



BERMUDA

WORKERS' COMPENSATION ACT 1965

1965 : 25

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SCHEDULE

Percentage Disability Percent.

*[preamble and words of enactment omitted]*

*[NB This Act was formerly entitled the "Workmen's Compensation Act 1965". The title was amended by 2004:19 s.2 effective 20 July 2004. All references in the Act to "workman" and "workmen" were changed to "worker" and "workers" respectively by 2004:19 s.8 effective 20 July 2004. These amendments are not individually noted.]*

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### PART I INTERPRETATION

#### Meaning of "worker" and application of Act

1 (1) *[Repealed by 2004:19]*

(2) If in any proceedings for the recovery of compensation under this Act it appears to the court that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

(3) Any reference to a worker who has been injured shall, unless the context otherwise requires, where the worker is dead, include a reference to his legal personal representative, or to his dependants or any of them or such officer as the Minister may appoint to act on behalf of the dependants of the worker.

*[Section 1 subsection (1) repealed by 2004:19 s.3 effective 20 July 2004]*

#### Interpretation

2 (1) In this Act, unless the context otherwise requires—

"compensation" means compensation as provided for by this Act;

"court" means a court of competent jurisdiction;

"dependants" means those members of the family of a worker who were wholly or in part dependent upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent, and, where the worker, being the parent or grandparent of a child, leaves such child, so dependent upon his earnings, or, being a child, leaves a parent or grandparent so dependent upon his earnings, shall include such a child or parent or grandparent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life;

"earnings" includes salary, wages and any allowance in respect of increased cost of living paid to the worker by the employer and the value of any food, fuel or quarters supplied to the worker by the employer if as a result of the accident the worker is deprived of such food, fuel, or quarters; and any overtime payments or other special remuneration for work done whether by way of bonus or otherwise, if of constant character or for work habitually performed, but shall not include remuneration for intermittent overtime, or casual payments of a nonrecurrent nature, any ex gratia payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a worker

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towards any pension or provident fund, or a sum paid to cover any special expenses entailed on him by the nature of his employment;

“employee” shall have the same meaning as “employee” under section 4 of the Employment Act 2000;

“employer” includes Her Majesty in right of Her Government of Bermuda and any body of persons corporate or unincorporate and the legal personal representative of a deceased employer and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person; and in relation to any person employed for the purposes of any game or recreation and engaged or paid through a club, the manager or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

“medical aid” means medical, surgical and hospital treatment, skilled nursing services, and the supply of medicines within Bermuda or, with the approval of the Chief Medical Officer after consultation with the medical practitioner in any case outside Bermuda and the supply, maintenance, repair and renewal of artificial limbs, or any other artificial appliances or apparatus;

“medical practitioner” means a medical practitioner registered under the Medical Practitioners Act 1950 [*title 30 item 8*];

“member of the family” means the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister;

“Minister” means the Minister responsible for workforce development and related matters;

“occupational disease” means any disease declared to be an occupational disease by regulation under section 38;

“outworker” means a person to whom articles or materials are given out to be made up, cleansed, washed, altered, ornamented, finished or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a worker in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in any employment which he was capable of undertaking at that time:

Provided that every injury specified in the Schedule except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in the Schedule against

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such injury or injuries amounts to one hundred per centum or more shall be deemed to result in permanent partial incapacity;

“total incapacity” means such incapacity, whether of a temporary or permanent nature, as incapacitates a worker for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the Schedule the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per centum or more;

“worker” shall have the same meaning as “employee” under section 4 of the Employment Act 2000;

“year” means any period of fifty-two consecutive weeks.

(2) The exercise and performance of the powers and duties of a public authority shall for the purposes of this Act, be deemed to be the trade or business of such public authority.

*[Section 2 subsection (1) “dependants” amended, “employee” and “worker” inserted, by 2004:19 s.4 effective 20 July 2004; subsection (1) “Minister” amended by BR 5 / 2011 para. 5 effective 25 February 2011; subsection (1) “Minister” amended by BR 40 / 2013 para. 2 effective 3 May 2013]*

Application to workers employed under the Crown, etc.

3 (1) Subject to this Act, this Act shall apply to workers employed by or under the Crown in the same way and to the same extent as if the employer were a private person.

(2) Notwithstanding subsection (1), nothing in this Act shall apply to—

- (a) members of Her Majesty’s Naval Military or Air Forces or any member of the United States Forces;
- (b) persons in the civil employment of Her Majesty otherwise than in right of Her Government of Bermuda who have been engaged in a place outside Bermuda;
- (c) persons in the civil employment of the Government of the United States of America who have been engaged in a place outside Bermuda and do not have Bermudian status by virtue of the Bermuda Immigration and Protection Act 1956 [title 5 item 16], or are not ordinarily resident in Bermuda.

PART II  
COMPENSATION FOR INJURY OR OCCUPATIONAL DISEASE

Employer's liability for compensation for death or incapacity resulting from accident

4 (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with this Act:

Provided that—

- (a) the employer shall not be liable under this Part in respect of any injury which does not incapacitate the worker for a period of at least three consecutive days from earning full wages at the work at which he was employed; and
- (b) if it is proved that the injury to a worker is attributable to the serious and wilful misconduct of that worker, any compensation claimed in respect of that injury shall be disallowed:

Provided that where the injury results in death or serious and permanent incapacity, the court on a consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as it shall think fit.

(2) For the purpose of this Act, an accident resulting in the death or serious and permanent incapacity of a worker shall be deemed to arise out of and in the course of his employment, notwithstanding that the worker was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the worker for the purposes of and in connection with his employer's trade or business.

(3) No compensation shall be payable under this Act in respect of any incapacity or death resulting from a deliberate self-injury.

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

Compensation in fatal cases

5 Where death results from the injury—

- (a) if the worker leaves any dependants wholly dependent on his earnings, the amount of compensation shall be the "actual earnings" of the deceased in the three years prior to the incident, or three years of the average annual per capita income as recorded in the most recent official national statistics, whichever is the lesser, but where in respect of the same accident compensation has been paid under section 6 or section 7 there shall be

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deducted from the sum payable under this paragraph any sums so paid as compensation;

- (b) if the worker does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the court to be reasonable and proportionate to the injury to such dependants;
- (c) if the worker leaves no dependants, the reasonable expenses of the burial of the deceased worker not exceeding the sum of \$2,000 and the reasonable expenses of medical attention as laid down in Part III shall be paid by the employer.

*[Section 5 para (a) amended by 2004:19 s.5 effective 20 July 2004]*

### Compensation in the case of permanent total incapacity

6 (1) Where permanent total incapacity results from the injury, the amount of compensation shall be the "actual earnings" of the deceased in the four years prior to the incident, or four years of the average annual per capita income as recorded in the most recent official national statistics, whichever is the lesser.

(2) Notwithstanding subsection (1), where an injury results in permanent total incapacity of such a nature that the injured worker must have the constant help of another person, additional compensation shall be paid amounting to one quarter of the amount which is otherwise payable under this section.

*[Section 6 subsection (1) amended by 2004:19 s.6 effective 20 July 2004]*

### Compensation in the case of permanent partial incapacity

7 (1) Where permanent partial incapacity results from the injury the amount of compensation shall be—

- (a) in the case of an injury specified in the Schedule such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of causing capacity caused by that injury; and
- (b) in the case of an injury not specified in the Schedule such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury.

(2) Where more injuries than one are caused by the same accident, the amount of compensation payable under this section shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

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Compensation in the case of temporary incapacity

8 (1) Where temporary incapacity whether total or partial results from the injury, the compensation shall be the periodical payments hereinafter mentioned payable at such intervals as may be agreed upon or as the court may order, or a lump sum calculated accordingly having regard to the probable duration, and probable changes in the degree, of the incapacity. Such periodical payments shall be, a weekly payment of half the difference between the weekly earnings which the worker was earning at the time of the accident and the weekly earnings which he is earning or is capable of earning in some suitable employment or business after the accident:

Provided that—

- (a) no periodical payment under this section shall be at a higher rate than \$170 a week;
- (b) neither the aggregate of the periodical payments nor the lump sum payable under this subsection shall exceed the lump sum which would be payable in respect of the same degree of incapacity under section 6(1) or section 7, as the case may be, if the incapacity were permanent;
- (c) the period covered by hospitalization or absence from duty certified necessary by a medical practitioner shall be regarded as a period of temporary total incapacity irrespective of the outcome of the injury, and any period subsequent thereto but preceding final assessment of disability shall be regarded as a period of temporary partial incapacity both periods being continuous with each other, variations in payments notwithstanding, and the maximum duration of periodical payments under this section shall not exceed eight years;
- (d) in the event of death or permanent incapacity following after temporary incapacity, no deductions shall be made from any lump sum payable under section 5, 6, or 7 by reason of periodical payments or a lump sum payment having been made under this section;

(2) In fixing the lump sum or periodical payments payable under subsection (1) the court may deduct the value of any payment, allowance or benefit including the value of any food, fuel or quarters, which the worker may receive from the employer during the period of incapacity.

(3) On the ceasing of the incapacity before the date on which any periodical payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

(4) Where a worker in receipt of periodical payments under this section intends to leave Bermuda for the purpose of residing elsewhere, he shall give notice of such intention to the employer who may agree with the worker for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments. If the employer and worker are unable to agree, either party may apply to the court which shall have jurisdiction to order such redemption and to determine the amount to be paid or to order the continuance of the periodical payments:



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Provided that any lump sum so ordered to be paid together with the periodical payments already made to the worker shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under section 6(1) or section 7 as the case may be, if the incapacity were permanent,

(5) If a worker in receipt of periodical payments under this section leaves Bermuda for the purposes of residing elsewhere, without giving notice as provided in subsection (4) or, having given such notice, leaves Bermuda as aforesaid without having come to an agreement with his employer for the redemption or continuance of such periodical payments, or without having made an application to the court under subsection (4), he shall not be entitled to any benefits under this Act during or in respect of the period of his absence. If the period of such absence shall exceed six months, the worker shall cease to be entitled to any benefits under this Act.

### Method of calculating earnings

9 (1) For the purposes of this Act the weekly earnings of a worker shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated at the date of the accident:

Provided that—

- (a) where by reason of the shortness of the time during which the worker has been in the employment of his employer or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the rate of remuneration in the manner aforementioned, regard may be had to the average weekly amount which during the year previous to the accident, was being earned by a person of similar earning capacity, in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment in Bermuda; and
- (b) for the purpose of assessing compensation payable in the case of permanent incapacity—
  - (i) where the worker was, at the date of the accident under the age of eighteen years his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of eighteen years, or at the end of a period of five years after the accident, whichever calculation is more favourable to the worker; and
  - (ii) where the worker was, at the date of the accident, employed under a contract of apprenticeship or as an improver or learner, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon the completion of his apprenticeship or the period during which he was employed as an improver or learner.

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(2) For the purposes of subsection (1), employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(3) Where the worker has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another for another such employer, his weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident:

Provided that the earnings of the worker under the concurrent contract shall be disclosed to any other employer at the time of his engagement with the latter and shall be taken into account only so far as the worker is incapacitated from performing the concurrent contract.

(4) Upon request of the worker to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the weekly earnings may be calculated for the purposes of this section.

### Persons entitled to compensation

10 (1) The compensation shall be payable to or for the benefit of the worker, or where death results from the injury, to or for the benefit of his dependants as provided by this Act.

(2) Where there are both total and partial dependants nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(3) Where a dependant dies before a claim in respect of death is made under this Act, or, if a claim has been made, before an order for the payment of compensation has been made, the legal personal representative of the dependant shall have no right to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before the worker.

### Distribution of compensation

11 (1) Compensation payable where the death of a worker has resulted from an injury shall be paid into court, and the court may order any sum so paid in to be apportioned among the dependants of the deceased worker or any of them in such proportion as the court thinks fit, or, in the discretion of the court, to be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or, invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(2) Where, on application being made in accordance with rules made under this Act, it appears to the court that, on account of the variation of the circumstances of the various dependants or for any other sufficient cause, an order made under this subsection ought to be varied, the court may make such order for the variation of the former order as in the circumstances of the case the court may think just.

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(3) Compensation payable under section 6 or section 7 and lump sums payable under section 8 shall be paid into court, and the court may order any sum so paid in to be paid to the person entitled thereto or to be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(4) Nothing in this section shall prevent an employer from making any payment to a worker pending the settlement or determination of the claim and the court may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to him under this section.

(5) Any other compensation payable under this Act may be paid to the worker or into court and when so paid in shall be paid by the court to the person entitled thereto.

(6) The receipt of a duly authorized officer of the court shall be a sufficient discharge in respect of any amount paid into court under this Act.

(7) Any order or directions of the court under this section shall be final.

### Requirements as to notice of accident and application for compensation

12 Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given by or on behalf of the worker as soon as practicable after the happening thereof and before the worker has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within twenty-six weeks from the occurrence of the accident causing the injury or, in the case of death, within twenty-six weeks from the time of death:

Provided that—

- (a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;
- (b) the failure to make a claim for compensation within the period above specified shall not be a bar to the maintenance of such proceedings—
  - (i) in the case of a worker whose earnings do not exceed such amount as may be prescribed; or
  - (ii) in the case of any other worker, if it is found that the failure was occasioned by mistake or other reasonable cause, so, however, that no proceedings for the recovery of compensation shall be maintainable unless the claim for compensation is made within a period of three years from the date of the accident.

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Employer to report the death of a worker

13 (1) When the death of a worker by accident arising out of and in the course of his employment or from an occupational disease is brought to the notice of or comes to the knowledge of his employer, the employer shall, as soon as practicable after the occurrence of the death, give notice thereof to the Director of Workforce Development or to such other person as may be prescribed. Such notice shall state the circumstances of the death of the worker if they are known to the employer.

(2) Any employer who fails to comply with subsection (1) without reasonable cause commits an offence:

Punishment on summary conviction: a fine of \$360.

(3) Nothing contained in this section shall prevent any person from making a claim for compensation under this Act.

*[Section 13 amended by 2010 : 36 s.3(f) effective 16 July 2010; amended by BR 40 / 2013 para. 2 effective 3 May 2013]*

Medical examination and treatment

14 (1) Where a worker has given notice of an accident the employer shall, as soon as reasonably possible after the date on which notice has been given, arrange to have him medically examined free of charge to the worker by a medical practitioner and any worker who is in receipt of periodical payments under section 8 shall submit himself for such medical examination from time to time as may be required by the employer.

Provided that the medical examination and report thereon shall relate only to the injury or disability caused by the accident.

(2) The worker shall, when required, attend upon the medical practitioner at such reasonable time and place as shall be notified to the worker by the employer or the medical practitioner.

(3) In the event of the worker being, in the opinion of any medical practitioner named by the employer, unable or not in a fit state to attend on the medical practitioner so named for examination, that fact shall be notified to the employer, and the medical practitioner conducting the examination required by subsection (1), shall fix a reasonable time and place for a personal examination of the worker and shall send him notice accordingly.

(4) If the worker fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place; and if such failure extends for a period of fifteen days from the date when the worker was required to submit himself for examination under subsection (2) or subsection (3), as the case may be, no compensation shall be payable, unless the court is satisfied that there was reasonable cause for such failure.

(5) The worker shall be entitled to have his own medical practitioner present at such examination, but at his own expense.

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(6) During the period of temporary total incapacity, the employer shall arrange to submit the worker for normal medical treatment by either the employer's medical practitioner or the worker's medical practitioner approved by the employer, at the expense of the employer. Such normal medical treatment shall include any specialist treatment which the medical practitioner may advise the worker to undergo.

(7) If the worker has failed to submit himself for treatment by a medical practitioner when so required under subsection (6), or having submitted himself for such treatment has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly.

(8) Where under this section a right of compensation is suspended, no compensation shall be payable in respect of the period of suspension.

(9) Notwithstanding the foregoing provisions of this section, where a claim for compensation is made in respect of the death of a worker, then if the worker failed to submit himself to examination by a medical practitioner when so required under this section or failed to submit himself for treatment by a medical practitioner when so required under this section or having submitted himself for such treatment disregarded the instructions of such medical practitioner, and if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the death of the worker was caused thereby, the death shall not be deemed to have resulted from the injury, and no compensation shall be payable in respect of the death.

### Agreement as to compensation

15 (1) The employer and worker may, after the injury in respect of which the claim to compensation has arisen agree in writing as to the compensation to be paid by the employer. Such agreement shall be in triplicate, one copy to be kept by the employer and one copy to be kept by the worker and the third copy to be transmitted to and retained by such officer as may be prescribed:

Provided that—

- (a) the compensation agreed upon shall not be less than the amount payable under this Act; and
- (b) where the worker is unable to read the agreement shall not be binding him unless it is endorsed by a certificate of a practising barrister and attorney or duly authorized officer of the court to the effect that he read over and explained to the worker the terms thereof and that the worker appeared fully to understand and approve of the agreement.

(2) Any agreement made under subsection (1) may on application to the court be made an order of the court.

(3) Where compensation has been agreed the court may notwithstanding that the agreement has been made an order of the court under subsection (2), on application by any

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party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the court may think just, if it is proved—

- (a) that the sum paid or to be paid was or is not in accordance with subsection (1);
  - (b) that the agreement was entered into in ignorance of or under a mistake as to, the true nature of the injury; or
  - (c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would in law, be sufficient ground for avoiding it.
- (4) No stamp duty shall be leviable or payable on any agreement under this section.

### Compensatory payments, pending investigations

15A Immediate compensatory part-payments shall be made by an employer to a person to whom compensation is due, upon verification by a Government Safety and Health Officer, pending the conclusion of an insurance company's investigation into an incident.

*[Section 15A inserted by 2004:19 s.7 effective 20 July 2004]*

### Determination of claims

16 (1) If an employer on whom notice of the accident has been served under section 12 does not within fourteen days after the receipt of the notice agree in writing with the worker as to the amount of compensation to be paid, the worker may, in the prescribed form and manner, make an application for enforcing his claim to compensation to the court.

(2) All claims for compensation under this Act, unless determined by agreement, and any matter arising out of proceedings thereunder shall be determined by the court and the court may, for that purpose, call upon any Government officer or any independent medical practitioner to give evidence if the court is of opinion that such officer or practitioner is, by virtue of his expert knowledge, able to assist the court.

### Review

17 (1) Any periodical payment payable under this Act either under agreement between the parties or under an order of the court may be reviewed by the court on the application either of the employer or of the worker:

Provided that where the application for review is based on a change in the condition of the worker any such application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

(2) Any periodical payment may, on review under this section, subject to this Act, be continued, increased, diminished, converted to a lump sum or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the worker is entitled under section 6 or section 7, as the case may be, and such lump sum shall be dealt with in accordance with section 11(3).

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(3) Where application is made by an employer under this section for any periodical payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay into court the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the court made on review under this section.

(4) In making a review under this section the court shall have regard only to the capacity for work of the worker as affected by the accident.

### Limitation of power of employer to end or decrease periodical payments

18 Subject to section 8(5), section 14(4) and section 15(3), an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the court—

- (a) to end periodical payments except—
  - (i) where a worker resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or
  - (ii) where a worker dies,
- (b) to diminish periodical payments except that where the earnings of a worker in receipt of periodical payments, together with such payments, exceed the amount of his earnings at the date of the accident, the employer may diminish the payments to such worker by an amount equal to such excess.

### General powers of court

19 Save as is provided in this Act and any rules made thereunder, the court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdiction exercisable by such court in or in connection with civil actions and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the court shall *mutatis mutandis* apply.

### Power of the court to submit questions of law

20 A magistrate's court may if it thinks fit, submit any question of law for the decision of the Supreme Court. Such submission shall be in the form of a special case in accordance with rules made under this Act.

### Appeals

21 (1) Subject to this Act, an appeal shall lie to the Supreme Court from any order of a magistrate's court.

(2) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the court, or in which the order of the court gives effect to an agreement come to by the parties.

### Liability in case of workers employed by contractors

22 (1) Where any person (in this section referred to as the principal), in the course of or for the purpose of his trade or business, contracts with any other person (which other

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person is in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section.

(3) Where a claim or application for compensation is made under this section against a principal, the principal shall give notice thereof to the contractor who shall thereupon be entitled to intervene in any application made against the principal.

Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.

(5) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

### Remedies against both employer and stranger

23 Where the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

- (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and
- (b) if the worker has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section 22 relating to liability in case of workers employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid, and any question as to the right to an amount of any such indemnity shall, in default of agreement, be settled—
  - (i) by civil suit; or
  - (ii) by consent of the parties, by arbitration under the Arbitration Act 1986, with a right of appeal to the Supreme Court on a point of law.

*[Section 23 paragraphs (i) and (ii) inserted by 2004:19 s.8 effective 20 July 2004]*



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Proceedings independently of this Act

24 (1) Where the injury was caused by the personal negligence or wilful act of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer in a court independently of this Act:

Provided that—

- (a) a judgment in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under this Act;
- (b) a judgment in proceedings under this Act whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;
- (c) an agreement come to between the employer and the worker under section 15(1) shall be a bar to proceedings by the worker in respect of the same injury independently of this Act..

(2) If in proceedings independently of this Act or on appeal it is determined that the employer is not liable under such proceedings, the court in which such proceedings are taken or the appellate tribunal may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation so payable, but may deduct from such compensation any extra costs which in the opinion of the court or appellate tribunal have been incurred by the employer by reason of the proceedings having been taken independently of this Act.

Minister may by order require employers to insure

25 (1) The Minister may, by order published in the Gazette, require any employer or class of employers to insure and keep himself or themselves insured in respect of any liability which he or they may incur under this Act to any worker employed by him or them.

(2) Where the Minister has made any order under subsection (1) he may exempt any employer to whom such order applies from the provisions thereof if such employer provides and maintains in force a security which complies with the requirements of subsection (3), and any exemption so granted shall continue in force only so long as such security continues in force.

(3) For the purposes of subsection (2), a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under this Act to any worker employed by him.

(4) Any employer who acts in contravention of any order made under subsection (1) commits an offence against this Act:

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Punishment on conviction: imprisonment for 3 months or a fine of \$360 or both such imprisonment and fine and in the case of a continuing offence a further fine of \$36 for every day during which the offence continues.

### Authorization of insurers

26 (1) Subject to the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*], any person may apply to the Minister for authority to undertake insurance business, and in considering any such application the Minister shall have regard to the financial standing of the applicant, and for this purpose may require the production of such documents or financial statements as he may consider relevant.

(2) In any case where the Minister is satisfied that the applicant is a fit and proper person, he may authorize the applicant to undertake insurance business upon such terms and conditions as he may consider appropriate.

(3) The Minister shall have the power at any time to require an insurer to produce any documents and answer any questions which may be relevant, and if at any time the Minister is satisfied that the insurer is no longer a fit and proper person to undertake insurance business he may revoke the authority granted to him:

Provided that such revocation shall not affect the liability of the insurer in respect of any policy of insurance in force at the time of such revocation.

(4) Any person who undertakes insurance business, except under the authority of the Minister, commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$7,200 or both such imprisonment and fine.

(5) For the purposes of this section, "insurance business" means the insurance of any employer in respect of any liability which he may incur under this Act to any worker employed by him.

(6) Any person aggrieved by a decision of the Minister under this section may, within fourteen days of the notification to him of his decision, appeal to the Governor against that decision and on such appeal the Governor shall have all the powers exercisable by the Minister under this section.

### Examining Physicians

27 (1) The Governor may, after consulting the Bermuda Branch of the British Medical Association, appoint such medical practitioners as he may determine, to be examining physicians for the purposes of sections 28 and 29 and the remuneration of, and other expenses incurred by, examining physicians under this shall be paid at such rates as the Minister, may, from time to time, determine.

(2) Where an examining physician has been employed as a medical practitioner in connection with any case by or on behalf of an employer or worker or by any insurer's interest, he shall not act as examining physician in that case.

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### Application of Act to occupational diseases

#### 28 (1) Where—

- (a) an examining physician certifies that a worker is suffering from an occupational disease and is thereby incapacitated from earning full wages at the work at which he was employed; or
- (b) the death of a worker is caused by any occupational disease;

and the occupational disease is due to the nature of any employment in which the worker was employed at any time within the year previous to the date of the incapacity, whether under one or more employers he or his dependants shall be entitled to compensation under this Act as if the occupational disease were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications—

- (i) the incapacity shall be treated as the happening of the accident;
- (ii) if it is proved that the worker has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the occupational disease, compensation shall not be payable;
- (iii) the compensation shall be recoverable from the employer who last employed the worker during the said year in the employment to the nature of which the occupational disease was due:

#### Provided that—

- (a) the worker or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said year as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under paragraph (b) of this proviso, that employer upon proving that the occupational disease was not contracted whilst the worker was in his employment shall not be liable to pay compensation; and
- (b) if that employer alleges that the occupational disease was in fact contracted whilst the worker was in the employment of some other employer, and not whilst in his employment he may join such other employer as a party to any proceedings under this Act and, if the allegation is proved, that other employer shall be liable for the compensation recoverable; and
- (c) if the occupational disease is of such a nature as to be contracted by a gradual process, any other employers who during the said year employed the worker in the employment to the nature of which the occupational disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions, as, in default of agreement may be determined by the court;
- (d) the amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable;

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- (e) the employer to whom notice of the accident is to be given shall be the employer who last employed the worker during the said year in employment to the nature of which the occupational disease was due, and the notice may be given notwithstanding that the worker has voluntarily left his employment;
- (f) if an employer or a worker is aggrieved by the action of an examining physician in giving or refusing to give a certificate of incapacity, the matter shall upon application to the Chief Medical Officer be referred by him to a medical referee selected by the Chief Medical Officer from a panel of medical referees to be appointed by the Minister after consulting the Bermuda Branch of the British Medical Association, for the purpose by notice in the Gazette, whose decision shall be final, and the medical referee when deciding the matter shall also certify as to the condition of the worker at the time when he is examined by him, and such certificate by the medical referee shall be conclusive.

(2) For the purpose of this section the date of incapacity shall be such date as the examining physician certifies as the date on which the incapacity commenced, or if he is unable to certify such a date, the date on which the certificate is given:

Provided that—

- (a) where the medical referee allows an appeal against a refusal by an examining physician to give a certificate of incapacity, the date of incapacity shall be such date as the medical referee may determine;
- (b) where a worker dies without having obtained a certificate of incapacity or is at the time of death not in receipt of a weekly payment on account of incapacity, it shall be the date of death.

(3) Nothing in this section shall affect the rights of a worker to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this Act.

### Supplemental provisions as to occupational diseases

29 (1) Where a worker claims to be suffering from and incapacitated by an occupational disease to which section 28 apply the employer may agree with the worker that he is liable to pay compensation without requiring the worker to obtain the certificate of the examining physician mentioned in those provisions and thereupon the worker shall be entitled to compensation as for injury by accident from the date of the agreement or from such other date as may be agreed, and section 15 shall apply mutatis mutandis to any such agreement.

### Provision as to cases to bankruptcy of employer

30 (1) Without prejudice to the Third Parties (Rights Against Insurers) Act 1963 [*title 8 item 69*], there shall be included amongst the debts or liabilities which—

## WORKERS' COMPENSATION ACT 1965

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- (i) under section 39 of the Bankruptcy Act 1989 [*title 8 item 49*], are in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts; and
- (ii) under section 167 of the Companies Act 1981 [*title 17 item 5*], are in the winding up of a company to be given legal priority,

the amount due or balance due in respect of any compensation or liability for compensation accrued before the following dates—

- (a) in the first case the date of the receiving order; and
- (b) in the second case the date of commencement of the winding up of the company.

(2) Where the compensation is a periodical payment the amount due in respect thereof shall, for the purposes of this section be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Act.

*[Section 30 amended by 1989:58 effective 31 January 1990]*

### Application to persons employed on ships

31 (1) Subject to this section this Act shall apply to masters, seafarers and apprentices to the sea service, provided that such persons are workers within the meaning of this Act, and are members of the crew of any ship registered in Bermuda or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager has his principal places of business in Bermuda, subject to the following modifications—

- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;
- (b) in the case of the death of the master, seafarers or apprentice, the application for compensation shall be made within three months after news of the death has been received by the claimant;
- (c) whenever in the course of any legal proceedings under this Act the testimony of any witness is required in relation to the subject matter of the proceedings then, upon due proof that the witness cannot be found in Bermuda, any deposition which the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in Her Majesty's dominions or in any place where Her Majesty exercises jurisdiction or before any British Consular Officer elsewhere and which, if the proceeding had been under the Merchant Shipping Act 1894, would have been admissible in such proceeding by virtue of section 691 and section 695 of that Act, shall be admissible in evidence subject to similar conditions as are laid down in the said section 691 and section 695;

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- (d) in case of the death of a master, seafarer or apprentice leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act 1894, liable to pay expenses of burial;
- (e) the periodical payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Bermuda relating to merchant shipping, liable to defray the expenses of maintenance of the injured master, seafarer or apprentice.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated wholly or mainly by shares in the profits or the gross earnings of the working of such vessel, except in such cases and subject to such modifications as the Minister may by regulations prescribe.

(3) This Act shall not apply to the members of the crew of any ship operating outside the territorial water if it does not operate regularly to and from Bermuda in the course of business or trade.

(4) This Act shall also apply to any person not being a master, seafarer or apprentice to the sea service employed on board any ship as is mentioned in this section, if he is so employed for the purposes of the ship, or of any passengers or cargo or mails carried by the ship, and if he is otherwise a worker within the meaning of this Act.

(5) In this section, unless the context otherwise requires—

“ship”, “vessel”, “master”, “seafarer” and “port” shall have the same meaning as in the Merchant Shipping Act 1894;

“manager” in relation to a ship means the ship’s husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

*[Section 31 amended by 2012 : 30 s. 27 effective 30 June 2014]*

### Contracting out

32 Any contract or agreement whether made before or after the commencement of this Act, whereby a worker relinquishes any right to compensation from an employer for injury arising out of and in the course of his employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act:

Provided that a worker, who has obtained compensation in respect of permanent partial or permanent total incapacity, may enter into a contract reducing or giving up his right to compensation under this Act in respect of any further personal injury by accident if such contract is certified to be fair and reasonable by any duly authorized officer of the court.

### Compensation not to be assigned, charged or attached

33 Compensation payable under this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law nor shall any claim be set off against such compensation.

PART III  
MEDICAL AID

Medical expenses

34 (1) The employer shall defray the reasonable expenses incurred by a worker within Bermuda as the result of an accident which would entitle the worker to compensation under this Act—

- (a) in respect of the compensation for hospital bed and board and services of a medical nature incurred by reason of confinement in hospital, not to exceed the prevailing public ward charge for a maximum of 56 days, and
- (b) in respect of all expenses incurred for emergency treatment as an out-patient, and
- (c) in respect of surgical expenses in hospital or in a doctor's clinic, or of the fees of an anaesthetist in accordance with the prevailing scale approved by the Bermuda Hospitals Board for surgical and anaesthetic fees; and
- (d) in respect of medical expenses in connection with medical treatment, skilled nursing services, ambulance charges, and the supply of medicines to an aggregate amount not exceeding \$1,000; and
- (e) in respect of the supply, maintenance, repair and renewal of artificial limbs or any other artificial appliances to an aggregate amount not exceeding \$2,000; and
- (f) in respect of reasonable transport charges, other than ambulance charges, not exceeding in the aggregate the sum of \$250 incurred in the transfer of a worker to and from a place where the necessary treatment is available; so, however, that such transfer shall be certified to be necessary by the medical practitioner in charge of the case.

(2) The court may, when determining any dispute in respect of compensation or upon the application of any interested person, order the payment of any of the expenses referred to in this section to the persons entitled to receive it, and if such expenses exceed the amount provided in subsection (1), the court may apportion the amount available in such manner as the court may deem expedient.

Decisions of court in regard to treatment and medical reports

35 (1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided under this Part shall be determined by the court.

(2) Any decision of the court given under subsection (1) shall be final.

Fees for medical aid to be prescribed

36 The fees and charges for medical aid to workers within Bermuda shall be in accordance with such scale as may be prescribed, and no claim for an amount in excess of a

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fee or charge in accordance with that scale shall lie against any worker or his employer in respect of any such medical aid.

### Abatement of compensation

37 Compensation and benefits accruing pursuant to this Act to a worker employed by or under the Crown in any Government body or to his dependant, shall abate to the extent that any corresponding payment, right or benefit accrues and is paid or granted under the Public Service Superannuation Act 1981 [*title 9 item 31*], the Government Employees (Disability etc. Benefits) Act 1953 [*title 9 item 15*], or any other general or special enactment.

## PART IV

### GENERAL

#### Regulations

38 (1) The Minister may make regulations not inconsistent with this Act for the purposes of giving better effect to the purposes and provisions thereof, and, without prejudice to the generality of the foregoing, may make regulations—

- (a) prescribing procedure, forms and fees;
- (b) prescribing anything which is to be or may be prescribed under this Act;
- (c) requiring employers and insurers carrying on in Bermuda the business of insuring employers against their liabilities under this Act to make periodic or other returns as to such matters as he may think fit, and prescribing a time limit for the making of such returns; and
- (d) declaring any disease to be an occupational disease for the purposes of this Act.

(2) Any person required to make a return by virtue of any regulation made under subsection (1) who—

- (a) fails to make such return within the time within which he is required to make it, or
- (b) makes or causes to be made a return which is false in any particular, or
- (c) on being so required fails to give any information or explanation respecting the return which it is in his power to give,

commits an offence against this Act:

Punishment on conviction: a fine of \$180 and in the case of a continuing offence a further fine of \$36 for every day during which the offence continues.

(3) Where a person convicted of an offence against this Act is a company, the chairman and every director and every officer of the company commits a like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.



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(4) The negative resolution procedure shall apply to regulations made under this section.

39 *[repealed by 1977:35]*

Power of Minister to amend certain sums by order

40 (1) The Minister may, by an order under this section, amend all or any of the several sums set out in sections 1(1)(a), 5(a) and (c), 6(1), 8(1)(a) and 34(1)(d), (e) and (f).

(2) The affirmative resolution procedure shall apply to an order made under this section.

(3) *[repealed by 1977:35]*

Rules of court

41 (1) The Chief Justice may make rules of court for regulating proceedings before any court under this Act, for the fees payable in respect thereof and costs.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules of court made under this section other than rules relating to fees which shall be subject to the affirmative resolution procedure.

Regulations as to transfer of funds

42 Where an arrangement has been made whereby sums awarded under the law relating to workmen's compensation in Bermuda to beneficiaries resident or becoming resident in the United Kingdom or in any other part of Her Majesty's dominions, and sums awarded under the law relating to workmen's compensation in the United Kingdom or in such other part of Her Majesty's dominions to beneficiaries resident or becoming resident in Bermuda may, at the request of the authority by which the award is made, be transferred to and administered by a competent authority in the United Kingdom or in such other part of Her Majesty's dominions or in Bermuda as the case may be, then in that event the Minister may make regulations—

- (a) for the transfer, in such manner as may be provided by the arrangement, to the United Kingdom or that part of Her Majesty's dominions with which the arrangement is made of any money in the disposition of the court, applicable for the benefit of any person resident in or about to reside in the United Kingdom or such other part of Her Majesty's dominions;
- (b) for the receipt and administration by an officer appointed by the Minister for such purpose of any money which under any such arrangement has been transmitted from the United Kingdom or the part of Her Majesty's dominions with which the arrangement has been made as money applicable for the benefit of any person resident or about to reside in Bermuda.

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### Application

42A Where any workers' compensation established by any other Act, agreement, contract of employment, custom or practice is more favourable than this Act establishes, the provisions so established by that other Act, agreement, contract of employment, custom or practice, shall in respect of compensation, prevail over this Act.

*[Section 42A inserted by 2004:19 s.9 effective 20 July 2004]*

### Commencement

43 *[omitted]*

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SCHEDULE	
PERCENTAGE DISABILITY	PERCENT.
Loss of two limbs	100
Loss of both hands or all fingers and both thumbs	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being bedridden permanently	100
Any other injury causing permanent total disablement	100
Loss of remaining eye by one-eyed worker	100
Loss of remaining arm by one-armed worker	100
Loss of remaining leg by one-legged worker	100
Loss of arm at shoulder	70
Loss of arm between elbow and shoulder	68
Loss of arm at elbow	67
Loss of arm between wrist and elbow	60/65
Loss of hand at wrist	60
Loss of four fingers and thumb of one hand	60
Loss of four fingers	35
Loss of thumb	
both phalanges	35
one phalanx	10
Loss of index finger	
three phalanges	10
two phalanges	7
one phalanx	4
Loss of middle finger	
three phalanges	6
two phalanges	4
one phalanx	2
Loss of ring finger	
three phalanges	5
two phalanges	4
one phalanx	2
Loss of little finger	
three phalanges	4
two phalanges	3
Loss of metacarpals	
first or second (additional)	3
third, fourth or fifth (additional)	2
Loss of leg at or above knee	70
Loss of leg below knee	40
Loss of foot	40
Loss of toes	
all	15
great, both phalanges	5
great, one phalanx	2

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other than great, if more than one toe lost (each)	1
Loss of eye	
eye out	30
sight of	30
lens of	30
sight of, except perception of light	30
Loss of hearing	
both ears	50
one ear	7

Total permanent loss of use of member shall be treated as loss member. The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 per cent, of the incapacity for loss of the part of that joint, according to whether the joint is ankylosed in favourable or unfavourable position.

In the case of a right-handed worker, an injury to the left arm or hand and, in the case of a left-handed worker, to the right arm or hand shall be rated at 90 per centum of the above percentages.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the whole hand.

Where there are two or more injuries, the sum of the percentages for such injuries may be increased, and, where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely—

- (a) where two digits have been injured, the sum total of the percentages shall be increased by 20 per centum of such sum total;
- (b) where three digits have been injured, the sum total of the percentages shall be increased by 30 per centum of such sum total;
- (c) where four digits have been injured, the sum total of the percentages shall be increased by 40 per centum of such sum total.

A one-eyed worker who on entering employment has failed to disclose the fact that he is one-eyed to his employer shall, if he loses his remaining eye, be entitled to compensation in respect of a degree of disablement of 30 per centum only.

For the purpose of this Schedule, a one-eyed worker means a worker who has lost the sight of one eye.

[Assent Date: 1 May 1965]

[This Act was brought into operation on 1 August 1965, being the day three months after assent]

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*[Amended by:*

1967 : 244

1969 : 188

1969 : 673

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1970 : 306  
1977 : 35  
SR&O 10 / 1977  
BR 31 / 1988  
1989 : 58  
2004 : 19  
2010 : 36  
BR 5 / 2011  
BR 40 / 2013  
2012 : 30]