

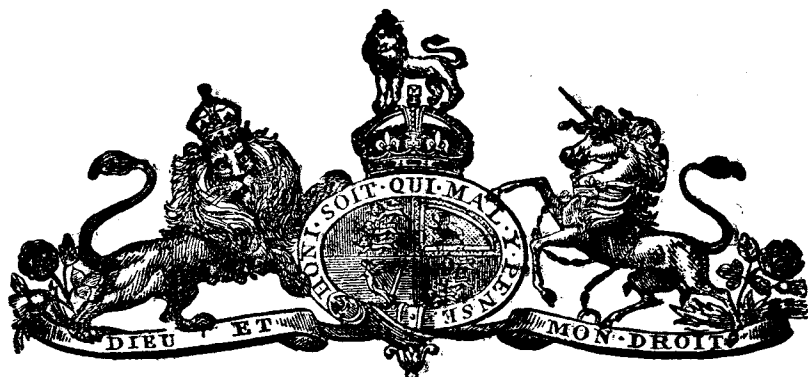
THE WORKERS' COMPENSATION ACT, 1910.

ANALYSIS.

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TASMANIA.



1910.

ANNO PRIMO

GEORGII V. REGIS,

No. 66.

AN ACT to provide Compensation for A.D.
1910.
Workers in respect of Injuries suffered in
the course of their Employment, and to
Regulate its Payment. [13 January, 1911.]

BE it enacted by His Excellency the Governor of *Tasmania*, by
and with the advice and consent of the Legislative Council and House
of Assembly, in Parliament assembled, as follows:—

- 1** This Act may be cited as "The Workers' Compensation Act, 1910," and shall commence and take effect on and from the First day of *July*, One thousand nine hundred and eleven. Short title and
commencement
of Act.
- 2** In this Act, unless the context otherwise requires—
"Commissioner" means a commissioner, being, a barrister, Interpretation.
"Commissioner,"
attorney, solicitor, or proctor of the Supreme Court,

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60 Vict. No. 48.

"Court of requests."

"Dependants."

6 Ed. VII., c. 58,
s. 13."Employer."
Eng., s. 13."Employment of
a casual nature.""Engineering
work."

"Factory."

"Member of a
family."
Eng., s. 13."Outworker."
Eng., s. 13.

appointed to hold a court of requests under "The Local Courts Act, 1896," and includes a substitute for any such commissioner :

"Court of requests" means a court of requests held before a commissioner as defined by this Act :

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

"Employer" includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person :

"Employment of a casual nature" shall mean any employment which does not occupy the worker for a longer period than Twenty-seven hours in each week :

"Engineering work" means—

- I. Any work of construction, or alteration, or repair of a railway, tramway, harbour, dock, or sewer ; or
- II. Any other work for the construction, alteration, or repair of which machinery driven by steam, water, electrical, or other mechanical power is used ; or
- III. Any work on, in, or about any building which exceeds Thirty feet in height, and is being constructed, repaired, or demolished by means of a scaffolding :

"Factory" means any building, structure, premises, or place where steam, water, gas, oil, or electric power is used in preparing, working at, dealing with, or manufacturing articles for trade or sale, or packing them for transit :

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister :

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered,

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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 :

"Railway" includes tramways, whether operated by steam, petrol, electricity, or horse-power : "Railway."

"Schedule" means schedule to this Act :

"Schedule."

"Worker" means any person employed in any manual labour where the remuneration does not exceed One hundred and fifty-six Pounds a year in any railway, factory, mine, quarry, or engineering work, or any other industry to which by resolutions passed by both Houses of Parliament the provisions of this Act are applied ; but shall not include a person whose employment is of a casual nature.

"Worker."

N.Z., 1908, No. 248, s. 1.

Any reference to a worker who has been injured shall, where the worker is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

Reference to worker, how construed.

Eng., s. 13.

The exercise and performance of the powers and duties of a local or other public body or authority shall, for the purposes of this Act, be treated as the trade or business of the body or authority.

Local and public authorities affected.

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

Liability of employers to worker for injuries arising out of employment.

(2.) Notwithstanding anything contained in this Act or the First Schedule as to the rate of compensation, compensation for the injuries mentioned in the First column of the Second Schedule to this Act shall be assessed in the manner indicated in the Second column of that schedule.

Schedule (1.).

Compensation for injuries mentioned in the Second Schedule.

(3.) Nothing in the Second Schedule shall limit the amount of compensation recoverable under the First Schedule for any such injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be taken into account in estimating the compensation payable in accordance with the Second Schedule.

(4.) The employer shall not be liable under this Act in respect of any injury which—

- i. Does not disable the worker for a period of at least One week from earning full wages at the work at which he was employed : or
- ii. Is directly attributable to insobriety or serious and wilful misconduct, or serious and wilful negligence of the worker injured, or the breach of any rule printed and published by the employer for the safety and protection of his workers : or
- iii. Occurs to a worker whilst proceeding to or from his place of work.

Cf. Eng., s. 1.
Q., s. 4.

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Mode of settling
questions arising
under this Act.
Cf. E., s. 1,
s.s. (3.).

4 If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a worker to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule or the Second Schedule, as the case may be, be settled by arbitration in accordance with the Third Schedule.

Worker may
claim compen-
sation under this
Act or take
independent
proceedings.
Cf. E., s. 1, s.s.
(2), (b.).
Q., s. 6.
E., s. 1, s.s. (5).

5—(1.) Nothing in this Act shall affect any liability of an employer independently of this Act.

(2.) The worker may, at his option, either claim compensation under this Act or take proceedings independently of this Act:

Provided that the employer shall not be liable to pay compensation or damages independently of this Act and also compensation under this Act, and shall not be liable to pay compensation or damages independently of this Act except in cases where his liability exists independently of this Act.

(3.) Nothing in this Act shall affect any proceeding for a fine under any enactments relating to mines, factories, or workshops, or employers or employees, or the application of any such fine.

Procedure when
action wrongly
brought
independently of
Act.
Cf. E., s. 1, s.s.
(4).
Q., s. 7.

6 If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; and such dismissal shall operate as a bar to any other proceedings for compensation under the provisions of this Act: Provided that the court in which the action is tried shall, if the plaintiff or defendant so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its opinion, have been caused by the plaintiff bringing the action instead of proceeding under this Act, and shall enter judgment accordingly.

Time for taking
proceedings.
E., s. 2.
Cf. Q., s. 9.
Notice of accident.

7—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless—

I. Notice of the accident has been given as soon as practicable after the happening thereof, and before the worker has voluntarily left the employment in which he was injured; but the worker shall not be deemed to have voluntarily left the employment in any case where by reason of the accident he is unable to continue in the employment: and

Claim for
compensation.

II. The claim for compensation with respect to such accident has been made within Six months from the occurrence of the accident causing the injury, or, in case of death, within Six months from the time of death:

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Provided that—

- (a) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause : and
- (b) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings, if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.
- (2.) Notice in respect of an injury under this Act shall —
- i. Give the name and address of the person injured : and
 - ii. State in ordinary language the cause of the injury and the date at which the accident happened : and
 - iii. Be served on the employer, or, if there is more than one employer, upon one of such employers.
- (3.) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the last known residence or place of business of the person on whom it is to be served.
- (4.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.
- (5.) Where the employer is the Government of *Tasmania* the notice shall be served on the Crown Solicitor, at *Hobart*, or on the manager for the time being of the work upon which the worker is employed.
- 8—(1.)** If a commissioner appointed by the Governor to act under this section, after taking steps to ascertain the views of the employer and workers, certifies—
- i. That any scheme of compensation, benefit, or insurance in any approved insurance company, for the workers of an employer in any employment (whether or not such scheme includes other employers and their workers) provides scales of compensation not less favourable to the workers and their dependants than the corresponding scales contained in this Act : and
 - ii. That, where the scheme provides for contributions by the workers, the scheme confers benefits at least equivalent to those contributions in addition to the benefits to which the workers would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the

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Defect or inaccuracy in notice.

Failure to make claim.

Contents of notice.

Service.

Where employer is a body of persons.

Where employer is the Government.

Contracting out.
Cf. E., s. 3.
Q., s. 12.

Substitution of certified scheme for provisions of this Act.

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workers to whom the scheme is applicable are in favour of such scheme—

Certificate for limited period

the employer may, whilst the certificate is in force, contract with any of his workers that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme; but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

Renewal.

(2.) A commissioner may give a certificate to expire at the end of a limited period of not less than Five years, and may from time to time renew, with or without modifications, such a certificate to expire at the end of the period for which it is renewed.

Certificate not to be granted in certain circumstances.

(3.) No scheme shall be so certified which—

I. Contains an obligation upon the workers to join the scheme as a condition of their hiring : or

II. Does not contain provisions enabling a worker to withdraw from the scheme.

Revocation of certificate.

(4.) If complaint is made to a commissioner by or on behalf of the workers of any employer that—

I. The benefits conferred by any scheme no longer conform to the conditions stated in Subsection (1.) of this section : or

II. The provisions of such scheme are being violated : or

III. The scheme is not being fairly administered : or

IV. Satisfactory reasons exist for revoking the certificate—

the commissioner shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

Distribution of moneys, &c., held for purposes of scheme revoked or expired.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workers, or as may be determined by a commissioner in the event of a difference of opinion.

Inquiries and accounts.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer and workers to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the commissioner.

Rules of court.

(7.) Rules of court may be made for carrying into effect the purposes of this section.

Liability in cases of contracting or sub-contracting. Q., s. 10. Cf. E., s. 4.

9 In any case where any person (hereinafter called the "principal") contracts with any other person (hereinafter called the "contractor") for the execution of any work by or under the contractor, and the contractor employs any worker thereon, the following provisions shall apply :—

Both principal and contractor liable to worker injured.

I. Both the principal and the contractor shall be deemed to be employers of the worker, and shall be jointly and severally liable to pay to the worker any compensation which the

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contractor if he were the sole employer would be liable to pay under this Act : A.D. 1910.

- II. The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section : Contractor liable to indemnify principal.
- III. The principal shall not be liable under this section except in cases where the work to be executed under the contract, and in which the worker is employed, is directly a part of or a process in the trade or business of the principal : Saving as to principal's liability.
 Provided that his liability shall be presumed until the contrary is shown :
- IV. In the case of sub-contracts, the expression "principal" shall extend to and include not only the original principal, but also each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work ; and the expression "contractor" shall extend to and include not only the original contractor, but also each sub-contractor : Provision as to sub-contracts.
 Provided that each principal's right of indemnity shall be a right over against every contractor standing between him and the contractor by whom the worker was employed at the time when the accident occurred, and including such lastmentioned contractor :
- V. The mode in which any right of indemnification arising under this Act may be enforced may be prescribed by regulations.

10—(1.) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any worker, then— Provision as to cases of bankruptcy of employer.

- i. In the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors : or E., s. 5.
Cf. Q., s. 11.
- ii. If the employer is a company, in the event of the company having commenced to be wound up—

the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the worker, 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 greater liability to the worker than they would have been under to the employer. Rights of employer against insurers to vest in worker.

(2.) If the liability of the insurers to the workers is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation. Worker may prove for balance.

(3.) There shall be included among the debts which under—

- I. "The Bankruptcy Act, 1870," or its amendments, are in the distribution of the property of a bankrupt : and Amount due for compensation, a preferential debt.

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Order of adjudication.

11. Any enactment relating to the winding-up of companies, are in the distribution of the assets of a company being wound up—

to be paid in priority to all other debts, the amount not exceeding in any individual case One hundred Pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding-up, as the case may be, and the said Acts and any such enactment as aforesaid shall have effect accordingly.

Provision for case of weekly payment.

Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule.

First Schedule.

Preferences and priorities not to apply in case of employer insured.

- (4.) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

Section not to apply to voluntary winding-up for certain purposes.

- (5.) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Recovery of damages from stranger.
E., s. 6.
Q., s. 8.

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

- I. The worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation : and

Indemnities.

- II. If the worker has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid : and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or if the parties consent, by arbitration, under this Act.

Appointment and remuneration of medical referees.
Cf. E., s. 10.

- 12—(1.) The Chief Secretary may appoint such legally-qualified medical practitioners to be medical referees for the purposes of this Act as he thinks fit, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to the regulations, be paid out of moneys provided by Parliament.

(2.) Where a medical referee has been employed as a medical practitioner in connection with a particular case by or on behalf of an employer or worker or by any insurers interested, he shall not act as medical referee in that case.

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13 Every employer in any industry to which the Chief Secretary may direct that this section shall apply shall, on or before such day in every year as the Chief Secretary may direct, send to the Chief Secretary a correct return specifying the number of injuries in respect of which compensation has been paid by the employer under this Act during the previous year, and the amount of such compensation, together with such other particulars as the Chief Secretary may direct, and in default of complying with this section shall be liable on conviction in a summary way to a fine not exceeding Five Pounds.

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Returns as to
compensation.
Cf. E., s. 12.

14 Any contract existing at the commencement of this Act, whereby a worker relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the worker's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Provision as to
existing contracts.
E., s. 15.
Q., s. 13.

15—(1.) This Act shall apply to workers employed by or under the Government of *Tasmania* to whom this Act would apply if the employer were a private person.

Application to
workers in
employment of
Crown.

(2.) All sums payable under this Act by or on behalf of the Crown shall be payable out of moneys to be appropriated by Parliament.

Cf. *ibid.* (E.), s. 9.

16—(1.) The judges of the Supreme Court may, subject to the provisions of this Act—

Power to judges
of Supreme Court
to make rules.

(a) Make rules of court for any purpose for which this Act authorises rules of court to be made, and generally for carrying into effect this Act so far as it affects any court of requests or any commissioner or officer thereof, and any proceedings in any court of requests, or before a commissioner thereof:

(b) In such rules prescribe such forms and such scales of fees, costs, or expenses as may be necessary or convenient for the purposes of this Act.

(2.) The provisions of section One hundred and thirty-eight of "The Local Courts Act, 1896," shall, *mutatis mutandis*, and so far as they are applicable, apply to the rules of court under this section.

60 Vict. No. 48.

17—(1.) In addition to the power to make regulations for any purpose for which this Act or any schedule authorises regulations to be made, the Governor may from time to time make all such regulations as he deems necessary in order to give full effect to the provisions and intention of this Act or any schedule thereto.

Regulations.
Q., s. 15.

(2.) Such regulations may prescribe penalties not exceeding Five Pounds for any contravention thereof.

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Procedure...

19 Vict. No. 8.

18. All offences against the provisions of this Act or the regulations, and all penalties imposed by this Act or the regulations, may be prosecuted and recovered in a summary way by and before a police magistrate or any Two or more justices, in the mode prescribed by "The Magistrates Summary Procedure Act."

FIRST SCHEDULE.**SCALE AND CONDITIONS OF COMPENSATION.**

Amount of compensation where death results from injury.

Cf. (1) Eng.

1. The amount of compensation under this Act shall be—**(A) Where death results from the injury—**

(i) If the worker leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the Three years next preceding the injury, or the sum of One hundred Pounds, whichever of those sums is the larger, but not exceeding in any case Two hundred Pounds; provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum; and if the period of the worker's employment by the said employer has been less than the said Three years, then the amount of his earnings during the said Three years shall be deemed to be One hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer:

(ii) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined on arbitration under this Act to be reasonable and proportionate to the injury to the said dependants: and

Cf. Q.

(iii) If he leaves no dependants, and not leaving sufficient means to meet them, the reasonable expenses of his medical attendance and burial, not exceeding Thirty Pounds.

Amount of compensation where total or partial incapacity results from injury.

(B) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding Fifty per centum of his average weekly earnings during the previous Twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, but such weekly payment shall not exceed One Pound Ten Shillings, but the total liability of the employer in respect thereof shall not exceed Two hundred Pounds.

Provided that—

Workers over Sixty years of age.

(a) If the incapacity lasts less than Two weeks no compensation shall be payable in respect of the First week:

(b) In the case of a worker whom his employer has reasonable cause to believe to be over Sixty years of age, and who has entered into an agreement in writing with his employer as to the maximum amount of compensation to be payable to him under this Act in respect of accidents happening after the date of the agreement, the compensation shall not exceed that maximum; but the maximum shall not be less—

(i) Where death results from the injury, and the worker leaves any dependants, than Fifty Pounds:

(ii) Where total or partial incapacity for work results from the injury, than a weekly payment during the incapacity after the Second

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week of Ten Shillings; but the total liability of the employer in respect thereof shall not exceed Fifty Pounds: A.D. 1910.

- (c) In the case of a worker who has, in accordance with the regulations, obtained from a medical referee a certificate to the effect that his age or any physical or mental infirmity or incapacity from which he is suffering is such as to render him specially liable to accident, or to render the result of an accident to him specially serious, and who has entered into an agreement in writing with his employer as to the maximum amount of compensation to be payable to him under this Act in respect of accidents happening after the date of the agreement, the compensation shall not exceed that maximum; but the maximum shall not be less—

Infirm workers.

Cf. 5 Ed. VII. No. 26,
Schedule, Par. 1
(Queensland).

- (i) Where death results from the injury, and the worker leaves any dependants, than Twenty-five Pounds or a sum equivalent to Thirty-nine times his average weekly earnings, whichever is the larger:

- (ii) Where total or partial incapacity for work results from the injury, than a weekly payment during the incapacity after the Second week of Five Shillings or One-quarter of his average weekly earnings, whichever is the larger; but the total liability of the employer in respect thereof shall not exceed Fifty Pounds:

- (d) As respects the weekly payment during total incapacity to a workman who is under Twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Twenty Shillings, One hundred per centum shall be substituted for Fifty per centum of his average weekly earnings; but the weekly payment shall in no case exceed Ten Shillings.

*Workers under
Twenty-one years of
age.*

2. In calculating "average weekly earnings" for the purposes of this Schedule—

*Mode of calculating
"average weekly
earnings."*

- (a) Where the employer has provided board and lodging as part of the worker's remuneration, the weekly estimated value of such board and lodging shall be taken into consideration;

- (b) Where the employer has been accustomed to pay to the worker a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings; and

- (c) Where a worker has not been exclusively employed by one employer for the period of four weeks immediately preceding the injury, regard may be had to the estimated amount of the sum which, taking one week with another, was being earned previously to the injury by a person in the same grade employed in the same class of employment and in the same district.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the worker before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident; but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

*Mode of fixing
amount of weekly
payment in certain
cases.*

(3) Eng.

4. Where a worker has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer; and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

*Medical examination
of worker after
notice of accident.*

(4) Eng.

5. The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into a Court of Requests, and any sum so paid into Court shall, subject to Rules of Court and the provisions of this Schedule, be invested, applied, or otherwise dealt with by the Commissioner in such manner as he in his discretion thinks fit for the benefit of the persons entitled thereto under this Act and the receipt of the Registrar of the Court shall be a sufficient discharge in respect of the amount paid in: Provided that, if so agreed, the payment in case of death shall, if the worker leaves no dependants, be made to his legal personal representative, or if he has no

*How payment to be
made in case of
death.*

(5) Eng.

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Transfer of money
from one Court to
another.

(6) Eng.

In case of disability
of payee, weekly
payment may be paid
into Court.

(7) Eng.

Question as to who
is a dependant.

Cf. (8) Eng.

In certain events
a Commissioner may
vary former order or
an agreement.

(9) Eng.

Medical examination
of worker receiving
weekly payments.

(14) Eng.

Regulations as to
medical examina-
tions.

(15) Eng.

Medical referee.

such representative, to the person to whom the expenses of medical attendance and burial are due.

6. Rules of Court may provide for the transfer of money paid into Court under this Act from one Court to another.

7. Where a weekly payment is payable under this Act to a person under any legal disability, a Commissioner may, on application being made in accordance with Rules of Court, order that the weekly payment to be paid during the disability into Court, and the provisions of this schedule with respect to sums required by this schedule to be paid into Court shall apply to sums paid into Court in pursuance of any such order.

8. Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or if not so settled before payment into Court under this schedule, shall be settled by a Commissioner, and the amount payable to each dependant shall be settled by arbitration under this Act, or if not so settled before payment into Court under this schedule, by a Commissioner.

Where there are both total and partial dependants, nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

9. Where, on application being made in accordance with Rules of Court, it appears to a Commissioner that on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of a Commissioner, or an award or an agreement recorded pursuant to Paragraph Six of the Third Schedule to this Act, as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the Commissioner may make such order for the variation of the former order or the said agreement as in the circumstances of the case he may think just.

10. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly-qualified medical practitioner provided and paid by the employer. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

11. A worker shall not be required to submit himself for examination by a medical practitioner under Paragraph Four or Paragraph Ten of this schedule, otherwise than in accordance with the regulations, or at more frequent intervals than may be prescribed by the regulations.

12. Where a worker has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer, or worker, as the case may be, has, within Six days after such examination, furnished the other with a copy of the report of that practitioner as to the worker's condition, then, in the event of no agreement being come to between the employer and the worker as to the worker's condition or fitness for employment, the Commissioner, on application being made to him by either party, and on payment by the applicant of such fee, not exceeding Two Pounds, as may be prescribed by any Rule of Court, may refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with the regulations, give a certificate as to the condition of the worker and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit; and that certificate shall be conclusive evidence as to the matter so certified.

Where no agreement can be come to between the employer and the worker, as to whether or to what extent the incapacity of the worker is due to the accident, the provisions of this paragraph shall, subject to the regulations, apply as if the question were a question as to the condition of the worker.

If a worker, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or in the case of a worker in receipt of a weekly payment his right to that weekly payment, shall be suspended until such examination has taken place.

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Rules of Court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph, and the forms to be used for those purposes, and as to the fee to be paid under this paragraph. A.D. 1910.

13. Any weekly payment may be reviewed by a Commissioner at the request either of the employer or of the worker, and on such review may be ended, diminished, or increased, subject to the maximum above provided; and the amount of payment shall, in default of agreement, be settled by arbitration under this Act. Weekly payment may be reviewed. (16) Eng.

Provided that where the worker was at the date of the accident under Twenty-one years of age, and the review takes place more than Twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding Fifty per centum of the weekly sum which the worker would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding One Pound.

14. Where any weekly payment has been continued for not less than Two weeks, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be determined by a Commissioner under this Act; and such lump sum may be ordered by the Commissioner to be invested or otherwise applied for the benefit of the person entitled thereto. Payment of lump sum. (17) Eng.

15. If a worker receiving weekly payment ceases to reside in this State, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as he proves in such manner, and at such intervals as may be prescribed by Rules of Court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable. Any question arising under this paragraph shall, in default of agreement, be determined by a Commissioner. Worker ceasing to reside in the State. (18) Eng.

16. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same. Compensation not assignable. (19) Eng.

17. Where under this schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension. No payment during suspension.

18. When payment of any moneys under this Act is made to any person under Twenty-one years of age, whether such person claims as a worker, dependant, or legal personal representative, the receipt of such person therefor shall be a good and valid discharge in law; and such person (notwithstanding minority) may, with the approval of a Commissioner, elect to claim compensation under this Act, and may agree upon the amount of compensation payable. Payments to minors.

SECOND SCHEDULE.

Nature of Injury.	Ratio of Compensation to full compensation as for total incapacity.
	Per cent.
Loss of both eyes	100
Loss of both hands	100
Loss of both feet	100
Loss of a hand and a foot	100
Total and incurable loss of mental powers, involving inability to work...	100
Total and incurable paralysis of the limbs or of mental powers	100
The total loss of the right arm or of the greater part of the arm	80
The total loss of the left arm or of the greater part of the arm	75
The total loss of the right hand, or of five fingers of the right hand, or of the lower part of the right arm	70
The total loss of the same for the left hand and arm	65

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Nature of Injury.	Ratio of Compensation to full compensation as for total incapacity. Per cent.
The total loss of a leg	75
The total loss of a foot, or the lower part of the leg	60
The total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	75
The total loss of hearing	50
The total loss of the sight of one eye	30
The total loss of the thumb of the right hand	30
The total loss of the thumb of the left hand	25
The total loss of the forefinger of the right hand	20
The total loss of the forefinger of the left hand	15
The total loss of part of the thumb of the right hand	15
The total loss of the little finger of the hand	12
The total loss of the middle, or ring finger, of the hand	8
The total loss of a toe or of a joint of a finger	5
Complete deafness of one ear	10

For the purposes of this schedule an eye, hand, or foot shall be deemed to be lost if it is rendered permanently and wholly useless.

Where a worker suffers by the same accident more than one of the injuries mentioned in this schedule he shall not in any case be entitled to receive more than full compensation as for total incapacity.

THIRD SCHEDULE.**ARBITRATION.**

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

Commissioner to be arbitrator.

1. Every such matter shall in the absence of agreement be settled by a Commissioner, according to the procedure prescribed by Rules of Court.

Powers of Commissioner.

2. "The Arbitration Act, 1892," shall not apply to any arbitration under this Act. The decision of the Commissioner in any case where he settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be absolutely final, both as regards questions of law and of fact.

Medical referee to sit as assessor and report to Commissioner.

A Commissioner shall, for the purpose of an arbitration or any application or proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the same were an action in a court of requests.

Rules.

3. A Commissioner may, if he thinks fit, summon a medical referee to sit with him as an assessor; and may, subject to regulations made by the Governor, appoint a medical referee to report on any matter which seems material to any question arising in an arbitration.

Costs.

4. Rules of Court may make provision for the appearance in any arbitration under this Act of any party by some other person.

5. The costs of and incidental to the arbitration and proceedings connected therewith shall, subject to any Rules of Court, be in the discretion of the Commissioner, and shall not exceed the limit prescribed by Rules of Court, and shall be taxed in manner prescribed by those rules; and such taxation may be reviewed by a Commissioner.

Registration of memorandum of agreement.

6. Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act by agreement, a memorandum thereof shall be sent, in manner prescribed by Rules of Court by any party interested, to the Registrar of the prescribed Court of Requests, who shall, subject to such Rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a Court of Requests judgment.

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Provided that—

- i. No such memorandum shall be recorded before Seven days after the despatch by the registrar of notice to the parties interested ; and
 - ii. Where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with the Rules of Court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Commissioner of the Court of Requests, under the circumstances, may think just ; and
 - iii. The Commissioner may at any time rectify the register ; and
 - iv. Where it appears to the Registrar of the Court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the Commissioner, who shall, in accordance with Rules of Court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just ; and
 - v. The Commissioner may, within Six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.
7. An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.
8. Where any matter under this Act is to be done in a Court of Requests, or by, to, or before a Commissioner or Registrar of a Court of Requests, then, unless the contrary intention appear, the same shall, subject to the Rules of Court, be done in, or by, to, or before the Commissioner or Registrar of—
- i. The Court nearest to the place where the accident out of which the said matter arose, occurred ; or
 - ii. The court prescribed by Rules of Court—
- without prejudice to any transfer in manner provided by Rules of Court.
9. The duty of a Commissioner of a Court of Requests under this Act shall, subject to Rules of Court, except as regards appeals, be part of the duties of Courts of Requests, and the officers of the Court shall act accordingly.
10. No court fee, except such as may be prescribed under Paragraph Eleven of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a worker under this Act in the Court prior to the award.
11. Any sum awarded as compensation shall, unless paid into Court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and no barrister and solicitor and no agent of a person claiming compensation under this Act shall be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of

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Proviso.

Before recording, certain time to elapse.

Objections to recording.

Register may be rectified.

Question of registration may in certain cases be referred to the Commissioner, who may make orders.

Commissioner may in certain cases order removal of record from register.

Effect of non-registration of memorandum of agreement.

What Court or Commissioner to have jurisdiction.

Duties to be part of duties of the Court of Requests.

Fees.

Receipts for payment.

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Costs of barrister and
solicitor or agent.

such costs on, or deduct such costs from, the sum agreed as compensation, except such sum as may be awarded by the Commissioner of the Court, on an application made either by the person claiming compensation, or by his barrister and solicitor or agent, to determine the amount of costs to be paid to any barrister and solicitor or agent of the person claiming compensation, and such sum shall be awarded subject to taxation and to the scale of costs prescribed by Rules of Court.