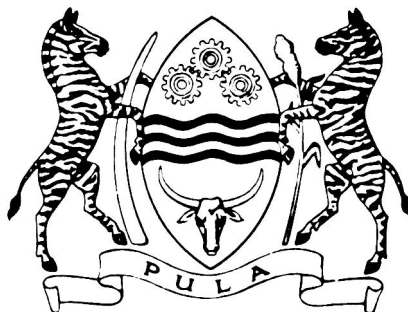




REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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6th July, 1977.

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Bill No. 22 of 1977

AGRICULTURAL CHARGES (AMENDMENT) BILL, 1977

(Published on 6th July, 1977)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to amend the Agricultural Charges Act (Cap. 35:01) in two ways, firstly to include asses and mules in the definition of "live-stock", and, secondly, to permit an agreement between a farmer and the National Development Bank to contain a provision enabling the proceeds of sale, less commission and expenses, to be paid direct to the Bank and not to the farmer. There is similar provision in the Hypothecation Bill, 1977.

Q.K.J. MASIRE,
Vice-President and

Minister of Finance and Development Planning.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 35:01
3. Amendment of section 7 of principal Act

A BILL

entitled

An Act to amend the Agricultural Charges Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Agricultural Charges (Amendment) Act, 1977, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title
and com-
mencement

2. Section 2 of the Agricultural Charges Act (hereinafter referred to as "the principal Act") is amended by inserting, immediately after the word "horse," which appears in the definition of "live-stock", the words "ass, mule,".

Amendment
of section 2 of
Cap. 35:01

3. Section 7 of the principal Act is amended by inserting, immediately after subsection (3) thereof, the new subsection following —

Amendment
of section 7 of
principal Act

"(3A) Where an agreement contains a provision under subsection (1), such agreement may also provide that the proceeds of sale of any agricultural produce of the class stipulated therein sold by or through a buyer, less any commission or expenses reasonably incurred in connexion with the marketing of such produce and due either to himself or some other person, shall be remitted to the Bank and not to the farmer."

L2/4/674 I

Bill No. 23 of 1977

HYPOTHECATION BILL, 1977

(Published on 6th July, 1977)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to provide a more flexible method of securing loans made on the security of movable property. As the law now stands a lender can obtain security for his loan over movable property in one of two ways —

(a) by taking possession of the security; or

(b) by way of notarial bond, which is expensive and cumbersome.

This Bill proposes a third way, namely, by registered deed of hypothecation. This will provide an inexpensive and flexible mode of security which will permit the borrower to retain possession of the property forming the security. Registered hypothecation will only be available to approved lenders.

3. Clause 3 of the Bill provides for loans and advances to be secured by hypothec and for such hypothecs to be evidenced in writing and registered in the Deeds Registry. This clause also provides for amending hypothecations, necessary, for example, where substitute security is provided or where security is released from the hypothec, and for the discharge of a hypothec on repayment of the amount secured. Clause 4 makes provision for the cession of interest on a hire-purchase contract in addition to or instead of hypothecation.

4. Clause 5 proposes that provision may be made in a deed of hypothecation for the marking of property hypothecated under such deed, and, in the case of livestock, the progeny thereof.

5. Clause 6 enables a deed of hypothecation to stipulate or name a person through whom produce or goods of the hypothecator shall be sold, and clause 7 provides that such a buyer may be required to make payment of any moneys due to the hypothecator direct to the lender. Clause 8 makes special provision where a co-operative society is nominated as a buyer.

6. Clause 9 enables a lender to foreclose on the breach of a deed of hypothecation and to apply to the court for summary judgment against the borrower, and clause 10 makes provision for the sale of hypothecated property in accordance with the Rules of the court. Clause 11 sets out the manner of distribution of the proceeds of sale consequent upon a sale under clause 10.

7. Clause 12 places the burden of the preparation of documents relating to a deed of hypothecation on the authorized creditor and for the fees to be paid in connexion therewith. Clause 13 proposes that certificates of indebtedness registered by the National Development Bank under the Agricultural Charges Act (Cap. 35:01) shall be deemed to be a hypothec entered into under this Bill, and clause 14 makes provision for regulations.

Q.K.J. MASIRE,
Vice-President and

Minister of Finance and Development Planning.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Loans and advances secured by hypothec
4. Loans and advances secured by cession of hire-purchase contract
5. Marking of hypothecated property
6. Sale of produce or goods to or through a buyer
7. Payment by a buyer to an authorized creditor
8. Special provision where buyer is a co-operative
9. Foreclosure of hypothec and hire-purchase contract
10. Sale of property
11. Allocation of proceeds of sale
12. Documents to be prepared by authorized creditor
13. This Act in addition to Agricultural Charges Act (Cap. 35:01)
14. Regulations

An Act to provide for the securing of Loans, Advances and Debts by Hypothec granted over Movable Property

Date of Assent :

Date of Commencement :

ENACTED by the Parliament of Botswana.

Short title
Inter-
pretation

1. This Act may be cited as the Hypothecation Act, 1977.
2. In this Act, unless the context otherwise requires, —

“agricultural produce” means crops or agricultural produce, whether future, growing or severed from the land, and after severance whether subjected to any treatment or manufacture or not; livestock and the produce and progeny thereof; and other agricultural or horticultural produce whether subjected to any treatment or manufacture or not;

“authorized creditor” means a person authorized by the Minister, by notice published in the Gazette, to be a person empowered to take security by way of hypothec under the provisions of this Act;

“buyer” means a person to whom or through whom agricultural produce is required to be sold in accordance with the provisions of section 6;

“livestock” includes —

- (a) any bovine animal, horse, ass, mule, sheep, goat or pig;
- (b) any fowl, goose, duck or turkey kept for commercial purposes;

“loan” includes the contracts known in Setswana as “go fisa”, and any similar contract.

Loans and
advances
secured by
hypothec

3. (1) Subject to this section (and subject to any limitation which the Minister may from time to time prescribe), an authorized creditor may secure any loan, advance, debt and possible future debt by hypothec of crops or other agricultural or natural produce, whether attached to the soil or not, felled timber, animals,

fodder, industrial and fishing materials, rolling stock, boats, fishing tackle or nets, raw materials, equipment, machinery, stock-in-trade, goods, and generally all produce of labour and things necessary used in connexion with production, or other movable property of whatsoever kind or description, of which the hypothecator is the owner, and in respect whereof he has the right of use and disposal, whether or not on the date of such hypothecation the property or thing offered as security is in existence or has been acquired by the hypothecator.

(2) A document evidencing a hypothecation entered into under this section shall —

(a) include —

- (i) a statement that the authorized creditor has either himself, or through his servant or agent, explained to the hypothecator the effect of making such deed and that the hypothecator understands the explanation; and
 - (ii) such other matters as may be prescribed; and
- (b) be lodged by the authorized creditor, together with the prescribed fee, with the Registrar of Deeds within 30 days of its execution and shall be registered by him in the manner of a notarial bond.

(3) A hypothecation entered into under this section shall be of no effect unless the document referred to in subsection (2) contains a statement of the matters referred to in subsection (2) (a) and until it has been registered in accordance with subsection (2) (b).

(4) With effect from the date of registration of a deed of hypothecation, all property thereby hypothecated and all progeny and produce thereof shall be deemed to be pledged in favour of the authorized creditor for the amount owing in respect of the loan or advance or the amount of the debt or possible future debt, together with interest and costs, as fully and effectually as if it had been pledged by delivery to such authorized creditor and were retained in the authorized creditor's possession, and any disposal thereof by or on behalf of the hypothecator without the consent in writing of such authorized creditor shall be null and void.

(5) An authorized creditor may at any time, upon such conditions as he deems fit, grant permission in writing to the hypothecator to dispose of the property hypothecated in terms of this section or to substitute any other property of the same description therefor, and any property so substituted shall be deemed to have been validly hypothecated in terms of this section with effect from the date of registration of an amending hypothecation.

(6) Movable property subject to an existing hypothec shall not be further hypothecated under this section except with the consent in writing of the holder of such hypothec, which consent shall not be unreasonably withheld.

(7) Any hypothecator who, without the written authority of the

authorized creditor, disposes of, destroys or consumes any property hypothecated under this section, or removes any property from the land where it is, by agreement with the authorized creditor, to be kept, shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year.

(8) If, at any trial in respect of a contravention of subsection (7), it is proved that the accused person failed, on the demand of any person designated in writing by the authorized creditor for such purpose, to produce the property hypothecated or any part thereof, the accused person shall be presumed to have disposed of, destroyed, consumed or removed the property in question, as the case may be according to the charge, unless the contrary is proved.

(9) Upon recovery or repayment of all loans, advances or debts secured by a deed of hypothecation together with interest thereon to the date of such repayment and any costs which may have been incurred in connexion with such loan, advance or debt and recoverable in terms thereof or of any written law, the authorized creditor shall forthwith issue a receipt for such moneys and shall, within 30 days, notify in writing the Registrar of Deeds who shall, on receipt of such notification, cancel the entry in the register of deeds.

Loans and
advances
secured by
cession of
hire-purchase
contract

4. If a loan or advance is granted by an authorized creditor for the purchase of machinery, equipment, vehicles, implements, rolling stock, boats, fishing tackle or nets, or any other like property, such authorized creditor may, instead of or in addition to securing the loan or advance by hypothec, take cession from the seller of his interest, right and title to a hire-purchase contract with the hypothecator in respect of such property as security for the loan or advance.

Marking of
hypothecated
property

5. (1) A deed of hypothecation may provide that property hypothecated thereunder be marked by the hypothecator if called upon so to do by the authorized creditor in a manner prescribed by the deed and that, where livestock are required to be so marked, their progeny shall be similarly marked.

(2) Any person who fails to mark hypothecated property when called upon so to do under subsection (1) and any person who, without cause or excuse, tampers with or defaces any mark made in terms of this section shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

Sale of
produce or
goods to or
through a
buyer

6. (1) A deed of hypothecation may provide that any produce or goods of the hypothecator of a class stipulated in the deed shall not be sold except to or through a person nominated in the hypothec.

(2) Where a deed of hypothecation contains a provision under subsection (1) such deed may also provide that the proceeds of sale of any produce or goods of the class stipulated therein sold by or through a buyer, less any commission or expenses reasonably incurred in connexion with the marketing of such produce and due either to himself or to some other person, be remitted to the author-

ized creditor and not paid to the hypothecator.

(3) Where a buyer is nominated in a deed of hypothecation a notice in the prescribed form shall be served by the authorized creditor on the buyer within one month of the signature of such deed.

(4) An authorized creditor may authorize the hypothecator to sell any or all of his produce or goods of the class stipulated in the deed of hypothecation to or through a person other than the buyer nominated therein.

(5) Where an authorized creditor determines that the person to or through whom a hypothecator is authorized to sell produce or goods under subsection (4) shall be a buyer, he shall serve notice in such form as may be prescribed on that person and on the Registrar of Deeds stating that that person shall henceforth be a buyer and, upon the serving of such notice upon him, that person shall be a buyer.

(6) Any hypothecator who, without the consent in writing of the authorized creditor, sells produce or goods of a class stipulated in a deed of hypothecation to a person other than the buyer to or through whom he is authorized to sell such produce or goods shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year.

7. (1) Where any moneys owed by a hypothecator under a deed of hypothecation containing a provision under section 6 (1) becomes due and payable and is not paid by the hypothecator within such time as may be stipulated in the deed of hypothecation the authorized creditor may, by notice in such form as may be prescribed served on the buyer, notify him that moneys are owed to the authorized creditor and that he invokes the provisions of this section.

Payment by a
buyer to an
authorized
creditor

(2) On receiving notice in terms of subsection (1) the buyer shall pay to the authorized creditor any moneys which may then be owed or which may from time to time thereafter be owed by him to the hypothecator by reason of the sale of produce or goods of the class stipulated in the deed of hypothecation:

Provided that, where a buyer acts as agent for the hypothecator or for the purchaser of such produce or goods, he shall be entitled to retain any expenses reasonably incurred in marketing the produce or goods as well as such reasonable commission as is payable to him by the hypothecator for services rendered in respect of such sale.

(3) The buyer shall make payment to the authorized creditor in accordance with the provisions of subsection (2) until the authorized creditor notifies him that the debt owed to him by the hypothecator is satisfied or that he no longer wishes to enforce his rights under this section:

Provided that an authorized creditor may at any time require a buyer liable to make payment in terms of this section to pay part

only of the proceeds of any produce or goods or to make payment of a stated sum only.

(4) A buyer shall pay to an authorized creditor any moneys due under the provisions of this section within 30 days —

- (a) of the sale where the buyer is himself the purchaser of such produce or goods;
- (b) of receiving the purchase price of the produce or goods where the buyer acts as agent.

(5) An authorized creditor may recover from a buyer any moneys which should have been paid in accordance with the provisions of this section if such moneys are not paid within the time prescribed in subsection (4), and it shall be no defence to any action brought by an authorized creditor against a buyer that the buyer has made payment to the hypothecator or to any other person in contravention of the provisions of this section:

Provided that a buyer shall have an action against a hypothecator or such other person for the recovery of the amount paid where he has made payment to an authorized creditor.

Special
provision
where
buyer is a
co-operative
Cap. 42:03

8. (1) Notwithstanding anything to the contrary, whether contained in any written law or otherwise of legal force or effect, a co-operative society registered under section 7 of the Co-operative Societies Act may be nominated as a buyer and shall possess the rights and be subject to the obligations of a buyer under section 7 of this Act.

(2) Notwithstanding the provisions of section 7 (2), a co-operative society may retain moneys owing to a hypothecator which it may lawfully appropriate in settlement of a debt owed to it by the hypothecator and which arose prior to the giving of notice by an authorized creditor in accordance with section 7 (1).

Foreclosure
of hypothec
and hire-
purchase
contract

9. (1) Upon the breach of any provision specified in a hypothec entered into under section 3, or a hire-purchase contract, the right, title or interest to which has been ceded to an authorized creditor under section 4, an officer of the authorized creditor, duly authorized thereto, may file with the clerk or registrar of a court of competent jurisdiction a statement, certified by him on oath as correct, setting forth the said breach and describing the property liable to seizure and annexing thereto a copy of the relevant hypothec or hire-purchase contract and deed of cession in respect thereof.

(2) A copy of the statement referred to in subsection (1) shall be sent by registered post by the authorized creditor to the hypothecator simultaneously with it being filed with the clerk or registrar of the court.

(3) A statement referred to in subsection (1) shall, on being filed in terms of that subsection, have all the effects of, and, subject to subsection (4), any proceedings may be taken thereon as if it were, a civil judgment lawfully given by the court in favour of the authorized creditor authorizing the issue of a writ of execution authorizing the seizure of such property.

(4) No writ of execution shall be issued against any person pursuant to subsection (3) until 14 days after service on him by the court of a notice informing him that a writ of execution is to be issued by the court authorizing the seizure and sale of the hypothecated property unless before the expiration of that period of 14 days he produces proof that the breach did not take place.

(5) After giving the authorized creditor opportunity to be heard, –

(a) in the event of proof that the breach did not take place being produced with which the court is satisfied, the writ of execution shall not be issued;

(b) in the event of no such proof being produced with which the court is satisfied, the writ of execution shall be issued and execution thereon shall proceed forthwith..

10. Property sold in execution to satisfy a debt to an authorized creditor under a hypothec, or hire-purchase contract, the right, title or interest to which has been ceded to an authorized creditor, shall be sold in accordance with the Rules of the court or in such other manner as the court may direct. Sale of property

11. (1) The proceeds of the sale of any property seized under section 10 shall be applied, firstly, towards any costs or expenses incidental to the taking of possession and sale of such property, and, secondly, to the discharge of the loan or advance or balance thereof outstanding secured by hypothec and any interest thereon to the date of sale, and thereafter any surplus remaining shall be paid to the hypothecator or to his successors-in-title or to his assigns, as the case may be. Allocation of proceeds of sale

(2) For the purposes of this section “successors-in-title” includes a *curator bonis* and any executor, administrator or liquidator of his estate.

12. (1) Every document evidencing a hypothecation and every document evidencing the discharge of any hypothecation shall be prepared by the authorized creditor in such form as may be prescribed and the hypothecator shall pay the charges in connexion therewith in accordance with such scale as may be prescribed. Documents to be prepared by authorized creditor

(2) Notwithstanding the provisions of any other written law, documents prepared by an authorized creditor in accordance with subsection (1) and which are registered in the Deeds Registry shall be registrable without it being necessary for any person to appear before the Registrar of Deeds.

13. (1) This Act shall be in addition to and not in derogation of the provisions of the Agricultural Charges Act. This Act in addition to Agricultural Charges Act (Cap. 35:01)

(2) A certificate for indebtedness entered into in accordance with the provisions of the Agricultural Charges Act and registered in accordance with that Act shall be deemed to be a hypothec entered into and registered under the provisions of this Act.

Regulations

14. The Minister may make regulations prescribing any matter or thing which under this Act is to be or may be prescribed and generally for the better carrying out of the objects and purposes of this Act.

L2/4/676 I

Bill No. 24 of 1977

WORKMEN'S COMPENSATION BILL, 1977

(Published on 6th July, 1977)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The Bill proposes to repeal and replace the Workmen's Compensation Proclamation (Cap. 149 of the 1959 revised edition), and in particular to extend the law in relation to workmen's compensation to require every employer to insure against possible liability to an employee incurred under the Act.

3. Parts II and III of the Bill provide for the payment of earnings-linked compensation by an employer to an employee (other than an employee specified in the proviso to clause 2 (1)) who suffers personal injury arising out of and in the course of his employment and to the dependants of such an employee who dies as a result of receiving such an injury.

4. Part IV provides for the method by which compensation is to be calculated and the manner in which it is to be distributed.

5. Part V makes provision for an employer to meet the medical expenses incurred by an employee as a result of an injury that would entitle him to compensation under the Act.

6. Part VI provides for the payment of compensation to an employee or to his dependants where the Minister is satisfied that incapacity or death has been caused by one of the diseases specified in the Second Schedule to the Bill which was due to the nature of the employee's employment. The Minister will have the power to delete any disease from the Second Schedule or to add any disease to it.

7. Part VII contains the provisions relating to compulsory insurance. This Part represents a considerable extension of the present law governing workmen's compensation. Under penal sanctions, clause 22 of the Bill requires every employer, other than the Government, to be at all times insured in respect of any liability he may incur under the Act to one of his employees. However, instead of taking out insurance, an employer may deposit with the Commissioner for Workmen's Compensation such sum of money or provide such other security as the Commissioner may approve to be used to pay compensation under the Act to an employee.

8. Part VIII makes detailed provision for the method by which the prompt payment of compensation by an employer to his employee is to be secured.

9. Part IX provides for the appointment by the Minister of a Commissioner for Workmen's Compensation and confers on the Commissioner and on the Minister certain powers aimed at ensuring the effectiveness of the Act.

10. Part X is a general Part which, among other provisions, preserves an employee's right to bring a civil action for damages, quite independently of the Act, against his employer where the injury was caused by the personal negligence or wilful act or default of the employer or of another person for whose act or default the employer is responsible.

M.P.K. NWAKO,
Acting Minister of Home Affairs.

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FIRST SCHEDULE

SECOND SCHEDULE

A BILL

entitled

An Act to provide for compensation to workmen for injuries suffered in the course of their employment or for death resulting from such injuries and for matters incidental thereto and connected therewith

Date of Assent :

Date of Commencement :

ENACTED by the Parliament of Botswana.

PART I. *Preliminary*

1. This Act may be cited as the Workmen's Compensation Act, 1977, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title
and com-
mencement

2. (1) Subject to section 4 in this Act, unless the context otherwise requires, "workman" means any person who, either before or after the commencement of this Act, has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed orally, is in writing or is implied:

Inter-
pretation and
application

Provided that the following persons shall be excepted from the definition of "workman," —

- (i) any person employed otherwise than by way of manual labour whose average earnings calculated in accordance with section 9 exceed P3 600 per annum;
- (ii) any person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person

employed for the purposes of any game or recreation and engaged or paid through a club;

- (iii) any person to whom articles or materials are given out to be made up, cleaned, 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;
- (iv) any person who is granted permission to win minerals, receiving a proportion of the minerals won by him or the value thereof;
- (v) any member of the employer's family living in the employer's house or the curtilage thereof;
- (vi) any member of the armed forces of Botswana; or
- (vii) any member of any class of persons whom the Minister may, by notice published in the Gazette, declare not to be workmen for the purposes of this Act.

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

“Commissioner” means the Commissioner for Workmen's Compensation appointed under section 35;

“compensation” means compensation payable under this Act;

“dependant”, in relation to a deceased person, means those members of his family 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 such deceased person, being the parent or grandparent of an illegitimate child, leaves such child so dependant upon his earnings, shall include such illegitimate child:

Provided that —

- (i) 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 ordinary necessities of life suitable for persons in his class and position;
- (ii) where an application being made by a woman in accordance with regulations made under this Act the Court is satisfied that —
 - (a) such woman and the deceased were living as man and wife at the time of the accident; and
 - (b) such woman was wholly or partially dependent on the earnings of the deceased at the time of his death, or would but for the incapacity due to the accident have been so dependent, the Court may, in its absolute discretion, order that such woman be deemed to be a dependant for the purposes of this Act;

“earnings” includes wages paid to the workman by the employer, the value of any food, fuel, or quarters supplied to the workman

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

“employer” includes the Government, a local authority, a statutory corporation and any body or association of persons corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman 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 workman whilst he is working for that other person; and in relation to a 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;

“insurer” means any person carrying on insurance business within the meaning of that expression as defined in the Insurance Act, 21 of 1969; 1969;

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman 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 every employment which he was capable of undertaking at that time:

Provided that every injury specified in the First Schedule, except such injury or combination of injuries in respect of which the percentage 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, shall be deemed to result in permanent partial incapacity;

“scheduled disease” means any disease specified in the Second Schedule;

“statutory corporation” means a corporation which is established by a written law;

“total incapacity” means such incapacity, whether of a temporary or permanent nature, as incapacitates a workman 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 First Schedule where 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.

(3) The exercise and performance of the powers and duties of a local authority, a statutory corporation or any department of the Government shall, for the purposes of this Act, be treated as the trade or business of such authority, corporation or Government department.

(4) If, in any proceedings for the recovery of compensation, it appears to the Minister that the contract of service or apprenticeship under which the injured person was working at the time of the accident causing the injury was illegal or otherwise unenforceable, the Minister, if, having regard to all the circumstances of the case, he thinks it proper so to do, may deal with the matter as if the injured person at the material time had been a person working under a valid contract of service or apprenticeship and thereafter, for the purposes of this Act, the injured person shall be so deemed to be.

(5) Except for the purposes of section 32 relating to the conclusion of agreements as to the amount of compensation payable, and except where the context otherwise requires, a reference to a workman shall, where that workman is dead, include reference to his dependants, or to any person acting on his behalf under this Act.

(6) This Act shall apply to any workman employed by the Government, any local authority or statutory corporation in the same way and to the same extent as if the employer were a private person.

PART II. *Eligibility for Compensation*

Employer's
liability for
compensation
for death or
incapacity

3. (1) If personal injury arising out of and in the course of his employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the provisions of this Act.

(2) The employer shall not be liable to pay compensation under this Act —

- (a) in respect of any injury which does not incapacitate the workman for a period of at least three consecutive days from earning full wages at the work at which he was employed;
- (b) in respect of any incapacity or death resulting from a deliberate self-injury;
- (c) the accident be proved to be attributable to the workman's own serious and wilful misconduct, which shall include —

- (i) his being under the influence of drugs or intoxicating drink;
- (ii) a contravention of any law, regulation or order, whether statutory or otherwise, expressly made for the purpose of ensuring the safety or health of workmen, or of preventing accidents, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation or order; or
- (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen;
- (d) it be proved that the accident would not have occurred, or insofar as the incapacity or death would not have been caused, but for a pre-existing diseased or injured condition of the workman of which the employer was unaware; or
- (e) death or incapacity resulting from personal injury if the workman has at any time represented to the employer that he was not suffering from that or a similar injury, knowing that the representation was false:

Provided that where the injury results in death or serious permanent incapacity the Minister may, nevertheless, on a consideration of all the circumstances, award compensation to such extent as he considers appropriate.

(4) For the purposes of this Act, an injury incurred whilst a workman is acting for the purpose of and in connexion with his employer's trade or business, and resulting in the death or serious permanent incapacity of the workman, shall be deemed to have arisen out of and in the course of his employment, notwithstanding that the workman, at the time the injury was incurred, was 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.

(5) For the purposes of this Act, an injury incurred by a workman in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be deemed to have arisen out of and during the course of his employment if the injury is incurred while he is taking steps in an actual or supposed emergency in or about those premises to rescue, succour or protect persons who are, or are thought to be, injured or imperilled, or to avert or minimize damage to property owned or utilized by the employer, or for which the employer was responsible to the owner.

(6) For the purposes of this Act, an injury incurred by a workman while he is travelling to or from his place of employment shall be deemed to arise out of and in the course of his employment if he is, with the express or implied permission of the employer, travelling on or by means of transport —

occurred, he would probably have received upon the completion of his contract of apprenticeship.

(6) Upon the request of the workman or any duly authorized person acting on his behalf under this Act made to an employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that workman upon which the amount of the monthly earnings may be calculated for the purposes of this section, and any employer who, without reasonable cause, fails to furnish such a list upon request, or who furnishes or causes to be furnished any such list which he knows or has reason to believe is false in any material particular, shall be guilty of an offence and liable to a fine of P200.

Persons
entitled to
compensation

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

(2) 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 workman.

Distribution
of compen-
sation

11. (1) Compensation payable where the death of a workman has resulted from an injury shall be paid to the Minister, and the Minister may order any sum so paid in to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Minister thinks fit, or, in the discretion of the Minister, to be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the Minister thinks fit. Where, on application being made in accordance with regulations made under this Act, it appears to the Minister 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 Minister may make such order for the variation of the former order as in the circumstances of the case the Minister may think just.

(2) Subject to section 32, compensation payable under section 5, 6 or 7 and the total sums payable under section 8 shall be paid to the Minister, and any sum so paid shall be paid to any persons entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the Minister thinks fit.

(3) Nothing in this section shall prevent an employer from making any payment to a workman pending the settlement or determination of the claim and the Minister 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.

(4) Any other compensation payable under this Act may be paid to the workman or to the Minister and when paid to the Minister shall be paid by the Minister to any person entitled thereto.

(5) The receipt of the Minister shall be a sufficient discharge in respect of any amount paid to the Minister under this Act.

(6) Any order or direction of the Minister under this section shall be final, and shall not be subject to any appeal.

PART V. *Medical Aid*

12. (1) The employer shall, in addition to any compensation payable under this Act, defray the reasonable expenses incurred by a workman within Botswana, or, with the approval of the Minister for the time being responsible for health, outside Botswana, as a result of an injury which would entitle the workman to compensation under this Act —

Medical
expenses

- (a) in respect of medical, surgical, dental and hospital treatment, skilled nursing services and the supply of medicines to a total amount not exceeding P1 000, or such higher figure as may be prescribed;
- (b) in respect of the supply, fitting, maintenance, repair and normal renewal of any artificial appliance, limb, apparatus or mechanical aid to a total amount not exceeding P600, or such higher figure as may be prescribed; and
- (c) in respect of reasonable transport charges not exceeding a total amount of P100, or such higher figure as may be prescribed, incurred in transporting the workman to and from a place where facilities for examination and treatment or assessment are available, if such transport is certified to be necessary by the medical practitioner in charge of the case.

(2) In determining any dispute in respect of compensation or upon the application of any interested person, the Minister may order the payment of any of the expenses referred to in subsection (1) to the person entitled to receive it, and if such expenses exceed the amount provided in that subsection the Minister may apportion the amount available in such manner as he considers expedient.

13. (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 Minister whose decision shall be final and shall not be subject to any appeal.

Decisions of
Minister in
regard to
medical aid

(2) In determining any question under subsection (1) the Minister may call for such evidence as he considers desirable or necessary.

14. (1) The fees and charges for medical aid to workmen within Botswana shall be in accordance with such scale as may be prescribed, and no claim for an amount in excess of a fee or charge in accordance with this scale shall lie against any workman or his employer in respect of any such medical aid.

Fees for
medical aid
to be
prescribed

(2) In fixing the amount of the periodical payments the Minister shall have regard to any payment, allowance or benefit, including the value of any food, fuel and quarters which the workman may receive from the employer during the 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 workman in receipt of periodical payments under this section intends to leave the neighbourhood in which he was employed, for the purpose of residing elsewhere, he shall give notice of such intention to the employer who may agree with the workman for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments; if the employer and workman are unable to agree, either party may apply to the Minister who may order such redemption and determine the amount to be paid or order the continuance of the periodical payments:

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the workman shall not in any case exceed the total sum which would be payable if the periodical payments had continued for the maximum period allowed under subsection (1).

(5) If a workman in receipt of periodical payments under this section leaves the neighbourhood in which he was employed, for the purpose of residing elsewhere, without giving notice as provided in subsection (4), or, having given such notice, leaves the neighbourhood 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 Minister under subsection (4), the Minister may, after consideration of all the circumstances, direct that the workman shall not be entitled to any benefits under this Act during or in respect of the period of his absence, or if the period of such absence shall exceed six months that the workman shall cease to be entitled to any benefits under this Act.

(6) In the event of death or permanent incapacity following after temporary incapacity to a workman, no deduction shall be made to the amount of compensation payable under sections 5, 6 and 7 by reason of any payments having been made under this section.

PART IV. *Calculation and Distribution of Compensation*

9. (1) For the purposes of this Act, the monthly earnings of a workman shall, subject to subsections (4) and (5), be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated during the previous twelve months if he has been so long employed by the same employer, but, if not, then for any less period during which he has been in the employment of the same employer:

Method of
calculating
earnings

Provided that —

- (i) where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average monthly amount which, during the twelve months previous to the injury, 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 and in the same district; and
- (ii) in no case may monthly earnings be computed to be less, in the case of a workman working on six days a week, than twenty-six times, and, in the case of a workman working on five days a week, twenty-two times, the minimum daily wage for adults prevailing in the area in which the workman was employed at the time of the injury.

(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 workman was employed at the time of the injury uninterrupted by absence from work due to illness or any other unavoidable cause.

(3) Where the workman had 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 time for another such employer, his monthly 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 injury:

Provided that the earnings of the workman under the concurrent contract shall be taken into account only so far as the workman is incapacitated from performing the concurrent contract.

(4) Where a workman was, at the date of the accident, under the age of eighteen years his earnings shall, for the purposes of assessing compensation payable in the case of permanent incapacity, be deemed to be such amounts as, if the accident had not occurred, 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 workman.

(5) Where a workman was, at the date of the accident, employed under a contract of apprenticeship, his earnings shall, for the purposes of assessing compensation payable in the case of permanent incapacity, be deemed to be such amount as, if the accident had not

- (a) provided by the employer for carrying workmen employed by him; or
- (b) which is under the control of the employer and the employer has expressly or impliedly authorized its use for carrying workmen employed by him.

Special cases

4. (1) Where the usual place of employment of a workman is in Botswana and he suffers injury while he is temporarily employed outside Botswana by the same employer, the workman shall be entitled to compensation from the employer in the same manner as if the injury was incurred during employment in Botswana.

(2) Where the usual place of employment of a workman is outside Botswana, and he suffers injury while he is temporarily employed in Botswana, he shall be entitled to compensation from the employer in the same manner as if he were ordinarily employed in Botswana:

Provided that where such a workman is so employed in Botswana for a continuous period exceeding twelve months he shall be deemed to be ordinarily employed by the employer in Botswana.

(3) Where a workman is engaged in Botswana for the purpose of service in another country and he suffers injury whilst on his way to commence employment in such other country or whilst being repatriated to his place of engagement in Botswana, such workman shall be entitled to compensation from the employer in the circumstances set out in section 3 (6) whether the injury was incurred in Botswana or outside Botswana.

PART III. *Compensation for Injury*

Compensation in fatal cases

5. Where death results from injury to a workman in circumstances in which compensation is payable —

- (a) if the workman leaves any dependants wholly dependent upon his earnings, the amount of compensation shall be a sum equal to forty-eight times his monthly earnings at the time of the injury, so, however, that in no case shall the amount of compensation be greater than P14 400 or less than P3 600:

Provided that, where in respect of the same accident giving rise to the injury compensation has been paid for permanent total or permanent partial incapacity, such compensation shall be deducted from the sum payable as compensation for the death of the workman;

- (b) if the work 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 Minister to be reasonable and proportionate to the injury to the said dependants;
- (c) the reasonable expenses of the burial of the deceased workman, not exceeding in all the sum of P100 or such greater amount as may be prescribed, shall be paid by the employer.

6. (1) Where permanent total incapacity results from injury to a workman in circumstances in which compensation is payable, the amount of compensation shall be a sum equal to sixty times the monthly earnings of the workman at the time of the injury, so, however, that in no case shall the amount of compensation be greater than P18 000 or less than P5 000.

Compensation in the case of permanent total incapacity

(2) Where the permanent total incapacity is of such a nature that the injured workman must have the constant help of another person, compensation additional to that provided under subsection (1) shall be payable at the discretion of the Minister, up to a maximum of one-quarter of the amount which is payable under subsection (1).

7. (1) Where permanent partial incapacity results from injury to a workman in circumstances in which compensation is payable, the amount of compensation shall be —

Compensation in the case of permanent partial incapacity

- (a) in the case of an injury specified in the First Schedule, such percentage of sixty times the workman's monthly earnings at the time of the injury as is specified in that Schedule as being the percentage of the loss of earning capacity caused by that injury; and
- (b) in the case of an injury not specified in the First Schedule, such percentage of sixty times the workman's monthly earnings at the time of the injury as the Minister considers proportionate to the loss of earning capacity permanently caused by the injury:

Provided that in no case shall the amount of compensation payable exceed P7 500.

(2) Where more injuries than one are caused to the workman, the amount of compensation payable 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.

8. (1) Where temporary incapacity, whether total or partial, results from injury to a workman the compensation payable shall be the periodical payments hereinafter mentioned payable at such intervals as may be agreed upon or as the Minister 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, or shall be at the rate proportionate to, a monthly payment of two-thirds of the difference between the monthly earnings which the workman was earning at the time of the accident and the monthly earnings which he is earning or is capable of earning in some suitable employment or business after the accident:

Compensation in the case of temporary incapacity

Provided that the duration of periodical payments shall not in the first place exceed six months, though the Minister may from time to time, after a review of all the circumstances, extend the duration of periodical payments for periods of up to three months at a time, so, however, that in no case shall the total duration of periodical payments exceed twenty-four months.

(2) Where medical aid for any workman is not obtainable in Botswana, the fees and charges for such medical aid obtained outside Botswana shall be in such amount as the Minister may, in each case, determine.

PART VI. *Occupational Diseases*

Compensation in respect of diseases

15. (1) Where a medical practitioner grants a certificate —

- (a) that a workman is suffering from a scheduled disease causing incapacity or that the death of a workman was caused by a scheduled disease; and
- (b) that such disease was due to the nature of the workman's employment and was contracted within such period preceding the date of incapacity or death as may be prescribed in respect of that disease,

and the Minister is satisfied on the evidence that the allegations contained in the certificate are correct, the workman, or if he is dead his dependants, shall be entitled to compensation under this Act as if such incapacity or death had been caused by an injury arising out of and in the course of his employment, and the provisions of this Act shall apply with any necessary modifications:

Provided that in no event shall the workman or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Botswana, except in respect of a workman from Botswana employed outside Botswana by his employer within Botswana.

(2) In any case of any incapacity or death arising from a scheduled disease, if the workman 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 scheduled disease, knowing that the representation was false, then the Minister, after a consideration of all the circumstances, may declare forfeit the compensation provided for by the Act or such part thereof as he thinks fit.

Liability to pay compensation

16. (1) Compensation payable under section 15 shall be paid by the employer who last employed the workman during the period referred to in section 15, unless that employer proves that the disease was not contracted while the workman was employed by him.

(2) The workman or his dependants if so required shall furnish to the employer from whom compensation is claimed such information as he or they possess as to the names and addresses of all other employers who during the prescribed period employed the workman in the occupation to the nature of which the disease is due.

(3) Where the employer alleges that the disease was in fact contracted while the workman was employed by some other employer and not while employed by him, he may join such other employer as a party to the proceedings in such manner as may be

prescribed, and, if the allegation is proved, that employer shall be the employer from whom the compensation shall be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the prescribed period, employed the workman in the occupation to the nature of which the disease is due, may be required by the Minister to make to the employer from whom compensation is recoverable such contributions as in default of agreement may seem to him to be appropriate.

17. (1) In the application of this Act to incapacity or death caused by a scheduled disease, references to the date of the injury shall be construed as meaning —

Special provisions relating to scheduled diseases

- (a) in the case of a disease causing incapacity, the date of the certificate referred to in section 15; and
- (b) in the case of death from a disease, the date of the death of the workman.

(2) The provisions of this Act relating to the giving of notice of an injury and the making of a claim for compensation shall apply in respect of the recovery of compensation under this Part as they apply in respect of the recovery of compensation for an injury arising out of and in the course of employment.

(3) Compensation payable under this Part shall be calculated with reference to the earnings of the workman under the employer from whom compensation is recoverable, and the monthly earnings of the workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated during the twelve months preceding the date of the certificate referred to in section 15, or, if the workman was not then so employed, the earnings shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated during the period when he was employed by the employer from whom the compensation is recoverable, and for this purpose section 9 shall, with necessary modifications, apply.

18. If a workman who becomes incapacitated or who dies as a result of any scheduled disease was, within the prescribed period preceding the incapacity or death, employed in any occupation prescribed that disease, it shall be presumed, unless or until the contrary is proved, that the disease was due to the nature of such employment.

Presumption as to cause of disease

19. Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the workman during the prescribed period referred to in section 15, if the employer who last employed the workman during that period

Saving right of workman to proceed against previous employer

proves that the disease was not contracted while the workman was employed by him, in which case section 16 (3) shall apply.

Compensation to include medical aid

20. For the purposes of this Part reference to compensation includes reference to medical aid within the meaning of Part V.

Power of Minister to amend Second Schedule

21. The Minister may, by order, delete from the Second Schedule any disease scheduled therein, and may in like manner insert any disease in that Schedule:

Provided that the intention to issue such an order shall be published in the Gazette at least two months before the issue thereof, and any person wishing so to do may make his objections in writing to the Minister.

PART VII. *Compulsory Insurance*

Employer to insure against liability under this Act

22. (1) Subject to subsections (2) and (3), every employer shall insure and keep himself insured with such insurers as may be approved by the Minister in respect of any liability which he may incur under this Act to any workman employed by him.

(2) Nothing in this section shall apply to the Government.

(3) Any employer required to insure under this section may, instead, in such manner as may be prescribed, deposit with the Commissioner such sum of money or furnish such other security as the Commissioner may approve and such money or other security shall be used to pay compensation to that employer's workman as occasion may arise.

(4) Any employer who fails to insure or keep himself insured as required by this section shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for twelve months.

Certificate of insurance

23. Whenever an employer insures himself pursuant to section 22 (1), the insurer shall, at the time of acceptance of the risk, issue and deliver to the employer a certificate of insurance in the prescribed form.

Certain conditions in policy to be of no effect

24. (1) Where a policy of insurance is issued to an employer pursuant to his obligation under section 26, any condition in such policy providing that no liability shall arise thereunder, or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, in respect of such liabilities as are required to be covered by such policy, be of no effect.

(2) Nothing in this section shall be construed to render void any provision in a policy requiring the employer insured to pay to the insurer any sum which the employer is liable to pay under the policy and which has been applied to the satisfaction of any claims of workmen employed by the employer.

25. (1) Where a policy issued pursuant to this Act is cancelled by mutual consent or by virtue of any provision in the policy, the employer to whom the certificate of insurance was issued under section 22 shall, within fourteen days beginning with the day when such cancellation became effective, surrender the certificate of insurance to the insurer, or, if it has been lost or destroyed, make a statutory declaration to that effect and deliver the same to the insurer.

Duty to
surrender
certificate of
insurance
on cancel-
lation
of policy

(2) Any employer who contravenes this section shall be guilty of an offence and liable to a fine of P200.

26. (1) If an employer to whom section 22 applies is duly insured as required by that section and an order or determination in respect of any liability required to be covered by such insurance is obtained by a workman against such employer, then, notwithstanding that the insurer may be entitled to avoid or cancel, or have avoided or cancelled, the policy of insurance, the insurer shall, subject to this section, pay to the workman entitled to the benefit of the order or determination any sum payable thereunder in respect of the liability including any amount payable in respect of costs and interest.

Duty of
insurer to
satisfy
determination
against
employer

(2) No sum shall be payable by an insurer under subsection (1) —

- (a) in respect of any order or determination unless, before or within twenty-one days after the commencement of the proceedings in which the order or determination was given, the insurer had notice of the bringing of the proceedings;
- (b) in respect of any order or determination, so long as execution thereon is stayed pending an appeal;
- (c) in connexion with any liability, if, before the occurrence giving rise to the liability, the policy of insurance was cancelled by mutual consent or by virtue of any provision contained therein and either before the occurrence but before the expiration of fourteen days beginning with the day when such cancellation of the policy became effective —

- (i) the certificate of insurance was surrendered to the insurer;
- (ii) the employer to whom the certificate of insurance was issued made a statutory declaration stating that the certificate of insurance has been lost or destroyed; or
- (iii) the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate of insurance; or
- (d) if, in an action commenced before or within three months after the commencement of the proceedings in which the order or determination was given, the insurer has obtained a declaration from the court that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that the employer obtained the insurance by the non-disclosure of a material fact or a representation of fact

which was false in some material particular, or, if the insurer has avoided the contract of insurance on that ground, that he was entitled so to do apart from any provision of such contract:

Provided that an insurer who has obtained such a declaration in an action shall not be entitled to the benefit of this paragraph in respect of any order or determination obtained before the commencement of such action unless, before or within fourteen days after the commencement of such action, he has given notice to the workman who is the claimant in the proceedings stating that he intends to rely on this paragraph and specifying the non-disclosure or false representation on which he proposes to rely, and a workman to whom such notice is so given shall be entitled, if he thinks fit, to be made a party thereto.

(3) If the amount which an insurer becomes liable under this section to pay in respect of the liability of an employer insured by a policy exceeds the amount for which he would, apart from this section, be liable under the policy of insurance in respect of that liability, he is entitled to recover the excess from that employer.

(4) Where, pursuant to this section, an insurer becomes liable to satisfy an order or determination against an employer, such insurer may appeal to the High Court under section 42 as if he were the employer.

(5) For the purposes of this section "order or determination" means an order or determination made by the Minister under this Act.

Penalty for false statement and wilful avoidance of policy

27. Any employer who, for the purpose of obtaining a policy of insurance as required by section 22, makes any false statement in consequence whereof the policy is liable to be avoided, or wilfully does any act which disentitles him to claim under the policy, shall be guilty of an offence and liable to a fine of P200 and to imprisonment for six months.

Employers against whom claims are made to give information as to insurance

28. (1) An employer against whom a claim is made in respect of any liability required to be covered by insurance under section 22 shall, on demand being made by the Commissioner or any person authorized by him in that behalf, or by or on behalf of any workman making a claim, state whether he is insured in respect of that liability and shall give such particulars concerning the policy of insurance as the person making the demand may require and shall produce for inspection by such person the certificate of insurance.

(2) Any employer who —

- (a) without reasonable excuse fails to comply with this section; or
- (b) wilfully makes any false statement in reply to any such demand,

shall be guilty of an offence and liable to a fine of P100.

PART VIII. *Administration*

29. (1) Proceedings under this Act for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given by or on behalf of the workman as soon as practicable after it has been incurred and before the workman has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such injury has been made within twelve months from the date it was incurred or, in the case of death, within twelve months from the time of death:

Requirements
as to notice
of accident
and appli-
cation for
compensation

Provided that —

- (i) 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 injury from any other source at or about the time it was incurred, 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 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;
- (ii) the notice may be given, and the application may be made under, this section by a labour officer or such other officer as may be so empowered by the Minister on behalf of the workman;
- (iii) the failure to give notice or to make an application within the periods above specified shall not be a bar to the maintenance of such proceedings if it is proved that the failure was occasioned by mistake or other reasonable cause, including the error or mistake of any person advising or assisting the workman under this Act;
- (iv) the failure to give notice or to make application within the periods above specified shall not be a bar to the maintenance of such proceedings, if it is proved that the employer has failed to comply with section 30 (1).

(2) Notice under this section may be given either orally or in writing to the employer, or, if there is more than one employer, to one of such employers, or to any foreman or other person under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall specify the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date on which and the place at which the accident occurred.

30. (1) Every injury arising out of and in the course of employment which —

- (a) results in the death of a workman;

Employers to
report
accidents

- (b) results in, or is likely to result in, some degree of permanent incapacity to a workman; or
- (c) results in incapacitating a workman from following his normal employment for more than three days, shall, within seventeen days of the date when the injury is incurred, be reported by the employer in the prescribed form and accompanied by the prescribed particulars to such officer as may be designated by the Minister for such purpose.

(2) Any employer who fails without reasonable cause to comply with the requirements of subsection (1) shall be guilty of an offence and liable to a fine of P2 000.

(3) Failure by an employer to comply with the requirements of subsection (1) shall not be a bar to the institution or maintenance of proceedings by the workman concerned for compensation under this Act.

Medical
examination
and treatment

31. (1) Where a workman has given notice of an injury he shall, if the employer, before the expiry of ten days from the time at which notice has been given, offers to have him examined free of charge by a medical practitioner named by the employer, submit himself for such examination, and any workman who is in receipt of a periodical payment under section 8 shall, if so required, submit himself for such examination from time to time.

(2) The workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer or that medical practitioner, provided such time and place are reasonable.

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

(4) If the workman 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 workman was required to submit himself for examination no compensation shall be payable unless the Minister is satisfied on a consideration of all the circumstances that compensation or such part of it as he thinks fit shall be payable.

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

(6) Where the workman is not attended by a medical practitioner he shall, if so required by the employer, submit himself for treatment by a medical practitioner without expense to the workman.

(7) If the workman fails 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 workman had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly:

Provided that where aggravation of the injury has resulted in death, the amount of compensation shall be the amount payable under this subsection or the amount payable under section 5, whichever is the lesser.

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

32. (1) The employer and workman 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, one copy to be kept by the workman and one copy to be kept by the Minister:

Agreement
as to
compensation

Provided that —

- (i) the compensation agreed upon shall not be less than the amount payable under this Act; and
- (ii) where the workman is unable to read and understand writing in the language in which the agreement is expressed, the agreement shall not be binding against him unless it is endorsed by a certificate of the Minister, a magistrate or a labour officer, to the effect that he read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement.

(2) Any agreement made under subsection (1) may on application be certified by the Minister, and when so certified shall be enforceable as if it were a determination of the Minister.

(3) Where compensation has been agreed and notwithstanding that the agreement has been certified by the Minister under subsection (2) the Minister may, on application by any party within three years 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 Minister may think just, if it is shown to his satisfaction that —

- (a) the sum paid or to be paid was or is not in accordance with subsection (1);
- (b) the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury;
- (c) subsequent and serious medical complications have arisen which are directly related to the injury; or
- (d) the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means, as would, in law, be sufficient ground for avoiding it.

Procedure in
fatal cases

33. (1) Section 32 shall not apply in fatal cases and any compensation payable in such cases shall be paid in full to the Minister who shall arrange payment to the dependants.

(2) Where, in any proceedings on a claim for compensation in respect of the death of a workman, the Minister is satisfied that other or sufficient evidence as to the dependency on the deceased workman or a person claiming to be a dependant, or as to the degree of dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to dependency and as to the degree of dependency of the claimant signed by a District Commissioner or commissioner of oaths in the district in which the claimant resides, whether within Botswana or outside Botswana, shall be *prima facie* proof of the facts stated therein. The signature of the District Commissioner or commissioner of oaths shall be admitted without further proof unless the Minister has reason to doubt the genuineness thereof.

(3) Where, in a fatal case, on application being made in accordance with regulations made under this Act, it appears to the Minister that, on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, such a course is necessary or just, he may vary any previous order or determination in respect of the payment of compensation.

(4) In a fatal case, where there are both total and partial dependants of the deceased workman, nothing in this Act shall be construed as preventing the compensation payable being allotted partly to the total and partly to the partial dependants.

Payment of
compensation
by instalments

34. A workman may, in writing to the Minister, require that any compensation payable to him shall be paid by instalments at such times and in such amounts as he may specify, and in such event the full amount of the compensation shall be paid in a lump sum by the employer to the Minister who shall arrange instalment payments to the workman according to his written instructions.

PART IX. *Commissioner for Workmen's Compensation*

Appointment
of Commis-
sioner

35. Subject to the written laws relating to the public service, the Minister may appoint a public officer to be the Commissioner for Workmen's Compensation.

36. (1) The Minister may, subject to any conditions that he may impose, delegate any of his duties or functions under this Act to any public officer, and in particular may require such officer —

Delegation
of powers

- (a) to assist the parties to bring about a settlement of any claim for compensation or dispute which may arise; and
- (b) to investigate or cause to be investigated any injury, claim or other matter in respect thereto which may come to his notice.

37. (1) Where it is necessary or desirable under this Act for the Minister to —

Functions of
Commissioner

- (a) adjudicate upon claims for compensation and other matters requiring decision under this Act;
- (b) determine whether any person is a workman or an employer for the purposes of this Act;
- (c) determine any question relating to —
 - (i) the right to compensation;
 - (ii) the computation of earnings of a workman;
 - (iii) the degree of incapacity of a workman;
 - (iv) the amount of compensation payable; and
 - (v) the payment, revision, discontinuance or suspension of any compensation;
- (d) determine whether any person is a dependant for the purposes of this Act, and, if so, the degree of dependency, and, where there is more than one dependant entitled to receive compensation, the allocation of compensation between dependants;
- (e) require that money payable as compensation in a fatal case to a widow or to minor children shall be paid in full to the Minister who may arrange payments in instalments in such amounts and at such periods as he may determine, or will arrange that such compensation is invested, applied or otherwise dealt with for the benefit of the widow or children concerned;
- (f) determine any question relating to the necessity for, or the character or sufficiency of any medical aid;
- (g) collect, compile and maintain such statistics, information and records relating to the occurrence or causes of accidents and scheduled diseases, and the award and payment of compensation, as may be necessary or as the Minister may require;
- (h) make recommendations in regard to the inclusion or exclusion of diseases in or from the Second Schedule;
- (i) receive any monies received from outside Botswana and payable as workmen's compensation under the law of any other country to dependants within Botswana, and to determine any question relating to the dependants or the degree of dependency, and to distribute the monies to the persons entitled to such monies, in such manner as may be just;

(j) subject to the laws relating to exchange control, transfer any monies payable as compensation to a workman or his dependants outside Botswana to the persons entitled to such monies or to a competent authority in the country concerned for payment to the persons so entitled;

(k) perform any other duties or functions in relation to workmen's compensation as the Minister may require,
the Minister may require the Commissioner to adjudicate, or hear evidence or conduct proceedings on his behalf and to make recommendations to him.

(2) In relation to proceedings conducted by the Commissioner under this Act, the Commissioner shall have all the powers of a magistrate to summon witnesses, to enforce attendance of witnesses, and to call for, require and to hear evidence and shall otherwise proceed according to any rules of procedure made by the Minister.

(3) Proceedings before the Commissioner shall not be open to the public and the Commissioner may exclude any persons who are not interested parties.

Applications
to the
Minister

38. (1) Any interested party or any duly authorized person acting on behalf of a workman under this Act may apply to the Minister for a determination or order if —

- (a) any question or matter to be determined under this Act has arisen and requires determination;
- (b) an employer and workman have not, within thirty days after an injury to the workman giving rise to a claim for compensation, agreed in writing as to the amount of compensation to be paid.

(2) Applications to the Minister shall be in writing in the prescribed form.

(3) Pending the outcome of an application to the Minister, the employer may make an interim payment to the workman concerned, and the Minister may order that the whole, or any part of such payment, shall be deducted from the amount of compensation payable under this Act.

Enforcement
of deter-
minations

39. Determinations or orders of the Minister under this Act may be enforced as if they were determinations or orders of a magistrate in civil cases, irrespective of the amounts involved.

Limitation of
power of
employer to
end or
decrease
periodical
payments

40. Subject to the limitations referred to in sections 8 (1) and 31 (4), an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the Minister —

- (a) to end periodical payments in respect of temporary incapacity except —
 - (i) where a workman resumes work and his earnings are not less than the earnings which he was obtaining before the injury; or
 - (ii) where a workman dies;

(b) to diminish periodical payments in respect of temporary incapacity except —

- (i) where a workman in receipt of such periodical payments in respect of total incapacity has actually returned to work; or
- (ii) where the earnings of a workman in receipt of such periodical payments in respect of partial incapacity have actually been increased.

41. The Minister may, if he thinks fit, submit any question of law arising under this Act for a decision of the High Court; such submission shall be in the form of a special case in accordance with regulations made under this Act.

Power of Minister to submit questions of law

42. Subject to the conditions set out hereunder, an appeal shall lie to the High Court from any order or determination under this Act where —

Appeals to the High Court

- (a) a question of law is involved; or
- (b) the order or determination is one which could not reasonably have been made in view of the evidence:

Provided that —

- (i) no appeal shall lie in respect of orders or determinations under section 38;
- (ii) unless some substantial question of law is involved, no appeal shall lie except with the leave of the Minister or of the High Court if the amount in dispute in the case is less than P400;
- (iii) no appeal shall lie in any case in which the parties have agreed to abide by the determination of the Minister, or in which the order of the Minister gives effect to an agreement come to between the parties;
- (iv) no appeal shall lie after the expiration of thirty days from the order or determination of the Minister unless the High Court, after consideration of all the circumstances of any particular case, considers it just or proper to extend the time for appealing under this provision.

PART X. *General*

43. (1) Where the injury in respect of which compensation is payable was caused in circumstances creating a legal liability in some other person than the employer (in this section referred to as “the third party”) to pay damages to the workman in respect thereof —

Remedies against both employer and stranger

- (a) the workman may both claim compensation under this Act and take proceedings against the third party in court to recover damages:

Provided that where any such proceedings are instituted the court shall, in awarding damages, have regard to the amount which, by virtue of paragraph (b), has or is likely to become payable to the employer by the third party; and

- (b) the employer by whom compensation is payable shall have a right of action against the third party for the recovery of the compensation he is obliged to pay as a result of the accident, and may exercise such right either by joining in an action begun by the workman against the third party or or by instituting separate proceedings:

Provided that the amount recoverable under this paragraph shall not exceed the amount of damages, if any, which, in the opinion of the court, would have been awarded to the workman but for this Act.

(2) A workman shall, before instituting proceedings for damages under subsection (1), notify, in writing, the employer of his intention so to do and shall likewise notify the employer if he decides to abandon such proceedings or to relinquish or settle his claim for damages, and shall, in connexion with any such notification, furnish such particulars as the employer may require, and no proceedings in the court to recover damages against a third party may be instituted by a workman until he has so notified the employer of his intention to institute such proceedings and unless he had lodged a claim for compensation.

(3) Notwithstanding anything to the contrary contained in any written law, where written notice of intention to institute proceedings under subsection (1) (b) has been given by an employer to a third third party within twelve months of the receipt by the employer of due notice of the accident concerned, no such proceedings shall lapse, or be barred, under any written law relating to the limitation of actions until after the expiration of a period of three months from the date upon which a claim to compensation in respect of such injury has been settled or finally determined by a court.

Proceedings
independently
of this Act

44. Where the injury was caused by the personal negligence or wilful act or default 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 by civil suit independently of this Act —

Provided that —

- (i) any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury; and
- (ii) any compensation paid under this Act shall take into account any damages previously paid in respect of the same injury.

Where
employer
not liable
in damages

45. If, in any proceedings by civil suit independently of this Act or on appeal, it is determined that the employer is not liable in damages, the court or appeal court in which such proceedings are taken may refer the case to the Minister with or without such costs to either party as the court or appeal court thinks fit and the Minister

shall then proceed to determine whether compensation is payable and shall assess the amount of any such compensation.

46. (1) Where any person (in this section referred to as "the principal"), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as "the contractor") for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman 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 workman under the employer by whom he is immediately employed.

Principals and
contractors

(2) Nothing in this section shall or shall be deemed to affect any right of the principal to claim indemnity from any other person who would be liable to pay compensation to the workman 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.

(4) Nothing in this section shall be construed as preventing a workman receiving 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.

47. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up either voluntarily or compulsorily or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as regards that liability shall, notwithstanding anything in any written law relating to bankruptcy and the winding-up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any

Provisions in
case of
bankruptcy
of employer

greater liability to the workmen than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may take steps to recover the balance from the receiver or manager.

Cap. 82
(1959)

- (3) There shall be included among the debts which —
- (a) under the Insolvency Proclamation are in the distribution of the property or assets of a bankrupt; and
 - (b) under any written law relating to companies are, in the winding-up of a company, to be paid in priority to all other debts, the amount due in respect of any compensation or liability for compensation before the following dates, that is to say —
 - (i) in the circumstances of paragraph (a), the date of the receiving order; and
 - (ii) in the circumstances of paragraph (b), the date of the winding-up order, or the date of commencement of the winding-up of the company, whichever is appropriate.

(4) Where the compensation is a periodical payment, the amount due in respect thereof shall be taken, for the purposes of this section, 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.

(5) Where the bankrupt or company in liquidation has entered into such a contract with insurers as is referred to in subsection (1), subsections (3) and (4) shall not apply in respect of the liability of the employer to the workman or that part thereof which is met by the insurers.

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

Provided that a workman, 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 future personal injury by accident if such is certified to be fair and reasonable by the Minister.

Compensation not to be assigned, charged or attached

49. 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.

50. The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may make provision for — Regulations

- (a) prescribing procedures, forms and fees;
- (b) prescribing anything which is to be or may be prescribed under this Act;
- (c) requiring employers to keep such records and to make such periodic and other returns as to such matters as he thinks fit, and prescribing a time limit for the making of such returns.

51. Any person required to keep a record or to make a return by virtue of any regulation made under section 50 who fails to keep such a record or to make such a return within the time in which he is required to make the return, or who makes or causes to be made a record or return which is false in any particular, or in being so required fails to give any information or explanation respecting the record or return which it is in his power to give, shall be guilty of an offence and liable to a fine of P100, and if the contravention in respect of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine of P5 for each day on which the contravention continued. Offences

52. (1) Except where otherwise expressly provided, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law. Other laws

(2) The Prescription Act shall not apply in relation to claims for compensation. Cap. 13:01

53. A claim for compensation in respect of an injury incurred before the commencement of this Act shall be dealt with under the Act repealed by section 54 as if this Act had not been enacted, but so, however, that the Minister shall be the court for the purpose of dealing with any such claim or with any dispute or question arising therefrom. Transitional provisions

54. The Workmen's Compensation Proclamation is hereby repealed. Repeal of
Cap. 149
(1959)

FIRST SCHEDULE Schedule of Percentage Incapacities

<i>Injury</i>	<i>Percentage of incapacity</i>
Loss of two limbs)	
Loss of both hands or of all fingers and thumbs)	
Loss of both feet)	
Total loss of sight)	100
Total paralysis)	
Injuries resulting in being permanently bedridden)	
Any other injury causing permanent total)	
disablement)	

B.176

Loss of arm at shoulder	.....	70
Loss of arm between elbow and shoulder	.....	60
Loss of arm at elbow	.....	55
Loss of arm between wrist and elbow	.....	50
Loss of hand at wrist	.....	50
Loss of four fingers and thumb on one hand	.....	50
Loss of four fingers	.....	35
Loss of thumb	– both phalanges	35
	– one phalange	10
Loss of index finger	– three phalanges	10
	– two phalanges	8
	– one phalange	4
Loss of middle finger	– three phalanges	6
	– two phalanges	4
	– one phalange	2
Loss of ring finger	– three phalanges	5
	– two phalanges	4
	– one phalange	2
Loss of little finger	– three phalanges	4
	– two phalanges	3
	– one phalange	2
Loss of metacarpals	– first or second (additional)	3
	– third, fourth or fifth (additional) ..	2
Loss of leg	– at or above knee	70
	– below knee	60
Loss of foot	.....	40
Loss of toes	– all of one foot	15
	– great, both phalanges	5
	– great, one phalange	2
	– other than great, if more than one toe lost – each	1
Loss of sight of one eye	.....	30
Loss of hearing in one ear	.....	10
Total loss of hearing	.....	50

Scars from injuries or burns which result in disfigurement shall be treated as resulting in from 0 to 50% permanent incapacity according to their size and location.

Total permanent loss of the use of a member shall be treated as loss of such member.

The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100% of the incapacity for loss of the part of that joint, according to whether the joint is ankylosed in a favourable or unfavourable position.

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

Injuries which result in permanent incapacity but which are not included in this Schedule shall be assessed in relation to the percentages of incapacity specified in this Schedule, wherever possible.

SECOND SCHEDULE
Occupational Diseases

Aniline poisoning
Anthrax
Arsenical poisoning by arsenic or its compounds
Asbestosis, including malignant mesothelioma of pleura and peritoneum
Bagassosis
Benzene poisoning, including poisoning by any of its homologues or their nitro or amide derivatives
Byssinosis
Carbon bisulphide poisoning
Chrome ulceration due to chromic acid or bichromate of potassium, sodium or ammonium or any preparation of these substances
Compressed air illness
Lead poisoning, including poisoning by any preparation or compound of lead
Manganese poisoning
Mercurial poisoning by mercury, its amalgams or compounds
Pathological manifestations due to radium or other radio-active substances or X-rays
Phosphorous poisoning by phosphorus or its compounds
Primary epithelomatous ulceration of the skin due to the handling or use of tar, pitch, bitumen, mineral oil or paraffin or any compound product or residue of any of these substances
Silicosis
Tobaccosis
Toxic anaemia
Toxic jaundice due to tetrachlorethane or nitro or amide derivatives of benzene or their poisonous substances

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