect of a completed salary period, but no recovery shall be made of any such advance made for travelling expenses.

(2) Advances may be recovered in instalments by deductions from salary spread over not more than 12 months.

(3) No instalment under subsection (2) shall exceed one-quarter of the salary due for the salary period in respect of which the deduction is made.

(4) Loans may be recovered in instalments by deductions from salary.

(5) No instalment under subsection (4) shall exceed one-quarter of the salary due for the salary period in respect of which the deduction is made.

Deductions not to exceed 50 per cent of salary.

50. (1) The total amount of all deductions made from the salary of an employee by an employer in any one salary period, other than deductions under sections 45(1)(a), (f), (g) or (j), shall not exceed 50 per cent of the salary payable to the employee in respect of that period.

(2) Subsection (1) shall not apply to deductions made from the last salary due to an employee on termination of his contract of service or on completion of his contract of service.

Priority of salary to other debts.

51. (1) This section shall apply to all workmen and to other employees who are in receipt of a salary not exceeding \$1,600 a month (excluding overtime payments, bonus payments, annual salary supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister.

(2) When, on the application of a person holding a mortgage, charge or lien or of a person who has obtained a judgment or decree, the property of an employer is sold, or any money due to the employer is garnished, the court ordering the sale or garnishment shall not distribute the proceeds of the sale or the money to the person entitled thereto unless the court has ascertained and paid the salary due to all the employees employed by that employer and to all employees engaged by a contractor or sub-contractor and working for that employer.

(3) This section shall only apply —

(a) to property on which those employees were or are working;

(b) where the property sold was or is the produce of the work of those employees;

(c) where the property sold is movable property used or being used by those employees in the course of their work; or

(d) to money due to the employer in respect of work done by those employees.

(4) The amount payable to each such employee under subsection (2) shall not exceed 5 months' salary.

(5) For the purpose of ascertaining the amount due to any employee under subsection (2), the court may refer the matter to the Commissioner with a request

that he holds an inquiry into the matter and forwards his findings in respect thereof to the court, and the Commissioner shall thereupon comply with any such request.

(6) For the purposes of any inquiry under subsection (5), the Commissioner shall have all the powers conferred upon him by section 124.

(7) For the purposes of this section, "employees" includes sub-contractors for labour and "salary" includes money due to a sub-contractor for labour.

Offence.

52. Any employer who fails to pay the salary of an employee in accordance with the provisions of this Part is guilty of an offence.

PART V

PRINCIPALS AND CONTRACTORS

Liability of principals and contractors for salary.

53. (1) Where a principal in the course of his trade or business —

(a) contracts with a contractor for —

(i) the supply of labour; or

(ii) the execution by or under the contractor, of the whole or any part of any work undertaken by the principal; and

(b) any salary is due to any workman by the contractor or any sub-contractor under the contractor, for labour supplied or for work done in the course of the execution of such work,

the principal, the contractor and any such sub-contractor, not being the employer, shall be jointly and severally liable with the employer to pay the workman as if the workman had been immediately employed by him.

(2) Where salary is claimed from the principal, this Order, with the exception of section 51, shall apply as if a reference to the principal were substituted for the reference to the employer, except that salary claimed shall be calculated with reference to the salary of the workman under the employer by whom he was immediately employed.

(3) No principal, contractor or sub-contractor, not being the employer, shall be jointly and severally liable to any workman under subsections (1) or (2) for more than the salary earned in one month for the work done by the employer.

(4) In the case of a contract of service for constructional work, the principal shall not be liable for the payment of salary under subsections (1) or (2) unless he is also a constructional contractor.

(5) The workman shall institute proceedings for the recovery of his salary within 60 days or such longer period as the Commissioner may allow from the date on which the salary became due for payment in accordance with the provisions for the payment of salary in Part IV.

(6) A claim for salary under this section shall be made in the manner provided for in Part XVI.

(7) Nothing in this section shall prevent any principal, contractor or sub-contractor, not being the employer, who, as the result of a claim made under this section, has paid any salary to a workman from instituting civil proceedings for the recovery of the amount of that salary so paid from the employer of that workman.

(8) Nothing in this section shall be construed so as to prevent a workman from recovering salary under this Order from his employer instead of the principal, contractor or sub-contractor.

(9) The reference to principal in this section shall include the Government and a statutory body.

Registration of contractors and sub-contractors.

54. (1) The Minister may, by notification published in the *Gazette*, require all contractors and sub-contractors to be registered with the Commissioner and thereafter no person shall act as a contractor or a sub-contractor unless he is so registered.

(2) Every application for such registration shall be in such form as the Commissioner may determine.

(3) Every person so registered under this section as a contractor or sub-contractor shall be deemed to be the employer of the workmen employed by him.

(4) Every contractor or sub-contractor who has been so registered and who changes the name under which he carries on business shall, within 7 days of the change of name, apply in writing to the Commissioner for re-registration and cancellation of the previous registration.

(5) The Commissioner may effect the registration of any person under this section and may cancel any such registration.

(6) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to prescribe the requirements and conditions for registration of a contractor or sub-contractor under this section.

(7) Any person who contravenes this section is guilty of an offence.

PART VI

TRUCK SYSTEM

Agreements to pay salary otherwise than in legal tender illegal.

55. The salary of an employee shall be payable in legal tender and not otherwise and if in any contract of service the whole or any part of the salary is made payable in any other manner the contract of service shall be illegal and invalid.

Agreements as to place and manner etc. of spending salary illegal.

56. No contract of service shall contain any terms as to the place at which, or the manner in which, or the person with whom, any salary paid to the employee is to be expended and every contract of service containing such terms shall be illegal and invalid.

Salary to be paid entirely in legal tender.

57. Except where otherwise expressly permitted by the provisions of this Order, the entire amount of the salary earned by, or payable to, any employee in respect of any work done by him shall be actually paid to him in legal tender, and every payment of, or on account of, any such salary made in any other form shall be illegal and invalid.

Recovery of salary not paid in legal tender.

58. Every employee shall be entitled to recover in any court or before the Commissioner, acting under section 124, so much of his salary exclusive of sums lawfully deducted in accordance with the provisions of this Order as has not been actually paid to him in legal tender.

Payment of salary through bank.

59. (1) Nothing in sections 55 or 57 shall render illegal any payment of salary by an employer to an employee in accordance with the employee's written approval in either of the following ways —

(a) payment into an account at a bank in Brunei Darussalam holding a licence granted under the Banking Order, 2006 [S 45/06], a licence being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons;

(b) payment by cheque made payable to or to the order of the employee.

(2) Where the salary or part thereof has been paid in either of the ways set out in subsection (1), section 58 shall not operate to give a right of recovery of so much of the salary as have been so paid.

(3) The employee may at any time withdraw his approval under subsection (1) by notice in writing given to the employer.

(4) Such notice shall take effect 14 days from the date on which it was served on the employer.

(5) The approval of the employee to the mode of payment of his salary under subsection (1) shall not be unreasonably withheld, or if granted and notwithstanding subsection (3) shall not be unreasonably withdrawn, by the employee.

(6) Any dispute as to whether an employee has unreasonably withheld or withdrawn his approval to the mode of payment of his salary under subsection (1) shall be referred to the Commissioner, whose decision shall be final.

Remuneration other than salary.

60. Nothing in this Part shall render illegal a contract of service with an employee for giving to him food, accommodation and other privileges in addition to money as remuneration for his services, but no employer shall give to a workman any noxious drugs or intoxicating liquor by way of remuneration.

Shops and canteens.

61. (1) Nothing in this Part shall prevent the employer from establishing or permitting to be established a shop or a canteen for the sale of foodstuffs, provisions, meals or refreshments; but no workman shall be compelled by any

contract of service to purchase any goods at that shop or canteen, and no noxious drugs or intoxicating liquor shall be sold at any such shop or canteen.

(2) No employer shall establish or keep or permit to be established or kept, a shop or canteen on any place of employment for the sale of foodstuffs, provisions, meals or refreshments to his workmen otherwise than in accordance with subsection (1).

Offences.

62. Any employer who —

(a) enters into any contract of service or gives any remuneration for services which is contrary to the provisions of this Part or is declared by this Part to be illegal; or

(b) receives any payment from any employee contrary to the provisions of this Part or who contravenes section 61(2),

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and for a second or subsequent offence to a fine not exceeding \$2,000, imprisonment for a term not exceeding one year or both.

PART VII

REST DAYS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF SERVICE

Rest days.

63. (1) Every employee shall be allowed, in each week, a rest day of one whole day which shall be Sunday or such other day as the employer may determine.

(2) The employer may substitute any continuous period of 30 hours as a rest day for an employee engaged in shift work.

(3) Where in any week a continuous period of 30 hours commencing at any time before 6.00 p.m. on a Sunday is substituted as a rest day for an employee engaged in shift work, such rest day shall be deemed to have been granted within that week notwithstanding that the period of 30 hours ends after that week.

(4) Where the rest days of an employee are determined by the employer, the employer shall, before the commencement of the month in which the rest days fall, prepare or cause to be prepared a roster of the days appointed to be rest days therein.

Work on rest day.

64. (1) Subject to section 65(2), no employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

(2) In the event of any dispute, the Commissioner may decide whether or not an employee is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

(3) Any employee who at his own request works on a rest day or a public holiday shall be paid for that day —

(a) if the period of work does not exceed one-half of his normal hours of work, a sum at the basic rate of pay for half a day's work;

(b) if the period of work is more than one-half but does not exceed his normal hours of work, a sum of the basic rate of pay for one day's work;

(c) if the period of work exceeds his normal hours of work for one day —

(i) a sum at the basic rate of pay for one day's work; and

(ii) a sum at the rate of not less than one and one-half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

(4) Any employee who at the request of his employer works on a rest day or a public holiday shall be paid for that day —

(a) if the period of work does not exceed one-half of his normal hours of work, a sum at the basic rate of pay for one day's work;

(b) if the period of work is more than one-half but does not exceed his normal hours of work, a sum at the basic rate of pay for 2 days' work;

(c) if the period of work exceeds his normal hours of work for one day —

(i) a sum at the basic rate of pay for 2 days' work; and

(ii) a sum at the rate of not less than one and one-half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

(5) In this section —

(a) "hourly basic rate of pay" of an employee is to be calculated in the same manner as for the purpose of calculating payment due to an employee under section 65 for working overtime;

(b) "normal hours of work" means the number of hours of work (not exceeding the limits applicable to an employee under sections 65 or 67, as the case may be) that is agreed between an employer and an employee to be the usual hours of work per day; or in the absence of any such agreement, shall be deemed to be 8 hours a day.

(6) Subsection (3) shall not apply to any employee who is employed by the Government or a statutory body in any of the essential services as defined in section 3(3) of the Internal Security Act (Chapter 133) for the purposes of that section, but any such employee who at the request of his employer works on a rest day or part thereof shall be given a day or part of a day off, as the case may be, in substitution for such a rest day or part thereof.

Hours of work.

65. (1) Except as hereinafter provided, an employee shall not be required under his contract of service to work for —

(a) more than 6 consecutive hours without a period of leisure;

(b) more than 8 hours in one day or for more than 44 hours in one week:

Provided that —

- (i)* an employee who is engaged in work which must be carried on continuously may be required to work for 8 consecutive hours, inclusive of a period or periods of not less than 45 minutes in the aggregate, during which he shall have the opportunity to have a meal;
- (ii)* where under a contract of service, the number of hours of work on one or more days of the week is less than 8, the limit of 8 hours may be exceeded on the remaining days of the week, but no employee shall be required to work for more than 9 hours in one day or 44 hours in one week;
- (iii)* where under a contract of service, the number of days on which the employee is required to work in a week is not more than 5 days, the limit of 8 hours in one day may be

exceeded, but no employee shall be required to work for more than 9 hours in one day or 44 hours in one week; and

- (iv) where under a contract of service, the number of hours of work in every alternate week is less than 44, the limit of 44 hours in one week may be exceeded in the other week, but no employee shall be required to work for more than 48 hours in one week or for more than 88 hours in any continuous period of 2 weeks.

(2) An employee may be required by his employer to exceed the limit of hours set out in subsection (1) and to work on a rest day or a public holiday, in the case of —

- (a) an accident, actual or threatened;
- (b) any work, the performance of which is essential to the life of the community;
- (c) any work which is essential for defence or security;
- (d) any urgent work to be done to any machinery or plant;
- (e) any interruption of work which was impossible to foresee;
- (f) work to be performed by employees in any industrial undertaking essential to the economy of Brunei Darussalam or in any of the essential services as defined in section 3(3) of the Internal Security Act (Chapter 133) for the purposes of that section.

(3) In the event of any dispute, the Commissioner shall have the power to decide whether or not the employer was justified in calling upon the employee to work in the circumstances specified in subsection 2(f).

(4) If an employee at the request of the employer works —

(a) for more than 8 hours in one day, except as provided in paragraphs (ii) and (iii) of the proviso to subsection (1), or for more than 9 hours in one day in any case specified in those paragraphs; or

(b) for more than 44 hours in one week, except as provided in paragraph (iv) of the proviso to subsection (1), or for more than 48 hours in any one week or more than 88 hours in any continuous period of 2 weeks in any case specified in that paragraph,

he shall be paid for such extra work at the rate of not less than one and one-half of his hourly basic rate of pay, irrespective of the basis on which his rate of pay is fixed.

(5) An employee shall not be permitted to work overtime for more than 72 hours a month.

(6) For the purpose of calculating the payment due for overtime to an employee, his hourly basic rate of salary shall be calculated in accordance with the following formula –

(a) in the case of a person employed on a monthly rate of pay –

$$\frac{12 \times \text{the employee's monthly basic rate of salary}}{52 \times 44 \text{ hours; and}}$$

(b) in the case of a person employed on piece rates –

$$\frac{\text{the total weekly salary at the basic rate of salary received}}{\text{the total number of hours worked in the week.}}$$

(7) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purpose of calculating the payment due for overtime to an employee employed on piece rates.

(8) Except in the circumstances described in subsection (2), an employee shall not be permitted to work for more than 12 hours in any one day.

(9) This section does not apply to employees engaged in the fire and rescue service or in any work which by its nature involves long hours of inactive or stand-by employment.

Task work.

66. Nothing in this Part shall prevent any employer from agreeing with any employee that the salary of the employee shall be paid at an agreed rate in accordance with the specific amount of work required to be performed, instead of by the basic daily rate or by piece rate.

Shift workers etc.

67. (1) Notwithstanding section 65(1), an employee who is engaged under his contract of service in regular shift work or who has otherwise consented in writing to work in accordance with the hours of work specified in this section, may be required to work for more than 6 consecutive hours, for more than 8 hours in any one day or for more than 44 hours in any one week, but the

average number of hours worked over any continuous period of 3 weeks shall not exceed 44 hours per week.

(2) No consent given by an employee under this section shall be valid unless —

(a) this section and section 65 have been explained to him; and

(b) he has been informed of —

(i) the times at which the hours of work begin and end;

(ii) the number of working days in each week; and

(iii) the weekly rest day.

(3) An employee to whom this section applies shall not be permitted to work for more than 12 hours in any one day.

(4) Section 65(4) does not apply to any employee to whom this section applies, but any such employee who, at the request of his employer, works for more than an average of 44 hours per week over any continuous period of 3 weeks, shall be paid for such extra work in accordance with section 65(4).

Interpretation of week for purposes of sections 63, 65 and 67.

68. For the purposes of sections 63, 65 and 67, "week" shall mean a continuous period of 7 days commencing at midnight on Sunday.

Power to exempt.

69. (1) The Commissioner may, after considering the operational needs of the employer and the health and safety of any employee or class of employee, by order in writing exempt an employee or any class of employee from sections 65(1), (5) and (8) and section 67(3), subject to such conditions as the Commissioner thinks fit.

(2) The Commissioner may, after considering the operational needs of an employer and the interests of any employee or class of employee, by order in writing, direct that the entitlement to be paid for extra work under sections 64(3), 64(4), 65(4), 67(4) or 70(4) shall not apply to that employee or class of employee, subject to such conditions as the Commissioner thinks fit.

(3) Where the Commissioner --

(a) exempts any employee or class of employee from sections 65(1), (5) and (8) or section 67(3); or

(b) directs that the entitlement to be paid for extra work under sections 64(3), 64(4), 65(4), 67(4) or 70(4) shall not apply to any employee or class of employee,

the employer shall display the order or a copy thereof conspicuously in the place where the employee or class of employee is employed.

Holidays.

70. (1) Every employee shall be entitled to a paid holiday at his gross rate of pay on every public holiday that falls during the time that he is employed:

Provided that --

(a) by agreement between the employer and the employee, any other day or days may be substituted for any one or more public holidays;

(b) if any public holiday falls on a rest day, the working day next following that rest day shall be a paid holiday; and

(c) if any public holiday falls on a day when the employee is not required to work under his contract of service, the employer may either pay the employee for that holiday at his gross rate of pay or give the employee a day off in substitution for that holiday.

(2) Notwithstanding subsection (1), no employee shall be entitled to holiday pay for any public holiday which falls on a day when the employee is on leave of absence without pay granted by the employer at the request of the employee.

(3) An employee who absents himself from work on the working day immediately preceding or immediately succeeding a public holiday or on any day substituted therefor under subsection (1), without the prior approval of his employer or without reasonable excuse, shall not be entitled to any holiday pay for that public holiday.

(4) Notwithstanding subsection (1), any employee may be required by his employer to work on any holiday to which he would otherwise be entitled under that subsection, and in such event he shall be paid an extra day's salary at the basic rate of pay for one day's work, in addition to the gross rate of pay for that

day and to a travelling allowance, if payable to him under the contract of service with his employer, for one day.

(5) No employee shall be entitled under subsection (4) to receive double any housing allowance or food allowance.

(6) Subsection (4) does not apply to an employee who is employed in the public service or in any of the essential services as defined in section 3(3) of the Internal Security Act (Chapter 133) for the purposes of that section, but any such employee may, notwithstanding subsection (1), be required by his employer to work on a holiday or part thereof to which he would otherwise be certified under that subsection, and in any such case he shall be given a day or part of a day off, as the case may be, in substitution for the holiday or part thereof.

(7) For the purposes of this section, if any public holiday falls on a half working day, the gross or basic rate of pay payable shall be that of a full working day.

Annual leave.

71. (1) An employee who has served an employer for a period of not less than 3 months shall be entitled to —

(a) paid annual leave of 7 days in respect of the first 12 months of continuous service with the same employer; and

(b) an additional one day's annual leave for every subsequent 12 months of continuous service with the same employer,

subject to a maximum of 14 days of such leave, which shall be in addition to the rest days, public holidays and sick leave to which the employee is entitled under sections 63, 70 and 72 respectively.

(2) An employee who has served an employer for a period of not less than 3 months but who has not completed 12 months of continuous service in any year shall be entitled to annual leave in proportion to the number of completed months of service in that year.

(3) In calculating the proportionate annual leave under subsection (2), any fraction of a day which is less than one-half of a day shall be disregarded and where the fraction of the day is one-half or more it shall be regarded as one day.

(4) Where an employee is granted leave of absence without pay by the employer at the request of the employee, the period of the leave shall be disregarded for the purpose of computing continuous service under this section.

(5) An employee shall forfeit his entitlement to annual leave if he absents himself from work without the permission of the employer or without reasonable excuse for more than 20 per cent of the number of working days in the months or year, as the case may be, in which his entitlement to such leave accrues.

(6) The employer shall grant and the employee shall take such annual leave not later than 12 months after the end of every 12 months continuous service and any employee who fails to take that leave by the end of such period shall thereupon cease to be entitled thereto.

(7) The employer shall pay the employee his gross rate of pay for every day of such annual leave and if an employee has been dismissed otherwise than for misconduct before he has taken that leave, the employer shall pay him his gross rate of pay in respect of every day of that leave.

(8) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, fix the periods when and prescribe the manner in which, annual leave shall be granted to employees in different types of employment or in different classes of industry.

Sick leave.

72. (1) Any employee who has served an employer for a period of not less than 6 months shall, after undergoing a medical examination at the expense of the employer by a medical practitioner be entitled to paid sick leave not exceeding in the aggregate —

(a) 14 days in each year if no hospitalisation is necessary; or

(b) 60 days in each year if hospitalisation is necessary,

as may be certified by the medical practitioner.

(2) Notwithstanding subsection (1), if an employee is hospitalised for less than 46 days in any one year, his entitlement to paid sick leave for that year shall not exceed the aggregate of 14 days plus the number of days on which he was hospitalised.

(3) If an employee is certified by the medical practitioner to be ill enough to need to be hospitalised but is not hospitalised, the employee shall be deemed to be hospitalised for the purposes of this section.

(4) An employee who absents himself on sick leave —

(a) which is not certified by a medical practitioner; or

(b) which is certified by a medical practitioner, but without him informing or attempting to inform his employer of such sick leave within 48 hours of its commencement,

shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

(5) The employer shall pay the employee for every day of such sick leave —

(a) where no hospitalisation is necessary, at the gross rate of pay excluding any allowance payable in respect of shift work; and

(b) where hospitalisation is necessary, at the gross rate of pay.

(6) Notwithstanding subsection (5), no employee shall be entitled to paid sick leave —

(a) on a rest day or on a public holiday to which he is entitled under sections 63 or 70;

(b) on any day of paid annual leave;

(c) on a day when he is not required to work under his contract of service; or

(d) on a day when he is on leave of absence without pay granted by the employer at his request.

(7) No employee shall be entitled to paid sick leave for the period during which he is receiving compensation for temporary incapacity under paragraph 3 of the Third Schedule to the Workmen's Compensation Act (Chapter 74).

Payment of retrenchment benefit.

73. No employee, who has been in continuous service with an employer for less than 5 years, shall be entitled to any retrenchment benefit on the termination of his service by the employer on the ground of redundancy or by reason of any re-organisation of the employer's profession, business, trade or work.

Retirement benefit.

74. No employee, who has been in continuous service with an employer for less than 5 years, shall be entitled to any retirement benefit other than the sums

payable under the Tabung Amanah Pekerja Act (Chapter 167) on the cessation of his service.

Payment of annual salary supplement or other variable payment.

75. (1) Where a contract of service or collective agreement made before the commencement of this Order provides for the payment by the employer of any annual salary supplement, annual bonus or annual salary increase, such payments shall continue to be payable by the employer until the employer and his employees or a trade union representing his employees have negotiated and agreed to vary such payments.

(2) An employer and his employees or a trade union representing his employees may negotiate for and agree to a variable payment based on the trading results, productivity or on any other criteria agreed upon by the parties concerned.

(3) Where an employer has not paid any annual salary supplement prior to the commencement of this Order, any contract of service or collective agreement made on or after such commencement between the employer and his employees or a trade union representing his employees shall not contain a provision for the payment of an annual salary supplement exceeding the equivalent of one and one-half month's salary of the employees.

(4) Any —

(a) person who, or trade union of employees which, requests (whether orally or in writing) or invites negotiations for the payment by an employer of an annual salary supplement which is in excess of the amount specified in subsection (3); and

(b) employer who pays an annual salary supplement exceeding the amount specified in subsection (3),

is guilty of an offence.

(5) Notwithstanding that an annual salary supplement may be payable under subsections (1) or (3), an employer may, in the event of exceptionally poor business results for any year, invite the employees or a trade union representing his employees to negotiate for a lower quantum of annual salary supplement or for no annual salary supplement to be paid for that year.

Power of Minister to make recommendations for salary adjustments.

76. The Minister may make recommendations for salary adjustment and, upon the publication of such recommendations in the *Gazette*, the employer and his

employees or a trade union representing his employees may negotiate based on such recommendations.

Interpretation for purposes of sections 75 and 76.

77. In sections 75 and 76 —

"annual salary supplement" means a single annual payment to employees that is supplemental to the total amount of annual salary earned by them, whether expressed as a percentage thereof or otherwise;

"salary" means the basic salary payable to an employee in respect of work done under his contract of service, but does not include any commission, overtime allowance or any other allowance payable to an employee;

"variable payment" means such payment, however expressed and whether paid annually or otherwise, which serves as an incentive to all employees to increase their productivity or as a reward for their contribution.

Power to suspend application of this Part.

78. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, suspend the application of any of the provisions of this Part to any class of employee when the public interest so requires it.

Offences.

79. (1) Any employer who —

(a) employs any person as an employee contrary to the provisions of this Part; or

(b) fails to pay any salary in accordance with the provisions of this Part,

is guilty of an offence and liable on conviction to a fine not exceeding \$800, and for a second or subsequent offence to a fine not exceeding \$1,600, imprisonment for a term not exceeding one year or both.

(2) This section does not apply where the terms of service under which a person is employed are provided for in a collective agreement entered into before the commencement of this Order and while the collective agreement remains in force.

(3) Notwithstanding subsection (1) —

(a) an employer and his employees or a trade union representing his employees may negotiate for and agree to terms of service relating to leave more favourable than those contained in sections 71 and 72; and

(b) it shall not be an offence for an employer to grant to his employees terms of service relating to leave more favourable than those contained in sections 71 and 72.

PART VIII

HEALTH, ACCOMMODATION AND MEDICAL CARE

Duty to provide accommodation and sanitary arrangements.

80. Every employer who undertakes to provide accommodation for workmen employed either by him or by some other person with whom he has entered into a contract of service, shall provide and maintain for those workmen and their dependants —

(a) sufficient and proper hygienic accommodation;

(b) sufficient supply of wholesome water; and

(c) sufficient and proper sanitary arrangements.

Buildings to conform with legal requirements.

81. (1) All accommodation provided shall be constructed in accordance with the provisions of any other written law.

(2) All such accommodation shall be maintained and kept in a sanitary condition in accordance with the provisions of any other written law.

First-aid equipment.

82. (1) At every place of employment where workmen are employed, the employer shall provide such first-aid equipment as the Commissioner may determine.

(2) The Commissioner may, having regard to the nature and circumstances of the work, in writing, exempt any employer from this section.

Medical care and treatment.

83. (1) At every place of employment the employer shall provide for all workmen such medical attention and treatment with medicines of good quality, first aid equipment and appliances for the transportation of sick or injured workmen.

(2) Every employer shall take or cause to be taken, for treatment as soon as possible every workman injured or falling ill during the course of his employment and every resident workman and resident dependant on a place of employment requiring medical attention at a hospital or dispensary to the hospital or dispensary maintained for the workmen at such place of employment or, if there is no such hospital or dispensary, to the nearest hospital or dispensary maintained by the Government or approved by the Commissioner and shall also provide any treatment necessary therefor.

(3) The cost of maintenance and treatment of a workman and of his dependants residing on the place of employment in or at any hospital or dispensary to which the workman or his dependant is sent by the employer shall be borne or paid by the employer as long as the workman remains in his employment:

Provided that if the employer continues to pay to the workman salary or part salary amounting to not less than half his usual salary, he may recover by deduction from the salary of such workman the cost of such maintenance in hospital.

(4) Where any such workman or dependant has been admitted to a Government hospital or dispensary, the cost of maintenance and treatment and, in the event of the death of such workman or dependant in such hospital, any reasonable burial expenses incurred, shall be recoverable from the employer at the suit of the medical practitioner in charge.

Burial of deceased workmen or dependants.

84. The employer shall provide decent interment for any workman resident on a place of employment and for any dependant dying during the employment of such workman unless a relative or friend undertakes such duty.

Hospital maintained by employers.

85. (1) The Commissioner may at any time having regard to the situation of any place of employment and the number of workmen employed and resident thereon, by order in writing, require any employer --

(a) to construct within a reasonable time to be stated in such order, and thereafter to maintain at his own expense, a hospital on or in the immediate neighbourhood of any place of employment upon which workmen are employed by him with accommodation, for such number of patients as may be stated in such order; or

(b) if there is already a hospital maintained by such employer, to enlarge or add to such hospital so as to provide accommodation for a further number of patients as stated in the order,

and may further require him to employ a medical practitioner to reside at and have charge of such hospital or any hospital maintained by such employer and to provide such medical practitioner with fit and proper house accommodation to the satisfaction of the Commissioner.

(2) If 2 or more such places of employment are so situated that the required accommodation for patients from such places of employment can be conveniently provided in one hospital, the Commissioner may —

(a) instead of ordering each employer to construct and maintain a separate hospital, order all the employers concerned to construct within a reasonable time to be stated in such order, and thereafter to maintain at their own expense one hospital, in this section referred to as a group hospital, for all such places of employment with accommodation for such number of patients as may be stated in the order; or

(b) if there is already a hospital erected and maintained jointly by 2 or more employers (whether constructed in pursuance of the provisions of this section or not), order them to enlarge or add to such hospital so as to provide accommodation for such further number of patients in their employment as may be stated in the order,

and may further require such employers to employ a medical practitioner to take charge of such group hospital and to provide such medical practitioner with fit and proper house accommodation to the satisfaction of the Commissioner.

(3) Every employer referred to in subsection (3) shall be responsible for the due maintenance of the group hospital as the case may be and for the provision of the staff, equipment, diet and medicines and for the observance of any regulations made under this Order for the inspection and management of the hospital and the furnishing of any returns required as if the hospital were provided and maintained solely by him.

Approval of place of employment and prohibition of employment of workmen where arrangements are inadequate.

86. (1) Every person intending to —

(a) employ resident workmen at a place of employment where workmen have not hitherto been employed or have not been employed within the preceding 12 months; or

(b) increase the number of workmen already employed on a place of employment so that the existing arrangement would not conform to any prescribed requirements and standards of health and hygiene,

shall give notice in writing of such intention to the Commissioner.

(2) If the Commissioner at any time has reason to believe that —

(a) the arrangements made for the residence and employment of workmen on any place of employment where it is intended that workmen shall live or be employed or where workmen are living or employed are, from any cause, inadequate for the residence and employment of such workmen or of additional workmen; or

(b) that the health or condition of workmen living or employed on any place of employment is from any cause unsatisfactory,

he may by order served on the employer prohibit the residence or employment, or both, of workmen or of additional workmen on such place and it shall thereupon be unlawful for any person to employ or permit to reside on such place any workmen or dependants, or any workmen or dependants other than those who were residing or employed thereon before the issue of such order, as the case may be.

(3) The Commissioner may, upon being satisfied that —

(a) adequate arrangements have been made for the residence and employment of the workmen or of additional workmen on such place of employment; or

(b) that the health and condition of the workmen living or employed thereon have become satisfactory,

rescind the order made under subsection (2), and thereupon it shall be lawful for the employer to employ workmen or additional workmen as the case may be on such place of employment.

Offence.

87. Any person who contravenes or fails to comply with any of the provisions of this Part is guilty of an offence.

PART IX

PART-TIME EMPLOYEES

Part-time employees.

88. (1) In this Part, "part-time employee" means an employee who is required under his contract of service with an employer to work for less than 30 hours a week.

(2) Notwithstanding subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the *Gazette*, declare that any employee or class of employee is not to be regarded as a part-time employee for the purposes of this Part.

Minister may exclude or modify Order in relation to part-time employees.

89. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations exclude or modify any or all of the provisions of this Order in their application to any part-time employee or class of part-time employee.

PART X

EMPLOYMENT OF WOMEN

Interpretation of benefit period.

90. In this Part, "benefit period" means the period referred to in section 91(2).

Length of benefit period.

91. (1) Subject to this section, every female employee shall be entitled to absent herself from work —

(a) during —

(i) the period of 4 weeks immediately before her confinement;
and

- (ii) the period of 5 weeks immediately after her confinement;
- (b) during a period of 9 weeks, as agreed to by her and her employer, commencing —
 - (i) not earlier than 28 days immediately preceding the day of her confinement; and
 - (ii) not later than the day of her confinement.

(2) Subject to this section, every female employee shall be entitled to receive payment from her employer at her gross rate of pay for any of the following periods —

- (a) where subsection (1)(a) applies, the period of 4 weeks referred to in subsection (1)(a)(i) and the first 4 weeks of the period referred to in subsection (1)(a)(ii);
- (b) where subsection (1)(b) applies, the first 8 weeks of the period referred to in subsection (1)(b).

(3) A female employee who has served an employer for less than 180 days immediately preceding the day of her confinement shall not be entitled to any pay during the benefit period.

(4) Where a female employee has worked in her employment for any day during the benefit period before her confinement, she shall be entitled to receive in addition to her gross rate of pay for that day an amount that is equivalent to a day's pay at the gross rate of pay or to absent herself from work on another day at the end of the benefit period.

Claim from one employer only.

92. Nothing in this Part shall be deemed to entitle any female employee to claim any payment under this Part from more than one employer in respect of the same confinement.

Contracting out.

93. Any contract of service whereby a female employee relinquishes any right to maternity benefit under this Part shall not be valid in so far as it purports to deprive her of that right or to remove or reduce the liability of any employer to make any payment under this Part.

Notice of confinement.

94. (1) A female employee shall, at least one week before absenting herself from work in accordance with section 91(1), give notice to her employer specifying the date of which she intends to commence absenting herself from work.

(2) A female employee who has been confined shall, as soon as practicable, inform her employer of the date on which she was confined.

(3) Any female employee who fails to give notice as required under subsection (1) or who fails to inform her employer as required under subsection (2) shall be entitled to only one-half of the amount of any payment to which she would otherwise be entitled under this Part, unless she was prevented by any sufficient cause from giving such notice or information.

(4) A female employee may at any time in writing nominate some other person to whom any payment to which she is entitled under this Part may be paid on her behalf; and any such payment made to the person so nominated shall for the purpose of this Order be deemed to be a payment to the female employee who nominated such other person.

When payment to be made.

95. (1) In the case of a female employee who is a daily-rated employee, the payment referred to in section 91 shall be paid in 2 instalments —

(a) the first, for the period up to and including the day of confinement, to be paid within 7 days from the date of confinement; and

(b) the second, for the period after confinement, to be paid within 7 days from the end of that period.

(2) In the case of any other female employee, the payment shall be paid at such time as the salary earned by the employee under her contract of service is due to be paid to her.

Payments to include public holidays.

96. (1) The payment referred to in section 91 shall be paid for every day of the benefit period, including public holidays.

(2) Nothing in this section shall be construed to require an employer to pay to a female employee an extra day's salary for a public holiday which falls within the benefit period.

Payment of benefit on death of female employee before confinement.

97. (1) If a female employee, after giving notice to her employer under section 94(1), abstains from work in expectation of her confinement and dies from any cause before her confinement, the employer shall pay —

- (a) to the person nominated by her under section 94(4); or
- (b) if there is no such person, to her personal representative,

a sum of money at the rate set out in section 91 from the date immediately following the last day on which she worked to the day immediately preceding the day of her death and, except in the circumstances mentioned in this subsection, no employer shall be liable to pay any sum in respect of a period exceeding 30 days.

(2) If a female employee dies from any cause on or after the day of her confinement and before any payment to which she is entitled has been paid to her, the employer shall pay —

- (a) to the person nominated by her under section 94(4); or
- (b) if there is no such person, to her personal representative,

a sum of money to which she was on the date of her death entitled in respect of the period up to the day of her confinement and in respect of the period after her confinement up to the day immediately preceding the day of her death.

Dismissal during absence prohibited.

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

Right to benefit unaffected by notice of dismissal in specified circumstances.

99. (1) No notice of dismissal given without sufficient cause by an employer to a female employee within a period of 3 months before her confinement shall have the effect of depriving her of any payment to which —

- (a) but for that notice, she would have been entitled; or
- (b) she would, on or before the date of her confinement, have become entitled to,

under this Part.

(2) If any question arises as to whether any notice of dismissal given under subsection (1) was or was not given for sufficient cause, it shall be referred to the Minister within 2 months from the date of the employee's confinement.

(3) Where the Minister is satisfied that the employee has been dismissed without sufficient cause, he may, notwithstanding any rule of law or agreement to the contrary —

(a) direct the employer to reinstate the employee in her former employment and pay the employee an amount equal to the salary that she would have earned had she not been dismissed; or

(b) direct the employer to pay such amount of salary as compensation as the Minister may consider just and equitable having regard to all the circumstances of the case,

and the employer shall comply with the direction of the Minister.

(4) The decision of the Minister under subsection (3) shall be final.

(5) Any direction of the Minister under subsection (3) shall operate as a bar to any action for damages by the employee in any court in respect of the dismissal without sufficient cause under subsection (1).

(6) An employer who fails to comply with a direction of the Minister under subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(7) Where any amount to be paid by an employer under subsection (3) is not paid in accordance with the direction of the Minister and the employer has been convicted of an offence under subsection (6), the amount or so much thereof as remains unpaid shall be recoverable by the court as if it were a fine and the amount so recoverable shall be paid to the employee entitled to payment under the direction of the Minister.

Employment after confinement.

100. Any employer who knowingly employs a female employee at any time during the period of 4 weeks immediately following her confinement is guilty of an offence.

Forfeiture of payment.

101. If a female employee works for any other employer after she has absented herself from work under the provisions of this Part, she shall forfeit her claim to any payment to which she is entitled under this Part and shall be liable to dismissal.

Offences.

102. Any employer who --

(a) fails to pay his female employee in accordance with the provisions of this Part; or

(b) acts in contravention of section 98,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 6 months or both.

PART XI

EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

Restriction on employment of children.

103. (1) No person shall employ a child in an industrial undertaking or in an undertaking which is not an industrial undertaking, except as provided for in subsections (2) and (3).

(2) A child may be employed in an industrial undertaking in which only members of the same family are employed.

(3) A child who has attained the age of 14 years may be employed in light work suited to his capacity in an undertaking which is not in industrial undertaking.

(4) For the purposes of subsection (3), a certificate of a medical practitioner shall be conclusive on the question of whether any work is suited to the capacity of any particular child.

Restriction on employment of young persons.

104. (1) No young person shall be employed in any industrial undertaking which the Minister has declared under subsection (2) to be an industrial undertaking in which no young person shall be employed.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the *Gazette*, declare any industrial undertaking to be an industrial undertaking in which no young person shall be employed.

Conditions of employment.

105. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, prescribe the conditions upon which a child or young person may be employed in any industrial or an undertaking which is not an industrial undertaking.

Minimum rates of salary may be prescribed.

106. (1) If it is shown to the satisfaction of the Minister, upon the application of the Commissioner and after such inquiry as the Minister may think fit to direct, having regard to the nature of the work and the conditions of employment, that the salaries of children, young persons or both employed in any industry, for any particular work or in any area are insufficient, the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, prescribe minimum rates of salary to be paid to children, young persons or both in that industry, type of employment or area.

(2) Any person who contravenes any such order is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 6 months or both, and for a second or subsequent offence to a fine not exceeding \$2,000, imprisonment for a term not exceeding 2 years or both.

Approved employment.

107. (1) Sections 103 and 104 do not apply to —

(a) the employment of children and young persons —

- (i) in any work approved and supervised by the Ministry of Education, the Institute of Technical Education or any authorised government agency; and
- (ii) carried on in any technical, vocational or industrial training school or institute; and

(b) the employment of young persons under any apprenticeship programme approved and supervised by the Institute of Technical Education or any authorised government agency.

(2) In this section —

"authorised government agency" means any government agency authorised by the Ministry of Home Affairs;

"Institute of Technical Education" means the Institute of Technical Education established by the Ministry of Education.

Power of court in respect of children or young persons requiring care or protection.

108. A child or young person in respect of whom any of the offences mentioned in this Part has been committed may be brought before any court and that court, if satisfied that the child or young person is in need of care or protection, may exercise with respect to that child or young person all or any of the powers conferred by section 262 of the Criminal Procedure Code (Chapter 7) or by any other written law.

Regulations regulating employment.

109. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to regulate the employment of children in any occupation and no child or young person shall be employed under any circumstances or under any conditions which may be prohibited by the Minister by such regulations.

Offences.

110. (1) Any —

(a) person who employs a child or young person in contravention of the provisions of this Part or any of the regulations made thereunder;

(b) parent or guardian who knowingly or negligently suffers or permits any such employment,

is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 2 years or both.

(2) In the case where a child or young person suffers serious injury or death resulting from any breach of the provisions of this Part or any regulations made thereunder, the offender is guilty of an offence and liable on a further conviction to a fine not exceeding \$2,000 and imprisonment for a term not exceeding 2 years.

PART XII

DOMESTIC WORKERS

Minister may apply Order to domestic workers.

111. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations applying all or any of the provisions of this Order with such modification as may be set out in the regulation to all domestic workers or to any group, class or number of domestic workers and to provide generally for the engagement, repatriation and working conditions of domestic workers.

PART XIII

IMMIGRANT EMPLOYEES

Employment of immigrant employees.

112. (1) No person shall knowingly employ any immigrant employee unless he has obtained a licence from the Commissioner to do so in such form and subject to such conditions as the Commissioner may determine:

Provided that where an immigrant employee is found at any premises or place and is in possession of any tools or other implements or is engaged in any activity which may give rise to the inference that he is doing any work, the occupier of such premises or place shall, until the contrary is proved, be presumed to have employed him knowing that he is an immigrant employee.

(2) Any employer who contravenes the provisions of subsection (1) and any immigrant employee found working for such an employer are each guilty of an offence and liable on conviction to a fine of not less than \$6,000 and not exceeding \$10,000, imprisonment for a term of not less than 6 months or not more than 3 years or both.

(3) In this section —

"construction work" means construction, reconstruction, maintenance, repair, alteration or demolition of any building, harbour, dock, pier, canal, sewer, drain, well telegraphic or telephonic installation, electrical undertaking, gasworks, waterworks or other work of construction, as well as the preparation for or laying the foundation of any such work or structure;

"employer" includes a person who has entered into an engagement for money or money's worth for another person to work where —

(a) that other person is already under a contract of service with an employer (as defined in section 2) and in respect of whom a licence has been obtained by such employer from the Commissioner under subsection (1); or

(b) that work is at piece rates or on commission, whether or not as the result of an arrangement with an employer (as defined in section 2);

"occupier", in relation to any premises or place, includes —

(a) the person having the charge, management or control of either the whole or part of the premises or place, either on his own account or as an agent; and

(b) a contractor who is carrying out building operations or construction works at the premises or place on behalf of some other person.

Prohibition on termination of local for immigrant employee.

113. No employer shall, without reasonable grounds, terminate the contract of service of a local employee for the purpose of employing an immigrant employee.

PART XIV

REPATRIATION

Rights and obligations in respect of repatriation.

114. (1) Every immigrant employee who is a party to a contract of service under this Order and who has been brought to Brunei Darussalam by an employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or to the place of engagement, if the latter be nearer to the place of employment and if the law of the place of engagement permits, in the following cases —

(a) on the termination of the contract of service by expiry of the period for which it was made;

(b) on the termination of the contract of service by reason of the inability of the employer to fulfil the contract of service;

(c) on the termination of the contract of service by reason of the inability of the employee to fulfil the contract of service owing to sickness or accident;

(d) on the termination of the contract of service by notice and subject to the provisions of the particular contract of service and Part II;

(e) on the termination of the contract of service under section 17;

(f) on the termination of the contract of service by agreement or contract between the parties, unless the Commissioner otherwise decides.

(2) Every immigrant employee who is ordered to leave Brunei Darussalam under or in accordance with any provision of any written law shall be repatriated at the expense of the employer to his place of origin or to the place of engagement, if the latter be nearer to the place of employment and if the law of the place of engagement so permits.

(3) Where any dependant of the immigrant employee has been brought to the place of employment by the employer or by any person acting on behalf of the employer, such dependant shall be repatriated at the expense of the employer whenever the employee is repatriated or in the event of his death.

(4) The expenses of repatriation shall include —

(a) travelling and subsistence expenses during the journey;

(b) any subsistence expenses during the period between the date of termination of the contract of service and the date of repatriation; and

(c) provision for interment and the payment of the reasonable expenses of burial in the event of death of an employee occurring during the course of, or pending, repatriation.

(5) The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of the employee has been delayed —

(a) by the employee's own choice; or

(b) for reason of *force majeure*, when the employer has been able during such period to use the services of the employee at the gross rate of pay stipulated in the expired contract of service.

(6) If the employer fails to fulfil his obligation in respect of repatriation, the obligation shall be discharged by or under direction of the Commissioner, and any sums so expended may be recovered from the employer by civil suit as a debt due to the Government.

Exemption from obligation to repatriate.

115. The Commissioner may exempt the employer from liability for repatriation expenses in the following cases —

(a) when the Commissioner is satisfied that —

- (i) the employee, by a declaration before the Commissioner, has signified that he does not wish to be repatriated; and
- (ii) the employee has been settled at his request or with his consent at or near the place of employment;

(b) when the Commissioner is satisfied that the employee, by his own choice, has failed to exercise his right of repatriation before the expiry of 6 months from the date of termination of the contract of service;

(c) when the liability of the employer has been provided for under any of the provisions of any fund established under section 152(3)(i);

(d) when the contract of service has been terminated otherwise than by reason of the inability of the employee to fulfil the contract of service owing to sickness or accident and the Commissioner is satisfied that —

- (i) in fixing the rates of salary, proper allowance has been made for the payment of repatriation expenses by the employee; and
- (ii) suitable arrangements have been made by means of a system of deferred pay or otherwise to ensure that the employee has the funds necessary for the payment of such expenses.

Employer to provide transport.

116. (1) The employer shall whenever possible provide transport for employees who are being repatriated.

(2) The Commissioner shall take all necessary measures to ensure and may give such directions to the employer or to any person acting on behalf of the employer to ensure that —

(a) all vehicles or vessels to be used for transport of employees are suitable for such transport, in good sanitary condition and are not overcrowded;

(b) when it is necessary to break the journey for the night, suitable accommodation is provided for the employee;

(c) when the employees have to make long journeys on foot, the length of the daily journey is compatible with the maintenance of their health and strength; and

(d) in the case of long journeys, suitable arrangements are made for medical assistance and for the welfare of the employees.

(3) When the employees have to make long journeys in groups, they shall be accompanied by a responsible person approved by the Commissioner.

Offence.

117. Any employer who fails to comply with the direction given to him by the Commissioner in pursuance of the provisions of section 116 is guilty of an offence and liable on conviction to a fine not exceeding \$1,500 or in default thereof imprisonment for a term not exceeding 6 months.

PART XV

INSPECTION

Powers of entry, inspection and enquiry.

118. The Commissioner and any authorised officer may —

(a) enter and inspect, without previous notice at any hour of the day or night —

(i) any place where he has reasonable cause to believe that any employee resides or is employed; or

(ii) any building occupied or used for any purpose connected with that employment; and

(b) make any enquiry which he considers necessary in relation to any matter within the provisions of this Order.

Notice to employer of inspection.

119. On the occasion of an inspection or enquiry visit, the Commissioner and any authorised officer shall notify the employer or his representative of his

presence unless he considers that such notification may be prejudicial to the performance of his duties.

Powers of Commissioner and authorised officers during inspection.

120. (1) In the course of an inspection or enquiry, the Commissioner or any authorised officer may —

(a) examine orally any person whom he believes to be acquainted with the facts and circumstances of the employment of any person or any matter within the provisions of this Order, and to reduce into writing the answer given or statement made by that person; and such person shall be bound to answer truthfully all questions put to him; and the statement made by that person shall be read over to him, in the language in which he made it and, after correction, be signed by him or affixed with his thumb print, as the case may be;

(b) require the employer to —

(i) produce before him all or any of the employees employed by him together with any contracts of service, books of account of salary, registers and other documents concerning the employees or their employment;

(ii) answer such questions relating thereto as he may think proper to ask;

(c) examine notices and all documents which are required to be kept under the provisions of this Order or any regulations made thereunder;

(d) make copies of, or make extracts from, the contract of service, books of account of salary, registers or other documents required to be produced under paragraph (b);

(e) take or remove for purposes of analysis samples of materials and substances used or handled by employees, except that the employer or his representative shall be notified of any such samples of materials or substances taken or removed for this purpose;

(f) take possession of the contracts of service, books of account of salary, registers and other documents relating to the employees or their employment where in his opinion —

(i) the inspection, copying or the making of extracts from the contract of service, books of account of salary, registers or

other documents cannot reasonably be undertaken without taking possession of them;

- (ii) the contracts of service, book of account of salary, registers or other documents may be interfered with or destroyed unless he takes possession of them; or
- (iii) the contracts of service, books of account of salary, registers or other documents may be needed as evidence in any legal proceedings under this Order;

(g) take or remove for the purposes of an enquiry any other document concerning the employees or their employment.

(2) No answer which a person is legally bound to give under subsection (1)(a) shall be proved against him in any criminal proceeding, except on a prosecution for giving false evidence by that answer.

(3) Notwithstanding subsection (1)(b), no employee shall be required to leave or to cease from performing any work on which he is engaged if his absence or cessation from such work would endanger life or property or seriously disrupt any operation being carried on by his employer.

(4) For the purpose of this section, the Commissioner and an authorised officer shall have the same powers of investigation as a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Identification card to be produced.

121. (1) Every authorised officer, when exercising any of his powers or performing any of his duties under this Order, shall declare his office and shall on demand produce to any person against whom he is taking action such identification card as the Commissioner may direct to be carried by an authorised officer.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made or given by an authorised officer if such officer refuses on demand being made by that person to declare his office and produce his identification card.

Offences.

122. Any employer who, without reasonable excuse, the proof of which shall lie on him —

(a) neglects or refuses to produce any contracts of service, books of account of salary, registers or other documents concerning any employee or relating to that employee's employment as required under section 120(1)(b);

(b) hinders or obstructs the Commissioner or any authorised officer in the exercise of the power under section 120(1); or

(c) makes to the Commissioner or an authorised officer exercising the power under section 120(1) a statement either orally or in writing which is false in a material particular,

is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding one year or both.

PART XVI

COMPLAINTS AND INQUIRIES

Application of this Part.

123. This Part shall apply to all workmen and to other employees who are in receipt of a salary not exceeding \$1,600 a month (excluding overtime payments, bonus payments, annual salary supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister.

Commissioner's power to inquire into complaints.

124. (1) The Commissioner may inquire into and decide any dispute between an employee and his employer or any person liable under the provisions of this Order to pay any salary due to the employee, where the dispute arises out of —

(a) any term in the contract of service between the employee and his employer; or

(b) any of the provisions of this Order or any regulations made thereunder.

(2) In pursuance of that decision, the Commissioner may make an order in such form as he may determine, for the payment by either party of such sum of money as he considers just without limitation of the amount thereof.

(3) The power of the Commissioner under subsection (1) shall include the power to —

(a) hear and decide, in accordance with the procedure laid down in this Part, any claim by —

- (i) an employee against any person liable under section 53;
- (ii) a sub-contractor for labour against a contractor or sub-contractor for any sum which the sub-contractor for labour claims to be due to him in respect of any labour provided by him under his contract of service with the contractor or sub-contractor; and

(b) make such consequential orders as may be necessary to give effect to his decision.

Power of Commissioner to confirm or set aside decisions by employers.

125. (1) The Commissioner may inquire into and confirm or set aside any decision made by an employer under section 26(1) and may make such consequential orders as may be necessary to give effect to his decision.

(2) If the Commissioner sets aside any such decision, the consequential order against such employer shall be confined to payment of compensation in lieu of notice and other payments that the employee is entitled to as if no misconduct had been committed by the employee.

(3) The Commissioner shall not exercise his power under subsection (1) unless the employee has made a complaint to him under the provisions of this Part within 30 days from the date on which the decision made by his employer under section 26 was communicated to him either orally or in writing by the employer.

Procedure in Commissioner's inquiry.

126. The procedure for disposing of questions arising under sections 124 and 125 shall be as follows —

(a) the complainant shall present a written statement or in person make a statement, to the Commissioner, of his complaint and of the remedy which he seeks;

(b) the Commissioner shall, as soon as practicable thereafter, examine the complainant on oath and shall record the substance of the complainant's statement in his case book;

(c) the Commissioner may make such inquiry as he thinks necessary to satisfy himself that the complaint discloses matters which in his opinion

ought to be inquired into and may summon the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into, he may forthwith summon the person complained against:

Provided that if the person complained against attends in person before the Commissioner it shall not be necessary to serve a summons upon him;

(d) when issuing a summons to the person complained against, the Commissioner shall –

- (i) give him notice of the nature of the complaint made against him and of the name of the complainant; and
- (ii) inform him of the date, time and place at which he is required to attend, that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Commissioner for summonses to such persons to appear as witnesses on his behalf;

(e) when the Commissioner issues a summons to a person complained against –

- (i) he shall inform the complainant of the date, time and place mentioned therein;
- (ii) he shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf; and
- (iii) he may, on the request of the complainant and subject to any conditions he may think fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;

(f) when at any time before or during an inquiry the Commissioner has reason to believe that there is any person whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto, he may summon any or all of such persons;

(g) the Commissioner shall, at the date, time and place appointed, examine on oath those persons summoned or otherwise present whose evidence he thinks is material to the matters in issue and shall then give his decision;

(h) if the person complained against or any person whose financial interests the Commissioner has reason to believe are likely to be affected

and who has been duly summoned to attend at the date, time and place appointed in the summons, fails to attend, the Commissioner may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;

(i) in order to enable a court to enforce the decision of the Commissioner, the Commissioner shall embody his decision in an order in such form as he may determine.

Commissioner's record of inquiry.

127. (1) The Commissioner shall keep a case book in which he shall record the evidence of persons summoned or otherwise present and his decision and order in each matter in issue before him, and shall authenticate the record by attaching his signature thereto.

(2) The record in such case book shall be sufficient evidence of the giving of any decision.

(3) Any person interested in the decision or order shall be entitled to a copy of the record upon payment of the fee prescribed in the Second Schedule.

Joinder of several complaints in one complaint.

128. (1) Where it appears to the Commissioner in any proceedings under this Part that there are more than one employee having a common cause for complaint against the same employer or person liable, it shall not be necessary for each employee to make a separate complaint.

(2) The Commissioner may, if he thinks fit, permit one or more of the employees to make a complaint and to attend and act on behalf of and generally to represent the others, and the Commissioner may proceed to a decision on the joint complaint or complaints of each and all such employees:

Provided that where the Commissioner is of the opinion that the interests of the employer or person liable are likely to be prejudiced by the non-attendance of any employee, he shall require the personal attendance of such employee.

Prohibitory order by Commissioner to third party.

129. (1) Whenever the Commissioner —

(a) has made an order under sections 124 and 125 against an employer or any other person liable for the payment of any sum of money to any employee or sub-contractor for labour; and

(b) has reason to believe that there exists between such employer or that other person liable and any other person a contract of service in the course of the performance of which the employee or sub-contractor performed the work in respect of which the order was made,

the Commissioner may –

- (i) summon such other person; and
- (ii) if after enquiry he is satisfied that such a contract of service exists, make an order in such form as he may determine, prohibiting such other person from paying to the employer or that other person liable and requiring him to pay to the Commissioner any money (not exceeding the amount found due to such employee or sub-contractor for labour) admitted by him to be owing to the employer or that other person liable in respect of such contract of service.

(2) However, where such other person admits to the Commissioner in writing that money is owing by him under the contract of service to the employer or that other person liable, he need not be summoned under subsection (1)(i) and the Commissioner may make an order under subsection (1)(ii) in his absence.

(3) Where such other person is liable as a principal under section 53(1) to pay any salary due by the employer or that other person liable and where the money admitted by him to be owing to the employer or that other person liable is not sufficient to pay the whole of such salary, nothing in this section shall relieve him of his liability for the balance of such salary up to the amount for which he is liable under section 53(3).

(4) The payment of any money in pursuance of an order under subsection (1)(ii) shall be a discharge and payment up to the amount so paid of money due to the employer or that other person liable under the contract of service.

Service of summons.

130. (1) Any summons issued by the Commissioner under this Part may be served by an Intermediate Court or any Court of a Magistrate, on behalf of the Commissioner, or in such other manner and by such person as the Commissioner may direct.

(2) No fee shall be charged by the Commissioner in respect of any such summons.

Enforcement of Commissioner's order.

131. (1) Where an order has been made by the Commissioner under this Part and the person against whom it is made fails to comply therewith, the Commissioner may send a certified copy thereof to the registrar of the Intermediate Courts or to any Court of a Magistrate.

(2) The registrar or the Court of a Magistrate, as the case may be, shall cause the certified copy to be recorded and thereupon the order shall for all purposes be enforceable as a judgment of an Intermediate Court or of the Court of a Magistrate, as the case may be, notwithstanding that the order may, in respect of amount or value, be in excess of the ordinary jurisdiction of that court:

Provided that no sale of immovable property shall for the purposes of such enforcement be ordered, except by the High Court.

Submission by Commissioner to High Court on point of law.

132. (1) In any proceedings under this Part, the Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and if he does so, he shall decide the proceedings in conformity with such decision.

(2) An appeal by any person aggrieved shall lie to the Court of Appeal from any decision of the High Court under subsection (1).

Appeal against Commissioner's order to High Court.

133. (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Commissioner under sections 124, 125 or 129, he may appeal to the High Court.

(2) Subject to any Rules of Court made under section 25(1) of the Subordinate Courts Act (Chapter 6), the procedure in an appeal to the High Court shall be the procedure in a civil appeal from the Court of a Magistrate with such modifications as the circumstances may require.

Employee's remedy when employer about to abscond.

134. (1) If any employee complains to the Court of a Magistrate that he has reasonable grounds for believing that his employer, in order to evade payment of his salary due to him, is about to leave Brunei Darussalam, the court may summon such employer and direct him to show cause why he should not be required to give security by bond to remain in Brunei Darussalam until such salary is paid.

(2) If after hearing the evidence of the employer, the court decides that such bond shall be given, the court may order him to give security by bond in such sum as the court considers reasonable that he will not leave Brunei Darussalam until the court is satisfied that all the claims of such employee against him for salary have been paid or settled.

(3) If the employer fails to comply with the order to give security, he shall be detained in prison until arrangements have been made to the satisfaction of the court for settling the claims of the employee.

(4) However —

(a) the employer shall be released at any time by the court —

(i) on security being furnished;

(ii) on payment of all or such part of the salary as the court considers reasonable; or

(iii) on the presentation of a bankruptcy petition by or against him; and

(b) the period of such detention shall not exceed 3 months.

(5) The bond to be given by an employer shall be a personal bond with one or more sureties, and the penalty for breach of the bond shall be fixed with due regard to the circumstances of the case and the means of the employer.

(6) If on or after a complaint by any employee under subsection (1) it appears to the court that there is good ground for believing that the employer has absconded, is absconding or is about to abscond, the court may issue a warrant for the arrest of the employer and he shall be detained in custody pending the hearing of the complaint unless he provides security to the satisfaction of the court.

(7) For the purposes of this section, a certificate signed by the Commissioner and issued to the court to the effect that the salary claimed has been paid or settled shall be sufficient evidence of the payment or settlement thereof.

Powers of Commissioner to investigate possible offences against Order.

135. (1) Whenever —

(a) the Commissioner has reasonable grounds for suspecting that an offence against this Order has been committed;

(b) the Commissioner wishes to inquire into —

- (i) any matter dealt with by this Order;
- (ii) any dispute as to such matter;
- (iii) the death of or injury to an employee; or
- (iv) any matter connected with the keeping of registers and other documents; or

(c) any person has complained to the Commissioner of any breach of any provision of this Order,

the Commissioner may summon any person who he has reason to believe can give information in respect of such offence or the subject-matter of such inquiry or complaint.

(2) If upon such inquiry the Commissioner considers that an offence has been committed, he may institute such criminal proceedings as he may think necessary.

(3) A summons issued under this section shall be in such form as the Commissioner may determine.

Examination on summons by Commissioner.

136. Any person summoned by the Commissioner under this Part shall attend at the date, time and place specified in the summons and to answer truthfully all questions which the Commissioner may put to him.

Right of employee to appear before Commissioner.

137. No employer shall prevent or attempt to prevent any employee from appearing before the Commissioner in pursuance of this Part.

Offences.

138. (1) Any person who fails to comply with any decision or order of the Commissioner made under sections 124 and 125 is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a fine not exceeding \$100 for each day the offence continues after conviction.

(2) Any person who —

(a) wilfully obstructs the service of, or obedience to, any summons;

(b) neglects to attend as required in such summons;

(c) commits, in respect of any inquiry or complaint, any offence referred to in Chapter X of the Penal Code (Chapter 22),

shall be punished as provided in that Chapter.

PART XVII

GENERAL

Cost of proceedings.

139. No court fees shall be chargeable in the first instance on any proceedings commenced by an employee or by the Commissioner on his behalf, against his employer under this Order but, in case of a conviction or judgment against the employer, the court fees and the general costs of the proceedings shall be paid by the employer.

Application of fines.

140. When under this Order any court imposes a fine or enforces the payment of any sum secured by a recognisance or bond, the court may, if it thinks fit, direct that the whole or any part of such fine or sum when recovered be paid to the party complaining, or where the offence was committed by an employer in respect of a liability to pay money to an employee, that employee.

Service of summons.

141. (1) A summons issued by the Commissioner under Part XVI may be served on any person by delivering or tendering to him a copy thereof signed by the Commissioner:

Provided that —

(a) if the person to be summoned has an agent authorised to accept service of the summons on his behalf, service on such agent shall be sufficient;

(b) if the person to be summoned cannot be found and has no agent authorised to accept service of the summons on his behalf, service on any

adult male member (not being a domestic worker) of the family of the person to be summoned who is residing with him shall be sufficient.

(2) When the summons is addressed to a limited company, it may be served —

(a) by leaving a copy thereof, signed by the Commissioner, at the registered office of that company;

(b) by sending such copy by registered post in a letter addressed to the company at its principal office, whether such office is within Brunei Darussalam or elsewhere; or

(c) by delivering such copy to any director, secretary or other principal office of the company.

(3) When the person serving such summons delivers or tenders a copy of the summons to the person to be summoned or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to sign an acknowledgement of service endorsed on the original summons.

(4) If —

(a) such person refuses or is unable to sign the acknowledgment; or

(b) the person serving such summons cannot find the person to be summoned and there is no agent authorised to accept service of the summons on his behalf nor any other person on whom the service can be made,

the person serving such summons shall affix a copy of the summons on the outer door of the residence in which the person to be summoned ordinarily resides and then return the original to the Commissioner with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

(5) The person serving such summons shall, in all cases in which the summons has been served under subsection (3), endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served.

(6) When the summons is returned to the Commissioner under subsection (4), the Commissioner shall, if the return under that subsection has not been verified by an affidavit of the person serving the summons, and may, if it has been so verified, examine the person serving the summonses on oath touching the manner of service and may make such further enquiry in the matter as he thinks

fit and shall either declare that the summons has been duly served or order such other service as he thinks fit.

(7) When the Commissioner is satisfied that there is reason to believe that the person to be summoned is avoiding service or that for any other reason cannot be served in the ordinary way, the Commissioner may order the summons to be served by affixing a copy thereof in some conspicuous part of the house residence which the person to be summoned is known to have last resided, or in such other manner as the Commissioner thinks fit, or may order the substitution for the service of the notice by advertisement in the *Gazette* and in any local newspaper as the Commissioner may think fit.

(8) The service substituted by order of the Commissioner under subsection (7) shall be as effectual as if it had been served personally on the person to be summoned.

(9) Whenever service is substituted by order of the Commissioner, he shall fix such time for the appearance of the person to be summoned as the case may require.

(10) Any order or notice in writing made or issued by the Commissioner or other officer in the exercise of powers conferred by this Order may be served as if the order or notice were a summons, and the provisions of this section, other than subsection (1), shall apply to the service of any such order or notice.

Civil proceedings not barred.

142. Nothing in this Order shall operate to prevent any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any proceedings in court in any case in which proceedings are not instituted or, if instituted, are not proceeded with to judgment, under this Order.

Right to hearing.

143. The Commissioner and any officer authorised by him in writing shall have the right to appear and be heard before any court in any proceedings instituted by him under this Order or any regulations made thereunder.

Onus of proof.

144. In all proceedings under this Order, the onus of proving that he is not the employer or the person whose duty it is under this Order or under any regulations made thereunder to do or abstain from doing anything shall be on the

person who alleges that he is not the employer or other person, as the case may be.

Public servants.

145. For the purposes of this Order and of the Penal Code (Chapter 22), the Commissioner and all other officers appointed or authorised under this Order shall be deemed to be public servants within the meaning of the Penal Code.

Place of employment deemed to be public place.

146. For the purposes of sections 159 and 510 of the Penal Code (Chapter 22), every place of employment shall be deemed to be a public place.

Power to compound offences.

147. (1) The Commissioner or a Deputy Commissioner may compound any offence against this Order or any regulations made thereunder which is prescribed as a compoundable offence by making a written offer to compound to and by collecting from the person reasonably suspected of having committed that offence a sum not exceeding \$1,000.

(2) An offer to compound pursuant to subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Commissioner or a Deputy Commissioner may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (2) —

(a) no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made; and

(b) any book, register or document seized in connection with the offence shall be released immediately.

General penalty for offences not otherwise provided for.

148. Any person who is guilty of any breach of or of any offence against this Order or any regulations made thereunder, for which no penalty is provided, is liable on conviction to a fine not exceeding \$3,000, imprisonment for a term not exceeding one year or both.

Offences committed by bodies corporate.

149. (1) Where an offence against this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of any person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

Existing laws not affected.

150. Nothing in this Order shall operate to relieve any employer of any duty or liability imposed upon him by the provisions of any other written law or to limit any powers given to any public officer by any such written law.

Amendment of Schedules.

151. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, amend the Schedules.

Regulations.

152. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

(3) In particular and without prejudice to the generality of subsection (1), such regulations may —

(a) prescribe the circumstances and conditions under which women may be employed as employees or may work at night;

(b) require registers and records to be maintained and prescribe the form and contents thereof and the manner in which they shall be displayed;

(c) regulate the method of collecting statistics either in connection with or independently of any other department of Government, the staff to be employed in connection therewith, the duties to be performed and the publications, if any, to be issued;

(d) prescribe the forms in which, the times and places at and the manner in which particulars or information shall be furnished, and the manner in which they same shall be authenticated;

(e) exempt from the obligation to furnish particulars or information under this Order, either wholly or to the prescribed extent, and either unconditionally or subject to the prescribed conditions, any employer or class of employer;

(f) prescribe the form of any register, summons or order required to be kept, issued or made under this Order;

(g) to prescribe the offences which may be compounded and the manner and procedure thereof;

(h) prescribe the fees payable for filing of claims under section 124 and for copies of notes of evidence and decisions recorded under section 127(1);

(i) provide for the establishment of a fund or other method of securing the discharge of any liabilities and the expenses of repatriation of employees upon such conditions and subject to such control as the Minister considers necessary and for the administration of such a fund;

(j) prescribe penalties for any contravention or failure to comply with any of the provisions of the regulations made under this section; except that no such penalty shall exceed \$1,000 in the case of a first offence or \$2,000 in the case of a second or subsequent offence under the same regulation within one year.

Repeals.

153. The following written laws are repealed —

the Labour Act (Chapter 93);

the Labour (Domestic Servants) Rules (R2 of Chapter 93);

the Labour (Maternity Benefits) Rules (R3 of Chapter 93);

the Labour (Public Holidays) Rules (R4 of Chapter 93);

the Labour (Payment of Wages by Cheque) Rules (R7 of Chapter 93);

the Labour (Special Places of Employment) Notification (N1 of Chapter 93);

the Labour (Restriction on Employment of Children) Notification (N2 of Chapter 93).

Savings.

154. (1) All agreements and contracts (by whatsoever name so called) entered into between an employer and an employee, valid on the commencement of this Order, shall continue to be in force after such commencement and, subject to any provision contained in any such agreement or contract, the parties thereto shall be subject to, and entitled to the benefit of, the provisions of this Order.

(2) Any licence, document, endorsement, exemption or certificate prepared, made, issued or granted under the Labour Act (Chapter 93) (repealed by this Order) shall, so far as it is not inconsistent with any provision of this Order and except as otherwise expressly provided in this Order or in any other written law, continue and be deemed to have been prepared, made, issued or granted under the corresponding provisions of this Order and shall have effect accordingly.

(3) All subsidiary legislation not repealed by section 153 and all appointments made and any thing done under the Labour Act (Chapter 93) (repealed by this Order) and in force immediately prior to the commencement of this Order shall, so far as it is not inconsistent with the provisions of this Order, continue in force as if made or done under this Order until they are amended, repealed or revoked under this Order.

FIRST SCHEDULE

(section 2)

OTHER WORKMEN

Bus conductor.

Lorry attendant.

Bus, lorry, van and taxi drivers.

Motorboat and speedboat drivers.

Bus inspector.

Goldsmith and silversmith employed in the premises of the employer.

Tailor and dressmaker employed in the premises of the employer.

Harbour-craft crew.

All workmen employed on piece rates in the premises of the employer.

SECOND SCHEDULE

(section 127(3))

FEEs

for copy of record of decision or order made under section 127(1) \$0.50 per page

THIRD SCHEDULE

(section 2)

PUBLIC HOLIDAYS

1. 1st. January (New Year's Day)
2. First day of Hijriah
3. Chinese New Year
4. 23rd. February (National Day of Brunei Darussalam)
5. Maulud Prophet Mohammad's birthday
6. 15th. July (His Majesty the Sultan and Yang Di-Pertuan's birthday)
7. First day of Ramadhan
8. Anniversary of the revelation of the Quran
9. Hari Raya Aidilfitri
10. Hari Raya Aidiladha
11. 25th. December (Christmas Day)

Made this 13th. day of Ramadan, 1430 Hijriah corresponding to the 3rd. day of September, 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM**