

# LEGISLATIVE PRECEDENTS

Volume II

VCRAC CRABBE



Cavendish  
Publishing  
Limited

London • Sydney

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*To the Memory  
of  
Varna Cyrilla Richenda Aurora Carla Crabbe*



## PREFACE

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The value of precedents is that they are the product of experience. That experience is based upon established principles which have stood the test of time. And yet it does not call for slavish adherence. It calls for informed criticism. But a uniform course of practice helps in areas where there may be, or could be, a doubt, and then, 'Let me see how it is done', leads to, 'Ah, I can do it this way'. Herein lies the value of precedents in legislative drafting.

Precedents also tend to discourage years of bad drafting turning into years of bad experience. In an area where the experts are few and far between, it pays to acknowledge that it could be better done than one has been able to do it; or that one has been able to do it better – in an honest attempt at a comparison and without any attempt at being presumptuous.

So these Precedents are presented as sign posts. They are not intended to control, but to guide. So much will depend upon their compatibility with one's own problems which require solution by recourse to legislation. Thus the question should be: 'Is it cogent as a guide?' The answer should point the way to the direction that should be taken as regards a particular precedent. They are not intended to be taken as conveyancing precedents where all that is needed is a change in name, address and the identity of the property to be conveyed; or a printed form of a will for the relevant particulars to be filled in by a testator. They go deeper than that. They require the ability to discern the policy to be achieved; a regard for the symmetry of one's own draft; the legislative scheme upon which the draft is based; and an identification of the problem sought to be solved before an attempt is made to accept any of them as gospel.

In some cases the language of the precedent is so well established that it pays not to disturb the wording. The courts have come to accept the language with its peculiar, that is its particular, meaning. In others, judicial decisions have given such an approval that there is no need to change the language. Yet in others they encapsulate legal concepts which hold principles that permeate the whole corpus of the law. The precedents should thus be considered as part of the legislative process essential to the solution of the problem that faces counsel, and much will depend upon one's own resourcefulness and the ability to communicate. They can, it is hoped, be of some assistance. They are presented as realistic statements of objectives to be achieved.

The precedents that follow are not, by any means, the last word in legislative drafting. They could never be. They are intended to be guides, to provide some ideas; pointers to what could be done, not for any slavish reproduction. As such, general rather than detailed headings are given. All who read these precedents should bear in mind that counsel's responsibility is to translate a policy idea into a series of legislative sentences. The task, by its very nature, demands skills of the highest order in the practice of the law. A piece of legislation is for all time – until it is repealed.

The book could be of assistance to those engaged in distance learning, who may want to see a finished product – for purposes of comparison. It can



also be used as a companion volume to *Legislative Drafting*, 1993, Reprinted 1998, Volume I, London: Cavendish Publishing. As such, no attempt has been made to deal with the rules of legislative drafting except in a few cases where it is thought that information will be of assistance without recourse to the earlier work.

The best way to understand anything is to understand its limits. It is in that light that this book should be looked at. Perhaps there is something in Oliver Wendell Holmes's assertion that, 'Imitation is a necessity of human nature'.

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## ACKNOWLEDGMENTS

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This book owes its origin to the suggestions of very kind friends and to many students who thought that such a book could be of some assistance to young Parliamentary Counsel, and to others working on their own – the only person in each case engaged in legislative drafting for a jurisdiction – that Counsel may not have the advantage of discussions with colleagues in the field. I am very grateful for all their suggestions.

I am in perpetual debt to Mr Francis Bennion, who is not only one of the masters who taught me legislative drafting, but has allowed me to make whatever use I can – proper use that is – of his published works. And they have been of immense benefit over the years.

I have not ceased to draw inspiration – and ideas – from Elmer Driedger.

In preparing the drafts of the Precedents, I have studied, and have been sustained by, the labours of many a Parliamentary Counsel in many a Commonwealth jurisdiction. We have been engaged in the arduous task of helping to shape the texture of the law as a whole, of helping the progressive development of the societies of our respective jurisdictions – and of jurisdictions not our own. We have been a source of strength to each other, sometimes known, sometimes unknown, sometimes known only by name. But it has been – and still is – a brotherhood bound by an unsung history of public service of ancient lineage, of an abiding faith in the innate goodwill of human nature, and dedicated to ensuring that the rule of law shall hold sway in the equally complex business of government. I am very grateful for what they have offered me.

My special thanks go to my former secretary, Iris Mariula Hinds, who started this project with me but never lived to see its conclusion. I can never be able to pay her for her love, her loyalty and her devotion to duty – a very, very precious jewel of a secretary.

As usual I must thank the staff of Cavendish Publishing, London, for their help and assistance in the production of this book.

The members of the family must not be forgotten who have, in many, many ways, helped to make the book see the light of day.



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## THE FORMALITIES

### THE TITLES

An Act of Parliament usually has a 'long title' and a 'short title'. In some Commonwealth jurisdictions it is a matter of choice whether the short title comes at the end of the Act or as the first section of the Act.<sup>1</sup> The long title is usually placed at the beginning of the Act and before the 'enacting formula'.

### THE LONG TITLE

The long title is *the* title of the Act. It is the title that the Speaker or the Clerk of the House reads at the First Reading stage of a Bill in Parliament. It indicates the nature and scope of the legislative measure. It thus sets out succinctly the general purpose or the salient features of the Act. Though described as 'the long title' it need not be too long.<sup>2</sup> It should comprise the main theme of the Act – the pith and substance of the legislative measure. It is not intended to be a summary of the contents of the Act.

In drafting the long title, Parliamentary Counsel should take into account the procedural rules of Parliament – for an amendment may be ruled out of order if the amendment is considered outside the *scope* of the Bill. Thus if an amendment is allowed which goes beyond the scope of the long title, a corresponding amendment would have to be made to the long title. With this procedural point in mind, a Parliamentary Counsel may draft the long title in broad or vague terms in order to accommodate amendments that are likely to be introduced during the passage of the Bill.

#### *Example*

- 1 AN ACT to establish a statutory corporation the function of which is to sell potatoes and for other purposes connected therewith [or incidental thereto].

This type of long title displays a propensity towards verbosity. Why the words, 'or incidental thereto'? Are not the words, 'connected therewith' sufficient? It is not quite clear why *some* Parliamentary Counsel continue to use *both* expressions. It is not only a relic of the days when legal scribes and scribes were paid by the number of words used; it also displays an aspect of

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1 In Ghana the short title precedes the long title. One comes immediately after the other. That format was introduced by Mr Francis Bennion when he was on secondment from Westminster to Ghana.

2 Or too short as the long title to 22 Hen 8 c 9 (1530), which read: 'An Act for poysonyng.'



‘copy drafting’. A young counsel sees it in print and copies it. It is considered as a precedent. But it is a bad precedent.

The approach of copying precedents without questioning why it had been drafted in that particular form should not be encouraged. One or the other expression would do well. Equally, the words, ‘the function of which is to sell potatoes’ could be redrafted to read, ‘to sell potatoes’.

*Examples*

- 2 AN ACT to provide for the establishment of an Animals Court and for other purposes connected therewith.
- 3 AN ACT to provide to the setting up of an Animals Court, to provide for the appointment of the presiding officer of the Court and other personnel of the Court, for the practice and procedure of the Court, for the jurisdiction of the Court and for other matters related thereto.

Example 3 above contains more details than example 2; but since the salient feature of the Bill is to establish an Animals Court, would not the expressions ‘other purposes connected therewith’ or ‘other matters related thereto’ cover all the matters specified in example 3?

The long title to 23 Geo 2 c 26, a statute of 1750, states that it is:

AN ACT to continue several Laws for the better regulating of Pilots, for the conducting of Ships and Vessels from Dover, Deal, and the Isle of Thanet, up the Rivers of Thames Medway; and for permitting Rum or Spirits of the British Sugar Plantations to be landed before the Duties of Excise are paid thereon; and to continue and amend an Act for preventing Frauds in the Admeasurement of Coals within the City and Liberty of Westminster, and several Parishes near thereunto; and to continue several laws for preventing Exactions of Occupiers of Locks and Wears upon the River Thames Westward; and for ascertaining the Rates of Water Carriage upon the said River; and for the better Regulation and Government of Seamen in the Merchant Service; and also to amend so much of an Act made in the first Year of the Reign of King George the First, as relates to the better Preservation of Salmon in the River Ribble; and to regulate Fees in Trials and Assizes, and Nisi Prius, upon Records issuing out of the Office of Pleas of the Court of Exchequer; and for the apprehension of Persons in any County or Place, upon Warrants granted by Justices of the Peace in any other County or Place; and to repeal so much of an Act made in the twelfth Year of the Reign of King Charles the Second, as relates to the Time during which the Office of Excise is to be kept open each Day, and to appoint for how long Time the same shall be kept open upon each Day for the future; and to prevent the stealing or destroying of Turnips; and to amend an Act made in the second Year of his present Majesty, for better regulation of Attornies and Solicitors.

This an example of how *not* to draft a long title. It is a clear warning to Parliamentary Counsel to avoid a multiplicity of subjects in one Act. Contrast the 1750 long title with the long title to the Housing Act 1974:<sup>3</sup>

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3 1974 c 44.

AN ACT to extend the functions of the Housing Corporation and provide for the registration of, and the giving of financial assistance to, certain housing associations; to make further provision in relation to clearance areas and other areas in which living conditions are unsatisfactory or otherwise in need of improvement; to provide for the making of grants towards the improvement, repair and provision of housing accommodation and for compulsory improvement of such accommodation; to amend the law relating to assistance for house purchase and improvement and expenditure in connection with the provision and improvement of housing accommodation and of hostels; to raise the rateable value limits under the Leasehold Reform Act 1967; to amend the Housing Finance Act 1972; to amend the law relating to the rights and obligations of landlords and tenants and the enforceability of certain covenants relating to the development of land; and for purposes connected therewith.

It is quite clear that the matters referred to in the 1974 long title are *in pari materia*, whereas the 1750 one contains a conglomeration of subjects. On the other hand, a Law Reform (Miscellaneous Provisions) Act could have in the long title a miscellany of subjects. In practice, most Parliamentary Counsel avoid drafting such a long title with a miscellany of subjects. Thus the Law Reform (Miscellaneous Provisions) Act 1934<sup>4</sup> simply states in its long title that it is: 'AN ACT to amend the law as to the effect of death in relation to causes of action and as to the awarding of interest in civil proceedings.'

The Act deals with claims under s 189 of the Supreme Court of Judicature (Consolidation) Act 1925,<sup>5</sup> the Fatal Accidents Acts 1846–1908, the Carriage by Air Act 1932,<sup>6</sup> the Administration of Estates Act 1925,<sup>7</sup> and a few other Acts. It is an example of a non-textual form of amendment.

The long title to the Animal Boarding Establishments Act 1963,<sup>8</sup> states that it is: 'AN ACT to regulate the keeping of boarding establishments for animals.'

It is short, simple and to the point; but it is not until one gets to sub-s (2) of s 5, the definition section towards the end of the Act, that one realises that 'animal' is defined to mean, 'any dog or cat'. It is difficult to appreciate why in the title the expression 'dogs or cats' is not used. The reader of the Act is given the impression that the Act relates to animals generally, only to find at the end of the Act that the subject matter of the Act is 'any dog or cat'! Counsel could have used the expression, 'dogs or cats' in the title, and then, in the Act, defined 'animal' to mean 'any dog or cat', *and use the word, 'animal' throughout the Act, in order to avoid using four words when one word would do*. That is one of the purposes of a definition section in an Act of Parliament.

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4 24 & 25 Geo 5 c 41.

5 15 & 16 Geo 5 c 49.

6 22 & 23 Geo 5 c 36.

7 15 & 16 Geo 5 c 23.

8 1963 c 43.

Thus an important consideration in deciding on the wording of the long title is to consider how informative it should be. But the long title should not be drafted in order to take the place of a *statement of purpose*. That should be a substantive provision in the Act.

It should also be borne in mind that the long title in some cases may be considered as part of the *contemporanea expositio*, though the modern tendency is to avoid the application of the rule to modern Acts.<sup>9</sup> In *Vacher v London Society of Compositors*,<sup>10</sup> Lord Moulton said that: 'The title is part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.'<sup>11</sup>

The long title to the Agricultural (Commercial) Land Reform Act 1995<sup>12</sup> of Namibia is an example of a long title which, no doubt, will be considered, when the time comes, as part of the *contemporanea expositio*. It is stated to be an Act:

To provide for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or of adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices; to vest in the State a preferent right to purchase agricultural land for the purposes of the Act; to provide for the compulsory acquisition of certain agricultural land by the State for the purposes of the Act; to regulate the acquisition of agricultural land by foreign nationals; to establish a Lands Tribunal and determine its jurisdiction; and to provide for matters connected therewith.

## THE SHORT TITLE

According to Lord Thring:<sup>13</sup>

Every Act of Parliament should have a short title, ending with the date of the year in which it is passed ... For although Lord Brougham's Act<sup>14</sup> enables reference to be made to a particular statute without mentioning its title, it is very inexpedient to do so, as the mere mention of a particular chapter fails to convey to the mind of the reader any idea of the Act referred to, and mistakes often arise from a misprint in the number of a chapter.

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9 *Kingston Wharves v Reynolds Jamaica Mines* [1959] AC 187 (PC).

10 [1913] AC 107 at p 128.

11 See also *Re Harpers Will Trusts* [1962] Ch 78; *Fisher v Raven* [1964] AC 210 at p 232; and *Re Holts Settlement* [1969] 1 Ch 100.

12 Act No 6, 1995.

13 *Practical Legislation*, p 37.

14 13 & 14 Vict c 21. Lord Brougham's Act was the first Interpretation Act on the statute book. It was replaced by the Interpretation Act 1889 (52 & 53 Vict c 63), which has been superseded by the Interpretation Act 1978 (1978 c 30).

The short title in some Commonwealth jurisdictions comes at the end of the Act. In some others it comes as the first section of the Act. The assent is normally given by reference to the short title. It is a title '... given to the Act solely for the purpose of facility of reference ... Its object is identification and not description'.<sup>15</sup>

The short title could be used as a guide to legislative intention provided it is made clear that its function is to set out as briefly as possible a label by which to identify the Act. But one must bear in mind the warning given by Scrutton LJ<sup>16</sup> that the:

... short title being a label, accuracy may be sacrificed to brevity; but I do not understand on what principle of construction I am not to look at the words of the Act itself to help me understand its scope in order to interpret the words Parliament has used in the circumstances in which they were legislating.

The Short Titles Act 1896<sup>17</sup> and the Statute Law Revision Act 1948<sup>18</sup> provide short titles to English Acts of Parliament which did not originally have them. A short title may be drafted as a separate clause in a Bill or as part of a clause.

### *Examples*

- 1 This Act may be cited as the [Forestry Act ...].
- 2 This Act may be cited as the [Fires (Prevention) Act ...].
- 3 This Act may be cited as the [Police (Disciplinary Committee) Act ...].
- 4 This Act may be cited as the [Forestry (Amendment) Act ...].
- 5 This Act may be cited as the [Education (Amendment) (No 2) Act ...].
- 6 This Act may be cited as the [Animals Court Act ...] and shall come into force on the first day of January 1996.
- 7 (1) This Act may be cited as the [Animals Court Act ...].  
(2) This Act shall come into force on the first day of January 1996.
- 8 This Act may be cited as the [Fisheries Act ...] and shall be deemed to have come into force on the first day of September 1996.
- 9 This Act may be cited as the [Fisheries Act ...] and shall come into force on such day as the Minister may, by statutory instrument, appoint.

Example 1 is the normal form of the short title. Example 2 raises the question of keeping in mind the place of the title in an index. It could be drafted as '... the Prevention of Fires Act ...'; but since the subject matter of the Act is fires, there could be other Acts on fires, such as an Act on the declaration of fire limits. Thus, having the index in mind, it is appropriate to draft the short title in the forms 2 and 3, as in: Police (Criminal Investigations) Act ..., the Police (Force Orders) Act ... , the Police (Welfare Fund) Act ...

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15 Lord Moulton in *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at p 128. See also *National Telephone Co Ltd v PMG* [1913] AC 546 and *Re Boaler* [1915] 1 KB 21.

16 *Re Boaler* [1915] 1 KB 21 at p 40.

17 59 & 60 Vict c 14.

18 11 & 12 Geo 6 c 62.

Examples 4 and 5 deal with amending Acts. The old form of the title was to use the word 'Amendment' without the brackets (eg Forestry Amendment Act ...). This practice still survives in some jurisdictions. There are not many of such jurisdictions. Thus the modern tendency is to put the word 'Amendment' in brackets (as in the Education (Amendment) Act ...). The presence of the expression '(No 2)' indicates that the amendment is the second amendment of the Act in the *same year*.

There would have been no need to provide for a '(No 1)', because at the relevant time it could not have been foreseen that there would be a second amendment in the same year. Thus if there is another amendment, but in a different year, there would be no need to add a number: the year would be added after 'Act'. Therefore there could be on the statute book any amount of amending Acts with the same short titles, with the only difference being the years.

In examples 6, 7, 8 and 9, the short title and the date of commencement form part of one section. This will be dealt fully under 'commencement provisions'.

The comma after the word 'Act' [not shown in this book] has given rise to some controversy.<sup>19</sup> Up to 1962, the short title always had a comma before the calendar year. The Statute Law Committee was against the idea.<sup>20</sup> Thus the comma was dropped in the short title to the Tanganyika Republic Act 1962.<sup>21</sup> It is debatable whether the Statute Law Committee has the authority to determine the format of the short title. It is a matter entirely for Parliament. But where, as it is obvious, there is an enumeration of short titles, there may be a case against the use of so many commas – and perhaps it would be better if the commas were dropped in those circumstances.

## THE ENACTING FORMULA

This varies from jurisdiction to jurisdiction. Its importance lies in the fact that, according to Holdsworth,<sup>22</sup> it gives to the Act its 'jurisdictional identity and constitutional authenticity'. Two cases from the United States of America<sup>23</sup> have demonstrated the significance and importance of the 'enacting formula'.<sup>24</sup> It was held in the *Joiner* case that the statute in question '... is a nullity and of no force and effect in law'. The court stated that:

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19 See (1966) 82 LQR 25 and [1987] Stat LR at p 201.

20 See (1966) 82 LQR 25.

21 11 Eliz 2 c 1.

22 *A History of English Law*, Vol 11, 1906, p 366.

23 *Joiner v State*, Supreme Court of Georgia 1967 233 Ga 367, 155 SE 208, and *State ex rel Gouge v Burrow, City Recorder*, Supreme Court of Tennessee, 1907, 119 Tenn 376, 104 SW 526.

24 See also *Payne v Attorney General*, Suit No 7 of 1981.

The purpose of the enacting clause is to establish the Act; to give it permanence, uniformity and certainty; to afford evidence of its legislative statutory nature, and to secure uniformity of identification and thus prevent inadvertence, possible mistake, and fraud.

The enacting formula has taken the place of the words of enactment by which substantive enactments were determined. By s 2 of Lord Brougham's Act 1850:<sup>25</sup>

... all Acts shall be divided into sections if there be more enactments than one which sections shall be deemed to be substantive enactments without any introductory words.

### *Examples*

- 1 BE IT ENACTED by the Parliament of Ruritania as follows:
- 2 ENACTED by the Parliament of Draftaria.
- 3 ENACTED by the President and the Parliament of Ruritania.
- 4 BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:
- 5 BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives in accordance with the provisions of clause three of Article 37 of the Constitution, and by the authority of the same, as follows:
- 6 ENACTED by the National Assembly sitting at a Joint Meeting of the Senate and the House of Representatives and by a two-thirds majority of both Houses in accordance with the provisions of clause (4) of Article 55 of the Constitution.

Some modern constitutions in the Commonwealth stipulate the form of the enacting formula. Therefore there may be more than one enacting formula. Section 51 of the Constitution of Zimbabwe sets out the form of the enacting formula. Section 61 of the Constitution of Jamaica provides for five different forms of enacting formulae. Section 55(4) of the Constitution of Nigeria 1978 provided, for example, that where the President withholds the assent:

... the bill shall again be presented to the National Assembly sitting at a joint meeting and if passed by two-thirds majority of members of both Houses at such joint meeting, the bill shall become law and the assent of the President shall not be required.

In such circumstances the enacting formula should reflect this state of affairs, as in example 6 (above).

A similar situation exists in the United Kingdom which, though it does not have a written constitution, observes the convention that the sovereign does

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25 13 & 14 Vict c 21.

not have a place in the House of Commons and as a result of the Parliament Acts of 1911<sup>26</sup> and 1949,<sup>27</sup> the House of Lords does not have any business dealing with financial matters. This is beautifully put by s 1(1) of the Parliament Act 1911:

If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons directs to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords has not consented to the Bill.

The result of this provision is that the usual enacting formula, which reads:

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same ...

becomes, for a Bill to which s 1 of the 1911 Act applies:

We Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give, and grant unto Your Majesty, the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same ...

Indeed, the Parliament Act 1911 has as its enacting formula:

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons, in this present Parliament assembled, in accordance with the provisions of the Parliament Act 1911 and by the authority of the same ...

## MARGINAL NOTES OR SIDE NOTES

In *Stephens v Cuckfield RDC*,<sup>28</sup> it was said that a marginal note cannot control the language of a section. However, it is permissible, with the marginal note in mind, to consider the general purpose of the section and the mischief at which

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26 1 & 2 Geo 5, Ch 13.

27 12, 13 & 14 Geo 6, Ch 103.

28 [1960] 2 QB 373 at p 383.

it is aimed. But Lord Reid, in *Chandler v DPP*,<sup>29</sup> in dealing with the marginal note to s 1 of the Official Secrets Act 1911,<sup>30</sup> 'Penalties for spying', said:

In my view side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard ... that an amendment to alter a side note could be proposed in either House ... side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act.

Bennion<sup>31</sup> is quite emphatic:

A side note or marginal note to a section is part of the Act. It may be considered in construing the section or any other provision of the Act provided due account is taken of the fact that its function is merely to serve as a brief, and therefore necessarily inaccurate guide to the content of the section.<sup>32</sup>

Bennion's view is in keeping with Rupert Cross's quite logical assertion that, 'No judge can be expected to treat something which is before his eyes as though it was not there'.<sup>33</sup> For Parliamentary Counsel, the marginal note should state briefly the contents of the section. It need not be a paraphrase of the section, nor necessarily a précis of the section. It need not cover all the matters specified in the section as if it were a summary. It is intended to indicate the subject matter of the section, to capture the concept of the section and thus be of assistance in the construction of the section.

In drafting the marginal note, one should bear in mind that the marginal notes are put together in the 'Arrangement of Sections', which comes before the body of the text of the Act. When well drafted and set out in the arrangement of sections, the marginal notes 'should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act'.<sup>34</sup> In some jurisdictions, the marginal note or side note is placed in italics at the beginning of the margin, but before the section to which it relates, as a sort of subheading.

### *Examples*

- 1 'Accounts and Audit' – rather than, 'Keeping of books of account and audit by the Auditor General';
- 2 'Application' – rather than, 'Act to apply to ...';
- 3 'Appointments' – rather than, 'Minister may appoint the members of the Commission';
- 4 'Commencement' – rather than, 'Coming into force of the Act';
- 5 'Establishment of Councils' – rather than, 'Minister may establish Councils';

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29 [1964] AC 763 at p 789.

30 1 & 2 Geo 5 c 28.

31 *Statutory Interpretation*, 2nd edn, p 591.

32 See also *R v Milverton (Inhabitants)* (1836) 5 A & E 841 at p 854; *Sheffield Waterworks v Bennett* (1872) LR 7 Ex. 409 at p 421; and *Venour v Sellon* (1876) 2 Ch 522 at p 525.

33 *Statutory Interpretation*, p 113.

34 Lord Thring, *Practical Legislation*, p 60.



- 6 'Prohibition on damage' – rather than, 'Damage vegetation';
- 7 'Regulations' – rather than, 'Minister may make Regulations';
- 8 *Appointments*

The Governor General shall, acting in accordance with the recommendations of

- (a) the Chief Justice, appoint the chairman of the Council;
- (b) the Bar Association of Ruritania, appoint the two other members of the Council.

- 9 *Qualifications*

A person shall not be appointed

- (a) as chairman of the Council unless that person is, or has held office as, a Judge of the Superior Court of Judicature;
- (b) a member of the Council unless that person is, or has been, a legal practitioner of repute of not less than ten years standing.

## HEADINGS OR CROSS-HEADINGS

In *R v Schildkamp*,<sup>35</sup> Lord Reid said that:

A cross-heading ought to indicate the scope of the sections which follow it, but there is always a possibility that the scope of one of these sections may have been widened by amendment.

According to Lord Thring,<sup>36</sup> the practice of grouping sections of an Act started with the Clauses Consolidation Acts. In *Eastern Counties Ry v Marriage*,<sup>37</sup> it was stated that:

These various headings are not to be treated as if they were marginal notes, or were introduced in the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked at to explain its enactments, but as affording, as it appears to me, a better key to the construction of the sections which follow than might be afforded by a mere preamble.

But in *R v Hare*,<sup>38</sup> Avory J expressed the opinion that:

Headings of sections and marginal notes form no part of the statute. They are not voted on or passed by Parliament but are inserted after the Bill has become law. Headnotes cannot control the plain meaning of the enactment, though they may, in some cases, be looked upon in the light of preambles if there is any ambiguity in the meaning of the sections on which they throw light.

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35 [1971] AC 1 at p 10.

36 *Practical Legislation*, p 58.

37 (1861) 9 HLC 32 at p 41.

38 [1934] 1 KB 354 at p 355.

Avory J cannot be right regarding the legislative process from the drafting of Bills and the passage of Bills in Parliament, that headings and marginal notes are inserted *after* the Bill has become law. These days, headings are part of the Bill as presented to Parliament and as Cross asserted, 'No judge can be expected to treat something which is before his eyes as though it was not there'.<sup>39</sup>

The real position is that headings are not taken into consideration where the words of the Act are quite clear. Thus in *R v Surrey (NE Area) Assessment Committee*,<sup>40</sup> Lord Goddard said, with reference to the cross-headings in the Rating and Valuation Act 1925:<sup>41</sup>

But while the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use headings to give different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning.<sup>42</sup>

*Example*

[Title of Act]

[Arrangement of Sections]

*Preliminary*

*Section*

- 1 Short title
- 2 Commencement
- 3 Application

*The Commission*

- 5 Establishment of Commission
- 6 Composition
- 7 Appointment of members
- 8 Qualifications for appointment
- 9 Functions
- 10 Independence of the Commission
- 11 Immunity of members
- 12 Remuneration of members

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39 *Statutory Interpretation*, p 113.

40 [1948] 1 KB 28 at p 32.

41 15 & 16 Geo 5 c 90.

42 See also *Hammersmith & City Ry v Brand* (1869) LR 4 HL 171; *Fletcher v Birkenhead Corporation* [1907] 1 KB 205 at p 218; and *Bulmer v Inland Revenue Commissioners* [1967] Ch 145 at p 165, where Pennyquick J said that chapter headings are admissible in the construction of ambiguous statutory provisions.

*Finance*

- 13 Source of funds
- 14 Investment of funds
- 15 Accounts and audit

*Administration*

- 16 The Secretariat
- 17 Appointments
- 18 Conditions of service
- 19 Immunity

*Miscellaneous*

- 20 Annual Reports
- 21 Regulations
- 22 Interpretation

## SUBHEADINGS

Where an Act is divided into parts – the norm in lengthy Acts – it is the practice to have headings and subheadings. Lord Thring<sup>43</sup> advised that we follow the pattern of the Merchant Shipping Act 1854,<sup>44</sup> so that the courts would not refuse to recognise the division into parts as being a substantive part of the statute. It is better when there are parts, headings and subheadings to use roman letters as well as italics in order to distinguish between them.

Headings and subheadings should be placed at the centre of the page.

*Example*

CHAPTER TWELVE  
THE JUDICIARY  
The Superior Court of Judicature  
....  
....  
The Supreme Court  
....  
....  
The Court of Appeal  
....  
....

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43 *Practical Legislation*, p 60.

44 17 & 18 Vict c 104. But this is a 19th century Act. It consists of 548 sections with 32 pages of the Schedule. The 1894 Act of 747 sections and 19 Schedules bears out Lord Thring's advice.

The High Court of Justice

....

....

Miscellaneous

....

....

....

PART VIII

ENFORCEMENT

General

....

....

....

Employment Field

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....

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Claims

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Notices

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Enforcement by Commission

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Assistance

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Courts of Competent Jurisdiction

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Limitation Periods

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Evidence

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## NUMBERS AND DATES

It is a matter of preference whether one uses numerals or words. '1990' shows out clearer than 'one thousand nine hundred and ninety'. Yet a typographical error of '1990' for '1996' may not be easy to discover until, perhaps, it is too late. But it has never been a problem stating the calendar year in numerals rather than in words.

### *Examples*

- section forty; section 40;
- subparagraph (ii) of paragraph (a) of subsection four of section ninety; section 90(4)(a)(ii);
- the first day of October, one thousand nine hundred and ninety-six; 1st October, 1996.

When it comes to money, it would now depend upon whether one's computer has the appropriate symbol for the currency of one's jurisdiction. Thus amounts of money are likely to be expressed in words or both numbers and words, bearing in mind that it is easier (a) to discover errors in numbers, or (b) mistakenly to slip in an extra '0' thus making '1,000' become '10,000'. Either way, it demands great care, for example:

- twenty-four pounds sterling;
- 24.00 Canadian dollars;
- 24.35 Barbadian dollars.

## SYMBOLS AND ABBREVIATIONS

Symbols and abbreviations do not have a place in legislative drafting. Mistakes abound. What does the expression 'etc' mean in legislation? A sort of *ejusdem generis* or *noscitur a sociis*? How many legal practitioners these days would readily identify 'fi.fa.' as *fieri facias* and 'ca.sa.' as *capias satisfaciendum*? By the device of defining the word 'Area' to mean the North Atlantic Free Trade Area, one avoids NAFTA or N.A.F.T.A. and such abbreviations. Definitions, therefore, would appear to be the answer.

And though it is Latin, the average reader of an Act of Parliament would not be at sea with *per cent* or with *per centum* where the symbol ‘%’ could be used. The symbol ‘\$’ stands for dollars. It is of American origin and would normally stand for United States of America dollars. But now other countries use the word ‘dollar’ for their currency. There is thus the need to identify which dollar is being referred to – American, Australian, Barbadian, or some other dollar. So you have ‘US \$’, ‘Bds \$’ and so on. Would it not be better, therefore, to use the words ‘Barbadian dollars’, ‘Canadian dollars’, ‘United States dollars’? In some jurisdictions the Interpretation Act can be called in aid where the symbol is specifically defined.

## AMENDING PROVISIONS

In *Cabell v Markham*<sup>45</sup> Justice Learned Hand stated that it is ‘... well to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning’.

Thus difficulties of interpretation may lead to an amendment of an Act of Parliament. Equally, the incompetence of a Parliamentary Counsel would provide an opportunity for a restatement of the law by recourse to an amendment. Mere omission, either of drafting or of the result of a misunderstanding of a policy issue, may call for an amendment. Problems of implementation may also reveal the need for an amendment to an Act. Judicial decisions may play a large part here. It would be as well for Parliamentary Counsel, when dealing with judicial decisions, to make a chronological list of those decisions which would bear on the draft of the amendment, noting particularly the *ratio decidendi* and the assistance which *obiter dicta* could give.

A consideration of all the relevant factors would indicate whether a short amending Act is what is required or whether thought should be given to a consolidation Act.

It may also not be realised at the policy stage that an amendment would involve a change in the common law – or of the procedural law. It will be the responsibility of Parliamentary Counsel to ascertain and prepare a statement of what Counsel considers is the law on the matter and the method by which to amend the common law or the procedure. Would it be by way of leaving the *principle* of the common law as it exists in tact, and provide for the *procedure* of enforcement of a right at common law; or by restating the *parameters* of the common law and provide for the *procedure* as well, thus ousting completely the application of the common law.

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45 148 F 2d 737 at p 739 (1945). See also *Farmers Reservoir and Irrigation Co v McCourt* (1949) 337 US 755 at p 764.

Before drafting an amendment of existing legislation, Parliamentary Counsel must, of necessity, study the language of the existing law, judicial decisions bearing on the matter, and the style adopted in the drafting of the law. Counsel should, as far as possible, follow that style and the language used. If this is not done, problems of interpretation may arise, for example as to whether a change in words amounts to a change in meaning.

Whether an amendment extends or limits the operation of the common law or of the existing legislation, or introduces a new principle of law, the need for a clear, unambiguous language cannot be over-emphasised. Counsel may need to consider not only the particular law being amended but also whether the amendment is likely to affect any other principles of law. The unity of the law should therefore be taken seriously into account.

## Deletions and substitutions

### *Examples*

#### **Amendment of principal Act**

- 1 The principal Act is amended
  - (a) in section 2, by substituting for the words, “the Minister, in consultation with the chairman of the Council”, the words, “the Minister, acting in accordance with the recommendations of the chairman of the Council”;
  - (b) in section 10, by deleting the words, “with the approval of the chairman”;
  - (c) in section 15, by inserting after the word, “may”, the expression, “, by statutory instrument,”;
  - (d) in section 30, by adding to following sub-section:  
“(3) .....”x;
  - (e) in section 31, by deleting, wherever they occur, the words, “as the case may be”.
- 2 The principal Act is amended by substituting for section 35, the following section:  
*“Qualifications*  
35 .....  
.....  
.....”
- 3 The principal Act is amended by repealing section 40.

Example 1 is an example of textual amendments. It is recommended where there are but a few amendments to the principal Act. Where an Act consists of, say, ten sections, and each section is to be amended, Parliamentary Counsel should consider drafting a Bill for a new Act and *repealing* the whole of the

existing Act. The same principle will apply when the Act to be amended consists of many more sections. Much will depend upon the nature of the subject matter of the Act and the amendments sought to be dealt with.

Attention is drawn to the significance of the words, ‘adding’, ‘deleting’, ‘inserting’ and ‘substituting’. A word or words within a section may be deleted. A word or words may be inserted within a section. A section or sections may be inserted within the Act. A section, sections, a subsection or subsections may be added at the end of the Act or at the end of the section. An Act or a section of an Act may be repealed.

In drafting amendments for the Order Paper for the day’s sitting of Parliament, ‘delete’ and its cognate expressions and ‘substitute’ and its cognate expressions are used. The reason is that in Parliament the Standing Orders would require a motion for each of the amendments. Thus there would be a motion to delete an expression or a word; when that is carried then there would be another motion to substitute in its place the required amendment.

In paragraph (a) of example 1, the use of the commas should be noted. They form part of what is being substituted. It is understood that ‘words’ in this context covers the commas. In paragraph (c) of example 1, ‘expression’ is used rather than ‘words’.

Example 2 is recommended where there is more than one amendment to a section. It is better to reproduce the section with the proposed amendments in place rather than the textual amendment form of making many amendments to the section. Paragraphs (c), (d) and (e) in example 1 do not need a comment.

## Headings

### *Example*

For the heading ‘Finance’ appearing before section 27 of the principal Act, substitute the heading ‘Accounts and Audit’.

## Long title

### *Examples*

- 1 For the long title to the Dogs Act ..., substitute the following:  
AN ACT to provide for the vaccination, registration and licensing of dogs and for matters related thereto.
- 2 The long title to the Dogs Act ... is amended by inserting after the words, “provide for” the words, “vaccination, registration and”.
- 3 In the long title to the Statutory Corporations Act ... and in the preamble thereto, delete the word “companies”.



**New sections or subsections**

*Examples*

- 1 The principal Act is amended by substituting for section 40, the following new section:

*“Codes of conduct*

40 (1) .....

.....

(2) .....

.....”.

2. The principal Act is amended by inserting after section 40 the following new sections:

*“(Marginal note)*

40A .....

.....

.....

*(Marginal note)*

40B .....

.....

*(Marginal note)*

40C (1) .....

.....

(2) .....

.....”.

- 4 Section 35 of the principal Act is amended

(a) by inserting after

- (i) sub-section (1), the following new sub-section (1A):

*“(1A) .....*

.....”;

- (ii) sub-section (3), the following new sub-sections (3A), (3B) and (3C):

*“(3A) .....*

.....

(3B) .....

.....

(3C) .....

.....”.

(b) by adding after sub-section (5) the following new sub-section:

*“(6) .....*

.....”.

## Re-enactment of general words

### Example

Section 18 of the principal Act is amended by substituting

- (a) for the words of introduction preceding paragraph (a), the words, "For the purposes of this section";
- (b) for the concluding words after paragraph (g), the words, "and accordingly the Minister may, by legislative instrument, designate the areas for the demarcation of the fire limits."

## Schedules

### Examples

- 1 The enactments specified in the First Schedule are repealed to the extent specified in the fourth column of the Schedule.

#### FIRST SCHEDULE

(See section ...)

#### Repeals

Year	No	Short Title	Extent of Repeal
1900	10	The Factory Buildings Act	The whole Act
1924	5	The Education Act	The whole Act
1935	16	Medical and Dental Board Act	Sections 1–24 and paragraph (b) of section 25

- 2 The enactments specified in the Second Schedule are amended to the extent specified in the fourth column of the Schedule

#### SECOND SCHEDULE

(See section ...)

#### Amendments

Year	No	Short Title	Amendments
1908	10	The Criminal Procedure Code	(a) In section 24 delete the expression "(1)"; (b) In section 45 insert "under this Act" after the figure "30"
1932	16	The Armed Forces Regulations	regulations 10 and 25

3

#### SCHEDULE

#### MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 In section 34 of the Education Act 1947, delete the words, ".....".
- 2 Section 13 of the University Grants Commission Act 1978 shall cease to have effect.

- 3 The Tertiary Education Act 1987 is amended as follows:  
(a) in section 2, insert in the appropriate alphabetical order the following definitions: "... .."

4  
SCHEDULE  
Minor and Consequential Amendments

- 1 The Wills Act ... is amended by the repeal of section ...
- 2 The Law of Property Act ... is amended in section ... by substituting for the words "on trust for sale", the words "under a trust for sale within the meaning of the Trusts of Land Act ...".
- 3 The Settled Land Act ... is amended
- (a) in section ...,
- (i) by substituting for the words "settlement, trust for sale" and the words "settlement or trust for sale" in the proviso to subsection (1), the word "trust";
  - (ii) by substituting for the words "trust for sale" where they occur in the second sentence of subsection (1) and in subsections (2)(c) and (3), the word "trust";
  - (iii) by substituting for the word "settlement" in subsection (2)(b), the word "trust";
  - (iv) by omitting the words "a vesting instrument of" in paragraph (a) to the proviso to subsection (1), and the words from "is settled land" to "or", and the words "as the case may require" in the second sentence of in subsection (1);
- (b) in section ... ,
- (i) by substituting for the words "upon the statutory trusts" in subsection (2) and the words "on the statutory trusts" in subsection (3), the words "on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land, whether beneficially or otherwise";
  - (ii) by substituting for the words "trust for sale" in subsection (4), the words "trust of land within the meaning of that Act";
  - (iii) by omitting subsection (6).

*Other amendments in similar vein can be added to those set out above. This type of Schedule is used when, as indicated, there are several consequential amendments to be made as the result of, say, a Consolidation Act.*

## Renumbering

This should be avoided at all costs. It is likely to lead to confusion. There may have been a reference in some other legislation to the section being renumbered as the result of the repeal of a section. The device of providing for ss 40A, 40B and 40C, or sub-ss (3A), (3B) and (3C) should be used.

## Repeals

### *Examples*

- 1 Section 3 of the principal Act is repealed.
- 2 Subparagraph (iii) of paragraph (a) of subsection (3) of section ... of the principal Act is repealed.
- 3 Section 24(3)(a)(iii) is repealed.

In a repealing provision, does not the expression 'is hereby repealed' contain one word too many? Does the inclusion of the word 'hereby' add anything to the provision the absence of which would affect the validity of the provision? The answer is 'no'. The word could be considered a surplusage. It supplies the obvious.

### *Other examples*

- 1 (1) In section ..., for the words from "... " in subsection (1) to the word "...", where it occurs in the second place in subsection (2), substitute the words, "...
  - (a) .....
  - (b) ....."(2) Subsections ... and ... shall cease to have effect.  
(3) Subsection (1) of this section applies whether [a duty] is discharged before or after the coming into force of this Act.  
(4) This section has effect without prejudice to any [actions taken] before the coming into force of this Act.
- 2 (1) Section ... of the Forestry Act ... shall have effect subject to the amendments contained in this section.
  - (2) In subsection (1),
    - (a) the words "... " shall be omitted;
    - (b) at the end, add the words, "...".
  - (3) Delete subsection (2).
  - (4) In subsection (3) substitute the words, "... " for the words, ".....".
  - (5) Notwithstanding anything contained in subsection (1) of section ... of the Education Act ... , this section shall not affect the operation of that section with respect to any action which has arisen by virtue of that section before the coming into force of this Act.
- 3 (1) Where a person dies after the thirty-first day of December, 1997, the Administration of Estates Act ... shall have effect subject to the amendments set out in this section.
  - (2) For section... of the Act, substitute the following section,  
"....."
  - (3) Insert before subsection (3) of section ... the following new subsection,  
"(2A) .....  
....."

- (4) Delete section ... (1)(a)(iii) and section ... (b)(ii).
- (5) Pursuant to the amendments specified in subsections (2), (3) and (4) of this section,
  - (a) sections ..., ..., ... and ... of the principal Act are repealed;
  - (b) sections ..., ..., ... and ... of the [another Act which needs to be amended, would be dealt with and the amendments specified];
  - (c) [other Acts which need to be amended will also be dealt with].

## EXPLANATORY NOTES

The Law Commission of England, following the practice normally used in Canada, prints its Bills with explanatory notes. The text of the provision is printed on the left-hand page and the explanatory note on the right-hand page. It is a very useful technique which should be encouraged in all jurisdictions in the Commonwealth. The Law Commission uses the technique in rather small Bills. For the Criminal Code Bill, for example, the Commission provided a commentary on the draft Bill. It gives valuable information not only to members of Parliament, but, as *Pepper (Inspector of Taxes) v Hart*<sup>46</sup> would have it, to all other users of the Act.

It is a matter for serious consideration how far these explanatory notes may be used in place of the Memorandum to the Bill, which deals with the salient features of the Bill. The explanatory notes may be detailed and thus afford a clue where there is an ambiguity or vagueness. Whatever view is taken, the explanatory notes should not be discursive. They should deal with the reasons for the purported changes, the cold facts and not with any contentious matters.

## COMMENCEMENT PROVISIONS

The commencement of an Act of Parliament is now governed by the Constitution or the Interpretation Act, as appropriate. The common law position is that an Act of Parliament comes into force on the first day of the session of Parliament in which it was enacted. Thus statutes were – and even now are – referred to as, for example, 22 Hen 8 c 9 (1530) or 15 & 16 Geo 5 c 49. The present day reference for the United Kingdom is 1963 c 43. In other Commonwealth countries the reference is No ... of [year]. By a statute of 33 Geo 3 c 13, the common law rule was abolished in 1793. The 1793 statute provided that an Act of Parliament comes into force on the day the assent is

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46 [1993] 1 All ER 42.

given. The rule has been incorporated into the Interpretation Act of many jurisdictions. An Act of Parliament comes into force:

- on the day the assent is given;
- on the day of its publication in the *Gazette*;
- on the day appointed by a statutory instrument, or by an Order published in the *Gazette*;
- on the day stated in the Act that it is to operate retroactively, that is, from a day prior to the date of its enactment;
- on the day stated in the Act that it is to operate prospectively, that is, an a day after the date of its enactment.

## Appointed day

### *Examples*

- 1 This Act shall come into force on such day as the Governor General may, by Order published in the *Gazette*, appoint.
- 2 This Act shall come into force on a day to be determined by the Minister by statutory instrument [published in the *Gazette*].
- 3 This Act shall come into operation on such day as the Governor General may, by statutory instrument, appoint after a 'Yes' vote in a referendum conducted in accordance with article 75 of the Constitution.
- 4 This Act or a section or sections of the Act shall come into force on the day or days appointed by the President by legislative instrument.
- 5 This Act or a section or any sections of the Act shall come into operation on such day or days as the Governor General may, by Order published in the *Gazette*, appoint.
- 6 (1) This Act shall come into force on the first day of July ... or on such earlier day as the Minister may, by legislative instrument, determine.  
(2) The Minister may, in the exercise of the powers conferred under subsection (1), appoint a day or days on which a section or any sections of the Act shall come into force.

Examples 1 and 2, as it is obvious, are *unconditional*. Example 3 is *conditional*. Thus, unless the conditions are operative, the Governor General would not make the Order. Examples 4 and 5 allow the Governor General to appoint different days for the commencement of different provisions of the Act. Example 6 is an *alternative* provision and is thus, in a way, *conditional*. Events and administrative matters, would have to be taken into account, and if those events are perfected earlier than the day specified, then the power contained in the alternate provision would be exercised.

## Fixed or predetermined day

### Examples

- 1 This Act shall come into force on the first day of January [year]
- 2 This Act shall come into operation on the first day of the sixth calendar month after the assent is given.

Example 1 is definite. There can be no argument about the date. It is thus *ascertained*. Example 2 is *unascertained* as the date of the assent is not certain. But once the assent is given, there is certainty.

## Portions of Act

### Examples

- 1 [Sections ..., ..., ... and ...] shall come into force on the first day of January, ..., and the other sections of the Act shall come into force as from the first day of July, ...
- 2 The Act shall come into force, as regards
  - (a) PARTS ONE, TWO, THREE and FOUR, on the first day of July, ...;
  - (b) PARTS FIVE, SIX and SEVEN, on the third day of September, ...;
  - (c) PARTS EIGHT, NINE, TEN, ELEVEN and TWELVE, on such day after the 30th September, ..., as the Governor General may, by Order published in the *Gazette*, appoint.
- 3 The provisions of this Act specified in
  - (a) the first column of the First Schedule shall come into force on the days specified in the second column of that Schedule;
  - (b) the first column of the Second Schedule shall come into force not earlier than six calendar months after the days specified in the second column of that Schedule.

## Prospective commencement

Acts of Parliament are presumed to be speaking all the time. Once it is enacted, an Act is intended to operate until the end of time or until it is repealed. Depending upon the constitutional or statutory requirements, it is in force from the day the assent is given. There are on the statute book quite a number of Acts of Parliament of ancient origin which are still in force. The Treason Act 1351,<sup>47</sup> as amended from time to time, is very much alive. An Act of Parliament does not cease to be in force merely because it is used once in a blue moon. It is the nature of the Act – like the Treason Act 1351 – that determines the frequency of its use and enforcement.

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47 25 Edw 3, Stat 5 c 2.

Even so, there are times when Parliamentary Counsel may have to provide for the operation of an Act to be later than would otherwise be the case.

*Examples*

- 1 This Act shall come into force on such day, not being earlier than six months nor more than two years after the date the Assent is given, as the Governor General may, by Order published in the *Gazette*, appoint.
- 2 This Act shall come into operation six months after the coming into force of the Constitution.
- 3 This Act shall come into force on the first day of January [year] but the Governor General may, in respect of any of the provisions of this Act, by Order published in the *Gazette*, substitute [appoint] a day or days subsequent to the first day of January ... as the day or days on which any of those provisions are to come into force.
- 4 This Act shall come into force on the first day of July [year] or on such later day or days as the President may, by legislative instrument, appoint, and different days may be appointed for different provisions of the Act.
- 5 This Act shall come into operation on the first day of January [year] and confers power on the President to appoint, by statutory instrument, such later day or days as the day or days on which different provisions of the Act shall come into force.
- 6 This Act shall come into force not earlier than one year after the Assent is given, and confers power on the Governor General, exercisable by statutory instrument, to appoint different days on which different provisions of the Act shall come into force.

## Retroactive commencement

Retroactive operation of statutes has often been confused with retrospective operation of statutes. There is a difference, however subtle the distinction is. There is certainty as regards retroactive operation of statutes. It is often determined by Parliament. There can be no dispute as regards the retroactive commencement of a statute or of a provision of a statute. But there can be a dispute as to whether a statute or a provision of a statute operates retrospectively.<sup>48</sup>

*Examples*

- 1 This Act shall be deemed to have come into force on the third day of September [year];

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<sup>48</sup> See *Phillips v Eyre* (1870) 6 QB 23; *Laun v Renad* [1892] 3 Ch 402; *Western Counties Railway Co v Windsor Railway Co* (1882) 7 App Cas 178. The problem here has been that the judges had been using 'retrospectively' when 'retroactively' should have been used and saying a provision is not retrospective when, indeed, it operates retrospectively, and have thus caused the confusion. See *Re A Solicitor's Clerk* [1957] 1 WLR 1219. Lord Goddard's *dictum* is a classic statement of what a retrospective statute is. Yet he said that the 'Act is not in truth retrospective'.



- 2 Parts One, Two, Three and Four of this Act shall be deemed to have come into operation on the thirtieth day of September [year], and the remaining five Parts shall be deemed to have come into operation on the thirty-first day of December [year].

## **Prospective, retroactive and retrospective operation**

An Act of Parliament can be prospective, retroactive and retrospective at the same time. That indeed shows the distinction between retroactive and retrospective operation of statutes.

### *Example*

- 1 (1) The commencement of this Act is as follows:
- (a) Parts One and Two shall be deemed to have come into force of the first day of January [year] (*Retroactive.*)
  - (b) Parts Three, Four and Five shall come into force on the day the Assent is given; (*Prospective.*)
  - (c) Parts Six, Seven and Eight shall come into force one year after the day on which the Assent is given; (*Prospective.*)
  - (d) Parts Nine, Ten, Eleven and Twelve shall come into force on a day not being earlier than eighteen calendar months prior to, and not later than two years after, the day the Assent is given. (*Prospective.*)
- (2) After the commencement of this Act as provided under paragraph (b) of subsection (1), a person shall not be enrolled as a legal practitioner if that person
- (a) has been convicted for treason or for an offence involving the security of the State, fraud, dishonesty or moral turpitude; (*Retrospective.*)
  - (b) has been adjudged or otherwise declared a bankrupt under a law in force in Draftaria or any other country and has not been discharged. (*Retrospective.*)

## **DURATION**

As indicated above, an Act of Parliament is intended to be on the statute book till the end of time. That presumption has never precluded an amendment or even a repeal of the Act – as circumstances have dictated. Circumstances may also determine that an Act of Parliament shall operate for only a limited period of time. Its duration may be for a stated period or conditional upon the happening of an event.

## Appointed day

### *Examples*

- 1 This Act shall cease to have effect on such day as the Governor General may, by statutory instrument, appoint.
- 2 This Act shall continue in force until such day as the President may, by legislative instrument, determine.
- 3 This Act remains in force until such day after the determination of the Agreement set out in the Schedule as the Minister may, by legislative instrument, appoint.

## Commencement and expiration

### *Examples*

- 1 This Act shall come into force on the first day of January [year] or such earlier day as the Governor General may, by statutory instrument, appoint, and shall continue in force until six months after the date of the Proclamation issued by the Governor General in accordance with article ... of the Constitution.
- 2 This Act shall come into force on the day appointed by the Governor General in the Order made by virtue of article 104 of the Constitution, and shall continue in force for a period of four years after the appointed day.
- 3 (1) This Act shall be deemed to have come into force on the first day of January [year]  
(2) Part Four of the Act shall cease to have effect on the thirty-first day of December following the day specified in the Order made by the Governor General pursuant to article ... of the Constitution.
- 4 This Act shall come into force on such day, not earlier than six months after the Assent is given, as the Governor General may, by statutory instrument, appoint, and shall continue in force until the revocation of the Proclamation issued pursuant to article 140 of the Constitution.
- 5 This Act Shall come into operation on the day of its publication in the *Gazette*, and shall continue in force until the Governor General declares by Proclamation issued in accordance with article ... of the Constitution that the emergency referred to in the Proclamation has ceased to exist.

## Commencement and saving

### *Examples*

- 1 This Act shall come into force on the first day of July [year] without prejudice to the continuance in force of the Regulations made under section ... of the Act repealed by section ... of this Act.
- 2 This Act shall come into force on the first day of August [year] without prejudice to the validity of a licence granted by a permit issued under section ... or ... respectively of the repealed Act.

## Conditional

### Examples

- 1 This Act shall expire on the thirty-first day of December [year] unless before the expiration of that day, Parliament, by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, appoints a day later than that day.
- 2 This Act shall remain in force for six months after the day the Assent is given, unless before the expiration of those six months, Parliament, by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, declares, for each extension of the six months period, that it shall continue in force for a further period of six months.
- 3 (1) This Act shall remain in force for a period of six months after the day the Assent is given.  
(2) The period of six months specified in subsection (1) may be extended by a further period or periods each of not more than six months in duration.  
(3) The extension provided for in subsection (2) shall be effected by a resolution of Parliament supported by the votes of not less than three-quarters of all the members of Parliament.

## Fixed day

### Examples

- 1 This Act shall continue in force for a period of three years from the day the Assent is given.
- 2 This Act shall cease to have effect on the expiration of a period of twelve calendar months following the day the Assent is given.
- 3 This Act expires on the day the Governor General issues a Proclamation pursuant to article 96 of the Constitution for the dissolution of Parliament before the holding of a general election.

## APPLICATION

An Act of Parliament applies to all parts of a country. But due to the constitutional arrangements of the United Kingdom, for example, an Act of the United Kingdom Parliament may be enacted to *extend* to Northern Ireland or to *apply* to Scotland. In a federal state, an Act of the federal parliament would apply to all the states or provinces of the federation. However, depending on whether there is an *exclusive list* or a *concurrent list*, an Act of the federal parliament may not apply to a state of the Federation or it may be made to apply by an instrument made by the President of the Federation subject to certain conditions specified in the instrument.

*Examples*

- 1 This Act shall not apply to a person subject to the [Armed Forces Act ...].
- 2 This Act shall be in addition to, and not in derogation of, any other enactment.
- 3 This Act shall not apply to an industry set up, wholly or partly, out of funds provided by Parliament.
- 4 This Act applies to all States of the Federation, other than States in respect of which the number of persons registered to vote in an election of members of Parliament does not exceed five hundred thousand.
- 5 This Act does not affect adversely or prejudicially an estate or exemption, or a power, privilege or right of the Republic.
- 6 This Act binds the Republic.
- 7 This Act does not apply to a person holding an office the emoluments of which are paid out of moneys provided by Parliament.
- 8 This Act applies to the institutions specified in the first column of the Schedule effective from the date specified in relation thereto in the second column of the Schedule.
- 9 This Act applies to a judgment obtained in a court of competent jurisdiction in a State that accords the Republic reciprocal arrangements for the enforcement in that State of judgments of the Courts of the Republic.
- 10 This Act applies to a body of persons
  - (a) incorporated and registered under the Companies Act ...;
  - (b) incorporated outside the Republic but having an office in the Republic registered under the Companies Act ...;
  - (c) registered under an enactment relating to trade unions or an association formed for the purpose of protecting the interests of the members of the association.
- 11 Notwithstanding anything to the contrary contained in the Finance Act ..., the Capital Gains Act ..., or any other enactment relating to income tax, corporation tax or profits tax, the Bank established under section 4 of this Act is not liable to pay income tax, corporation tax or profits tax or any other tax in respect of
  - (a) any income, profits or gains accruing to the Development Fund of the Bank;
  - (b) any income, profits or gains derived or received by the Bank.
- 12 (1) Notwithstanding anything to the contrary contained in the Companies Act ..., or in the memorandum or articles of association or the Regulations of a company established under this Act,
  - (a) the shareholders of the company may nominate or appoint a person to be a director of the company;
  - (b) a resolution passed at a meeting of the shareholders of the company shall not be effective unless approved by the Registrar of Companies;

- (c) proceedings for the winding up or for the appointment of a liquidator or receiver of the company shall not be instituted in any court unless with the prior consent in writing of the inspector appointed under section ... of the Companies Act ....
- (2) Subject to subsection (1) and to such exceptions, restrictions or limitations as the Registrar of Companies may, by statutory instrument, specify, the Companies Act ... shall apply to a company established under this Act.
- 13 (1) An enactment relating to customs or to goods the importation of which is prohibited under section ... of the Customs Act ... shall, subject to section ... of this Act, apply in respect of articles of food the importation of which is prohibited under section ... of this Act.
  - (2) A customs officer shall have in respect of those articles of food the same powers as are exercisable under section ... of the Customs Act ...
  - (3) Without prejudice to subsections (1) and (2), a collector of customs may detain an imported package suspected to contain an article of food the importation of which is prohibited under section ... of this Act, for onward transmission to the Standards Board for examination.
- 14 This Act applies to a charitable and educational institution, whether
  - (a) the institution is charitable but not educational, or educational but not charitable, or the institution is both charitable and educational; and
  - (b) the institution is established before or after the coming into force of this Act.
- 15 This Act applies to all goods belonging to the Government of a State and are used for the purposes of a trade or business of any kind carried on by, or on behalf of, that Government as it applies to goods not belonging to the Federation.
- 16 Nothing in this Act shall affect the equitable defences of acquiescence and laches.
- 17 The rules of the Common Law relating to ... , in so far as they are not inconsistent with a provision of this Act, shall continue to apply.
- 18 The rules of law known as the doctrines of equity relating to ... , in so far as they are not inconsistent with a provision of this Act, shall continue to apply.
- 19 The provisions of section ... of the Education Act ..., as they relate to pensions for service in an educational institution, shall not apply to a person who, whilst serving in an educational institution, is in receipt of a pension awarded in whole or in part in respect of a previous service in an educational institution.
- 20 An agreement by a person that this Act shall not apply to, or that the remedies provided by this Act shall not be available for the benefit of, that person is void.
- 21 This Act extends to the whole of Draftaria except a State specified in the first column of Part One of the Schedule to the extent specified in the second column thereof.

- 22 This Act shall extend to the whole of Draftaria, except the States specified in the Third Schedule, and to all judicial proceedings in or before a Court, including a Court-Martial convened under the Armed Forces Act ..., but not to an affidavit presented to a Court or officer nor to proceedings before an arbitrator or a tribunal.

## SAVINGS AND TRANSITIONAL

It is customary to have a savings provision which protects the validity of the operation of a law or a right when an enactment is repealed. The precedents under 'Commencement and savings' contain such a provision. Interpretation Acts generally, for example, save rights, obligations accrued or incurred, legal proceedings or the prosecution of offences begun, under a repealed enactment. It is a very useful device. The same applies to situations where the law is changed or abrogated but continuity is called for.

### Savings provisions

#### *Examples*

- 1 Until Regulations are made under section ... of this Act, Regulations made under section ... of the repealed Act shall [continue in operation] [continue in force] [continue to apply] as if made under section ... of this Act.
- 2 An appointment, a nomination or a statutory instrument made under an enactment repealed by this Act shall continue in force, and may be amended, revoked or varied.
- 3 A Justice of a superior court of record holding office as such immediately before the coming into force of this Constitution shall be deemed to have been appointed on the coming into force of this Constitution to hold office as such under this Constitution.
- 4 (1) A person appointed under section ... to act as ... shall continue so to act for the period of that appointment, or if no such period is specified until the appointment is revoked by the Governor General acting in accordance with the recommendations of the Public Service Commission.  
(2) Notwithstanding the expiration of the period of the appointment or the revocation of the appointment pursuant to subsection (1), a person so appointed may continue to act for as long as may be necessary in order to complete the performance of any functions of the office commenced before the expiration or the revocation.
- 5 This Act does not supersede the existing law and the practice and procedure relating to ...
- 6 This Act does not impose a liability in respect of ... on a ... in any case where no such liability existed or would have existed if this Act had not been enacted.

- 7 A duty imposed, or a power conferred, by this Act is in addition to, and not in derogation of, a duty imposed, or a power conferred, by any other enactment, and unless otherwise repealed the duty may be discharged and the power may be exercised as if this Act had not been enacted.
- 8 This Act is in addition to, and not in derogation of, any other enactment relating to, or affecting, any matter with respect to which this Act applies.
- 9 The powers conferred by this Act are exercisable without prejudice to any powers conferred on ... by any other enactment.
- 10 Nothing in this Act affects the right of instituting proceedings against a person under any enactment or at common law.
- 11 A conviction or proceeding under this Act does not affect a civil proceeding or right to which a person aggrieved under this Act is entitled.
- 12 Nothing in this Act shall prejudice or prevent the institution or prosecution of proceedings for giving effect to a final judgment of a court of competent jurisdiction obtained before the coming into force of this Act.
- 13 This Act does not affect a title to property acquired for value before the coming into force of this Act.
- 14 This Act does not affect in any manner a right acquired by a person under an enactment relating to ...
- 15 Nothing in this Act, or in an order made, or in a notice given, under this Act shall be deemed to grant a sanction to or acknowledge in any manner a right vested in a person to ... where that person would not otherwise have that right.
- 16 A person appointed to an office under or by virtue of an enactment repealed by this Act shall be deemed to have been appointed under the corresponding provisions of this Act.
- 17 This Act does not affect any powers or rights of the Republic in existence immediately before the coming into force of this Act.
- 18 Where there is a conflict between a provision of this Act and an article of any arrangement, engagement, treaty or convention to which the Republic is a party or a signatory that article shall prevail.
- 19 Without prejudice to the general application of section ... of the Interpretation Act ... relating to the effect of repeals, the repeal of the enactments specified in the Schedule to this Act shall not affect
  - (a) the operation of a notice served, or an order made, under any of those enactments before the coming into force of this Act; or
  - (b) the rights of ... in respect of land the possession of which has been validly taken before the coming into force of this Act; or
  - (c) the right of a person to recover compensation in respect of anything done or suffered under any of those enactments whether before or after the coming into force of this Act.
- 20 Subject to section ... of this Act,
  - (a) a direction, form, notice, order, rule or regulation given, prescribed, made or issued under an enactment repealed by this Act shall continue in force, and may be amended, repealed, revoked or varied;

- (b) a document referring to an enactment or a provision of an enactment repealed by this Act shall be construed as a reference to this Act or to the corresponding provision of this Act.

## Transitional provisions

### *Examples*

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### SCHEDULE

#### *Existing offices*

(1) Subject to this article, and except as otherwise provided in this Constitution, a person who immediately before the coming into force of this Constitution held or was acting in an office of emolument under the Government shall, as far as it is consistent with this Constitution, be deemed to have been appointed as from the coming into force of this Constitution to hold, or to act in, that office or the equivalent office under this Constitution.

(2) A person who before the coming into force of this Constitution would have been required under law to vacate office at the expiration of a period of service or on the attainment of an age specified under the applicable law shall, notwithstanding clause (1), vacate office at the expiration of that period or on the attainment of that age.

(3) This clause shall be without prejudice to any powers conferred by or under this Constitution, or any other law not being inconsistent with this Constitution, upon a person or an authority to make provision for the abolition of an office, for the removal from office on stated and reasonable grounds of persons holding or acting in that office and from requiring persons to retire from office.

(4) In determining, for the purposes of any law relating to retiring benefits or otherwise to length of service, the length of service of a public officer to whom clauses (1) and (2) of this article apply, service as a public officer under the Government which terminates immediately before the coming into force of this Constitution shall be deemed to be continuous with service as a public officer which begins immediately at the commencement of this Constitution.

(5) A person to whom clauses (1), (2), (3) and (4) apply shall, immediately on the coming into force of this Constitution or at a convenient time thereafter, take and subscribe the oath required for that office.

#### *Pending matters*

Where a matter or thing has been commenced before the coming into force of this Constitution by a person or an authority having power in that behalf under the existing law, that matter or thing may be carried on and completed by that person or authority on or after the commencement and it shall not be necessary for that person or authority to commence that matter or thing *de novo*.



*Succession to property*

(1) Subject to article ... of this Constitution, all property and all assets which immediately before the coming into force of this Constitution were vested in an authority or a person for the purposes of, or in right of, the Republic or in the Government shall, on the coming into force of this Constitution, without further assurance than this article, vest in the Commission established under article ... of this Constitution in trust for the people of Draftaria.

(2) Any property which was, immediately before the coming into force of this Constitution, liable to escheat or to be forfeited to a person or an authority in right of the Republic shall, on that commencement, be liable to escheat or to be forfeited to the Republic.

(3) Where immediately before the coming into force of this Constitution a person or an authority held property or assets in trust for a person or an authority for the purposes of, or in right of, the Republic, that person or authority shall on the coming into force of this Constitution hold that property or those assets on the like trust for the purposes of, or in right of, the Republic.

*Devolution of other rights*

Subject to this Schedule,

- (a) where, under an existing law, a function, power, prerogative, privilege or right is vested in a person or in an authority, that function, power, prerogative, privilege or right shall vest, on the coming into force of this Constitution, in the appropriate person or authority under this Constitution, and accordingly that person or authority shall have power to do all things necessary for the exercise or performance thereof;
- (b) a duty, function, obligation, power, privilege or right vested in the Government by an existing law shall continue to be so vested.

*Legal proceedings*

Subject to this Schedule, legal proceedings pending immediately before the coming into force of this Constitution before a court of competent jurisdiction, including proceedings against or by the Government, shall not be affected by the coming into force of this Constitution, and may be continued.

2 (1) Where proceedings for an offence against ... were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, tried and determined in accordance with this Act, and the forfeiture, penalty or punishment in respect of that offence shall, subject to subsection (2), be imposed as if this Act had not come into force.

(2) Where under this Act the forfeiture, penalty or punishment is mitigated or reduced in relation to the forfeiture, penalty or punishment that would have been applicable had this Act not come into force, the provisions of this Act relating to forfeiture, penalty or punishment shall apply.

(3) Where proceedings for an offence against ... are commenced after the coming into force of this Act,

- (a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;
  - (b) where the offence was committed before the coming into force of this Act, the forfeiture, penalty, or punishment to be imposed upon conviction for that offence shall be the forfeiture, penalty or punishment authorised or required to be imposed by this Act or by the law that would have applied had not this Act come into force, but the lesser of the two forfeitures, penalties or punishments shall be awarded;
  - (c) where the offence is committed after the coming into force of this Act, the forfeiture, penalty or punishment to be imposed upon conviction for that offence shall be the forfeiture, penalty or punishment authorised or required to be imposed.
- 3 (1) A direction, notice, order, permit or other document that was granted, issued or made under an enactment relating to ... before the coming into force of this Act and that was valid immediately before the coming into force of this Act shall be given effect as if granted, issued or made under this Act.
- (2) Unless the Minister directs that they be completed and continued under the enactment relating to ... that was in force before the coming into force of this Act, all appeals, examinations, inquiries, investigations or other matters relating to deportation, entry or landing of any person that were commenced pursuant to that enactment and are not completed at the time of the coming into force of this Act shall be continued and completed pursuant to the provisions of this Act, and where necessary with such adaptations and modifications as the Chief Justice may in writing determine.
- 4 (1) The trustees appointed under section ... of this Act shall be the successors in office to the Board established under the repealed Act, and all acts and things done and matters and proceedings commenced by that Board shall be continued by the trustees under this Act.
- (2) The duties, privileges, powers and rights of the Board under the repealed Act or any other enactment shall vest in, and may be discharged or exercised by, the trustees.
- (3) In any document, enactment or instrument a reference to the Board under the repealed Act shall be read and construed as a reference to the trustees under this Act.
- 5 (1) The Governor General may, by statutory instrument, make such consequential, incidental or supplemental provisions as may be expedient or necessary for the purpose of giving full effect to the transfer, by or under this Act, of a duty or a power.
- (2) A duty or a power transferred under this Act includes the transfer of any liabilities, property or rights incurred, held or enjoyed by an authority or a person in connection with the duty or power transferred.
- (3) The provisions of the Interpretation Act ... relating to implied powers shall apply to the authority or person to which or to whom a transfer of a duty or a power is made under this Act.

- 6 Where a difficulty arises with respect to a transitional provision in this Schedule, the Governor General may, by statutory instrument, make such adaptations or modifications as shall
  - (a) prevent an anomaly that has arisen; or
  - (b) satisfactorily deal with the difficulty that has arisen.
- 7 Upon and by virtue of the appointment of [trustees] under section ... of this Act, the benefit of all bonds, contracts, deeds, securities or things in action vested in the [Board] shall vest in, and enure for the benefit of, the [trustees] as if the [trustees] had been mentioned, instead of the [Board], in all the bonds, contracts, deeds, securities or things in action.
- 8 In the construction or for the purposes of any enactment, award, contract, decree, deed, judgment or other document enacted, issued or made before the transfer to the [trustees] of the duties, obligations, privileges and powers of the [Board] by or under this Act, the [trustees] shall be substituted for the [Board].
- 9 Where anything has been commenced before the appointment of the [trustees] under this Act, that thing may be carried on and completed by or under the authority of the [trustees].
- 10 (1) Legal proceedings commenced by or against the [Board] prior to its dissolution may be continued by or against the [trustees] as successors in office to the [Board].  
(2) The costs incurred by or adjudged against the [trustees] shall be chargeable to the funds of the [Board] as if the proceedings had been determined before the appointment of the [trustees].
- 11 On the appointed day the functions of the [Board] shall, subject to this Act, be transferred to the [trustees] and the [Board] shall cease to exist as from that day.
- 12 (1) An officer or other employee of the [Board], in this section referred to as a 'transferred officer', who at the time of the coming into force of this Act is in full time employment with the [Board], shall be transferred to and become an officer or employee of the [Authority].
  - (2) A transferred officer
    - (a) shall hold office by the same tenure and other terms and conditions of service; and
    - (b) shall be paid emoluments not less than those that were payable to that officer immediately before the transfer,  
as if this Act had not been enacted.
  - (3) A transferred officer shall, for all purposes, be considered as an officer of the [Authority] and thus subject to the control and direction of the [Authority].
  - (4) The [Authority] may abolish the office of a transferred officer subject to the payment to that officer of prompt and adequate compensation.

- (5) A transferred officer whose services are dispensed with or whose emoluments are reduced not by reason of a stated misconduct on the part of that officer shall be paid prompt and adequate compensation by the [Authority].
- 13 (1) The Supreme Court in existence immediately before the coming into force of this Constitution shall be the Supreme Court for the purposes of this Constitution, and the Chief Justice and the other Justices of the Supreme Court holding office immediately before the coming into force of this Constitution shall, as from that commencement, continue to hold the like offices as if they had been appointed in accordance with article ... of this Constitution.
- (2) Until better provision is made under and in accordance with article ... of this Constitution, the salaries and allowances and other conditions of service of the Justices of the Supreme Court shall be the salaries and allowances and other conditions of service to which the holders of those offices were entitled to immediately before the coming into force of this Constitution.
- 14 (1) A law which is in force in Draftaria immediately before the appointed day shall, subject to adaptation, amendment, modification or repeal by the authority having power to adapt, amend, modify or repeal that law, continue in force on and after the appointed day.
- (2) All laws which have been made before the appointed day but have not previously been brought into operation may, subject to adaptation, amendment, modification or repeal by the authority having power to adapt, amend, modify or repeal, be brought into operation in accordance with any provision in that behalf, on or after the appointed day.
- (3) A law referred to in clause (2) shall, subject to this article, be construed, in relation to any period beginning on or after the appointed day, with such adaptations and modifications as may be necessary to bring it into conformity with this Constitution.
- (4) Without prejudice to the generality of clauses (1), (2) and (3), in any law which continues in force on or after the appointed day or which is brought into operation on or after the appointed day, unless the context otherwise requires,
- (a) references to [a person or an authority] shall, in relation to any period beginning on or after the appointed day, be construed as references to [the appropriate person or authority under this Constitution]

*[Subparagraphs (b), (c), (d), etc would provide for other appropriate references which need to be provided for separately. There would be a whole lot of them. Paragraph (a) provides the formula for all those other references.]*



## SUBSIDIARY LEGISLATION

### INTRODUCTION

The delegation by Parliament of legislative power to subordinate authorities is now a well established part of the legislative functions of Parliament. The Committee on Ministers' Powers (1932)<sup>1</sup> considered the matter in the wake of Lord Hewart's *The New Despotism* and confirmed, in effect, the statement in *R v Burch*<sup>2</sup> that:

Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence is no uncommon thing and in many circumstances it may be highly convenient.

In the language of Erskine May:<sup>3</sup>

It has been recognised that the greater the number of details of an essentially subsidiary or procedural character which can be withdrawn from the floors of both Houses, the more time will be available for the discussion of major matters of public concern. Consequently, legislative power is often conferred upon the executive by statute, and various arrangements are made for parliamentary scrutiny of its exercise.

The distinction between an Act of Parliament and a piece of delegated legislation is that the delegated legislation – for example, a set of Regulations – is the child of an Act of Parliament. An Act would contain a provision conferring power on a person or on an authority subordinate to Parliament to make Regulations. The Regulations when made would have the force of law. But the Regulations must satisfy the conditions precedent to their validity; otherwise, the courts will not give effect to them. Thus the validity of the Regulations can be canvassed.

It all depends upon the *vires*, that is to say, whether the person or authority upon whom the power is conferred has exercised the delegated power within the bounds of the enabling enactment. If the limits of the enabling enactment are exceeded or otherwise wrongfully exercised, that exercise can be

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1 See Report (1932) Cmd 4060.

2 (1878) 3 App Cas 889 at p 906.

3 *Parliamentary Practice*, 20th edn at p 609.

challenged.<sup>4</sup> In other words, as Heuston put it, '... the power exercised must be the power conferred'.<sup>5</sup>

There are five types of delegated legislation:

- Bye-laws;
- Orders;
- Regulations;
- Rules; and
- Statutory instruments.

Bye-laws are usually made by local government authorities for the purposes of local government, or are rules made by an association or a statutory corporation such as a public utility or other public body for the regulation of its affairs or proceedings.

Orders are usually executive in character. They would take the form of a *direction* or a *command*. The enabling enactment would grant a power to *authorise* the doing of an act, *consent* to certain matters, *declare* certain limits or *direct* the submission of certain reports. An Order is made up of *articles* which correspond to the *sections* of an Act.

Regulations are, like Acts of Parliament, 'always speaking'. They are legislative in character and form part of the parent Act. A set of Regulations corresponds to an Act of Parliament. The Regulations are construed as an Act of Parliament is construed. Indeed, Regulations made under an Act form an integral part of the Act, and if the Act is repealed, unless they are saved under the repealing Act, the Regulations made under the repealed Act are automatically repealed with the repeal of the parent Act. A *set* of Regulations is divided into a *series* of regulations, a *regulation* corresponding to a *section* of an Act. A regulation could be made up of subregulations, a subregulation could be made up of paragraphs, a paragraph could be divided into sub-paragraphs. To seek to subdivide sub-paragraphs into sub-sub-paragraphs is to demonstrate the insensitivity of Parliamentary Counsel towards those who have to labour to understand the legislation.

Rules: it is customary to reserve the term 'Rules' for instruments made for the practice and procedure of the courts. Thus we refer to the Rules of the Supreme Court, which are divided into 'orders', an order being made up of rules. A rule could be divided into sub-rules, a sub-rule into paragraphs and a paragraph into sub-paragraphs. Rules form part of the adjectival law: that is, they are procedural in character.

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4 *Commissioners of Customs & Excise v Cure and Deeley Ltd* [1962] 1 QB 340. See also *Institute of Patent Agents v Lockwood* [1894] AC 347; *R v Minister of Health ex p Yaffe* [1931] AC 494; *Hoffman la Roche (F) & Co AG v Secretary of State for Trade & Industry* [1975] AC 295; *Raymond v Honey* [1982] 1 All ER 756; [1983] AC 1.

5 *Essays in Constitutional Law*, 2nd edn at p 171.

Statutory instruments are now governed in the United Kingdom by the Statutory Instruments Act 1946.<sup>6</sup> The Act defines a statutory instrument in these terms:

- 1 (1) Where by this Act or any Act passed after the commencement of this Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown then, if the power is expressed,
  - (a) in the case of a power conferred on His Majesty, to be exercisable by Order in Council;
  - (b) in the case of a power conferred on a Minister of the Crown, to be exercisable by statutory instrument,

any document by which that power is exercised shall be known as a “statutory instrument” and the provisions of this Act shall apply accordingly.

(2) Where by any Act passed before the commencement of this Act power to make statutory rules within the meaning of the Rules Publication Act 1893 was conferred on any rule-making authority within the meaning of that Act, any document by which that power is exercised after the commencement of this Act shall, save as is otherwise provided by regulations made under this Act, be known as a “statutory instrument” and the provisions of this Act shall apply accordingly.

The Interpretation Act of Barbados also defines a statutory instrument simply as ‘an instrument made under an Act’. An ‘instrument’ is defined as including ‘a proclamation, order or warrant (other than an order made or a warrant issued by a court), notice, scheme, rule, regulation or bye-law’.

In some Commonwealth jurisdictions, statutory instruments are of two kinds: ‘Legislative Instruments’ and ‘Executive Instruments’. Under Legislative Instruments would fall Bye-laws, Regulations and Rules. Orders would fall under Executive Instruments. As the name implies, Executive Instruments are intended to be directive, that is, executive – and not legislative – in character.

Other instruments which fall under the generic term ‘statutory instruments’ are a declaration, a direction, notice, proclamation, scheme and warrant.<sup>7</sup>

In drafting delegated legislation, it is customary to set out the enabling power.

### *Examples*

- 1 IN EXERCISE of the powers conferred upon the Draftaria City Council by [section ... of the Local Government Act ...], these Bye-laws are hereby made, with the prior approval of the Minister, this [fourth day of June, 1956].

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6 9 & 10 Geo 6 c 36.

7 Ghana has another class of statutory instruments referred to as ‘Constitutional Instruments’. They are made under powers derived directly from the Constitution.



- 2 IN EXERCISE of the powers conferred upon the Governor General by [section ... of the Forestry Commission Act ...], this Order is hereby made this [tenth day of August, 1996].
- 3 IN EXERCISE of the powers conferred upon the Minister by [section ... of the Education Act ...], these Regulations are hereby made this [twenty-fourth day of February, 1996].
- 4 IN EXERCISE of the powers conferred by [section ... of the Courts Act ...], the Chief Justice, acting in accordance with the recommendations of the Rules Committee, hereby makes these Rules this [nineteenth day of October, 1989].

## Declarations

The expression, 'It is hereby declared that', is often used for the purposes of emphasis. It should be noted that a provision of an Act of Parliament or any other enactment is, in essence, a declaration. Thus the expression is redundant. Its use is thus not recommended unless it used to lay emphasis:

It is hereby declared that an institution which is exempted from the payment of tax by virtue of section ... is not thereby exempted from the payment of any other tax to which it may otherwise be subject.

The provision could well have been drafted as a subsection of a section:

- (5) This section does not exempt an institution to which it applies from the payment of any other tax to which the institution is subject.

Section 1 of the Northern Ireland (Miscellaneous Provisions) Act 1928 provided as follows:

It is hereby declared that the reservation in section forty-seven of the Government of Ireland Act 1920 ... of matters relating to the Supreme Court of Northern Ireland shall not preclude the Parliament of Northern Ireland from conferring on the rule-making authority power to make rules regulating procedure and distribution of business in the Supreme Court in regard to matters within the jurisdiction of that Parliament, or from conferring on the Supreme Court jurisdiction to hear and determine appeals from, and question of law on cases stated for its opinion by, any inferior court or other tribunal, and power to direct any such court or tribunal to state such a case.

It is quite obvious that if the words 'It is hereby declared that' are deleted, the substance and sentence structure of the provision are not in any way affected.

For the most part, declarations<sup>8</sup> are used in affidavits, oaths and offences. In an Act of Parliament, a provision could be made that:

- 1 Declarations under this Act shall be made before a magistrate, a commissioner of oaths or a notary public.

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8 Apart from declarations which operate in the sphere of international law.

- 2 A person shall not, for the purposes of this Act, knowingly receive a declaration made by a person who has not attained the age of twenty-one years.
- 3 A declaration made in lieu of an oath by a person allowed by law to declare, instead of swearing, shall have the like effect for all purposes as an oath.

The declaration referred to in example 3 could take the form:

I ... .. solemnly declare that I will at all times uphold the Constitution and will well and truly serve in the Office of ... and to the best of my ability and judgment freely give my counsel to ... when required so to do.

## Directives

It is well to keep in mind the distinction between directory provisions and mandatory provisions on an Act of Parliament. Mandatory provisions are intended to be carried into effect. They are commands which have to be obeyed. Usually, there is a sanction attached to a mandatory provision to ensure its observance. It would be obeyed exactly as demanded. A whole Act would fail in its operation if a mandatory provision is not obeyed as demanded by the Act. Accordingly, there should be no doubts implicit in a mandatory provision.

On the other hand, a directory provision may be construed liberally. It would be enough if it is obeyed or fulfilled substantially.<sup>9</sup> For this purpose there should be no doubt as to whether the provision is mandatory or directory:

- 1 A transfer under this Act shall be in the form set out in the Schedule and accordingly a transfer in any other form is void. [*Mandatory.*]
- 2 A notice required to be served under this Act is served
  - (a) by publication in four consecutive issues of a newspaper circulating within the magisterial district in which the summons was issued;
  - (b) by affixing the notice on a conspicuous part or place of the subject matter of the dispute;
  - (c) in any other manner ordered by the Court. [*Directory.*]

Example 2 could have used the mandatory 'shall'. Even so, the provision would still be directory. The essence of the provision is that notice is served. Thus three publications instead of four would not defeat the purpose of the Act once it can be shown that the other party did see the publication. Nor would the Act be defeated if the content of the notice is not exactly as ordered by the court, but contains substantially the terms of the order.

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9 *Barker v Palmer* LR 8 QBD 9.

## Notice

An Act of Parliament occasionally provides that a person or an authority should give notice. There is a constitutional requirement in a number of written constitutions that an Act of Parliament shall not come into force unless it is published in the *Gazette*. That is a constitutional requirement that notice of the Act should be given for the benefit of those to whom the Act is to apply. If that notice is not given, there is a constitutional defect. Indeed a publication in the *Gazette*, whether specifically stated as a notice or not, is a *notice to the whole world*. A notice would normally take the form:

- 1 It is hereby notified for general information that ...
- 2 Notice is hereby given that ...

## Proclamations

A proclamation, as the name implies, was originally part of the system whereby the town crier informed the public on a matter of public nature and importance. It was a notice of a kind, requiring, for example, the heir or devisee of a deceased copyholder to appear, pay a fine and then be admitted to the estate. The proclamation was repeated three times. If the heir or the devisee did not appear, the lord of the manor might seize the lands. Even today, on the accession of a sovereign, the proclamation is read three times: at St James's Palace, at the Temple Bar near Chancery Lane, and on the steps of the Stock Exchange in the City of London.

Under the common law, a declaration by a bailiff under the authority of a court is a proclamation of what is about to be done. In equity, a proclamation could be used to summon a defendant who has failed to appear, to appear and answer the plaintiff's bill. There are other proclamations:

- of a fine, made after the engrossment of a fine of lands. It was read openly in court 16 times in each term;
- of rebellion, made by the sheriff requiring the attendance of a person who has disobeyed a subpoena or attachment in chancery;
- of exigents, issue by writ upon the award of an exigent, requiring the sheriff of a county to proclaim the subject matter three times each in a well-known place so that the subject matter is brought to the attention of the person concerned;
- of recusants, a proclamation by which recusants were formerly convicted when they did not appear at the assizes.

In our day and age, a proclamation is a publication, a formal declaration, a public announcement giving notice of a governmental action taken, about to be taken or required to be taken. Thus the document in which the announcement is printed has come to be known as a 'proclamation'.

*Examples*

- 1 In exercise of the powers conferred upon the Governor General by article ... of the Constitution, and acting in accordance with the advice of the Privy Council, I, John of Gaunt, Knight Grand Cross of the Most Excellent Order of Draftaria, Commander of the Armed Forces of the Republic of Draftaria, do hereby declare and proclaim that a state of public emergency exists in Draftaria [in the Parish of Saint Baptist] [in the State of Eagle].

Given under the hand of the Governor General at Government House this 28th day of February, in the year of Our Lord One Thousand Nine Hundred and Ninety-six.

- 2 Whereas .....

And whereas .....

Now therefore, I, John of Gaunt, President and Commander in Chief in and over Draftaria, in exercise of the powers vested in the President by article ... of the Constitution, do hereby proclaim and order that,

- 1 This Proclamation may be cited as the Forestry Commission Proclamation.

- 2 .....

.....

Given under the hand and Public Seal of Draftaria this 19th day of May 1996.

Normally, the authority vested with the power to issue the proclamation, such as a Governor General, would sign the proclamation at the top left-hand corner or as near as possible to the public seal. In some cases, where, for instance the proclamation is made on the advice of Council, the proclamation would be signed at the bottom by the Clerk of the Council.

It is of interest to note that Proclamations are *cancelled*, Regulations and Rules are *revoked* and Acts of Parliament are *repealed*.

An Interpretation Act would normally provide that where an enactment is expressed to come into force on a particular day to be determined by the appropriate authority, judicial notice shall be taken of the issue of the proclamation and the day determined by the proclamation without any special pleading.

## DELEGATION OF GENERAL POWERS

As has so far been demonstrated, an Act of Parliament may not be complete in itself. Further legislative provisions would be required in order to make the law work. Parliament would thus confer power on a person or an authority to clothe, as it were, the dry bones of the Act with flesh by means the issuance of, say, Regulations. The enabling enactment takes many forms.

*Examples*

- 1 The Governor General may, by statutory instrument, make Regulations [for carrying out the purposes of this Act] [for carrying the purposes and provisions of this Act into effect].
- 2 The Minister may, by legislative instrument, make Regulations [to give effect to the provisions of this Act] [to provide for the effective carrying out of the provisions of this Act] [to provide for the better implementation of this Act].
- 3 The Governor General may, by statutory instrument, make such Regulations as are necessary for giving effect to the provisions of this Act.

The Regulations made under the above examples are not intended to alter substantive rights. Regulations should not seek to do that. Substantive rights must be dealt with in the parent Act. One should consider whether a subjective test of necessity is required in framing the enabling enactment – and provide for a wide discretionary power. Such a wide discretionary power should not, in any case, be inconsistent with or contrary to the tenure and *spirit* of the parent Act.

The courts would not normally question the exercise of the power of the person or authority where that person or authority is the sole judge of necessity – unless bad faith is established. Thus a power to ‘... make such Regulations as may be necessary for carrying out the provisions of this Act’ is essentially different from a power to ‘... make such Regulations as the Minister thinks necessary for carrying out the provisions of this Act’.

The first carries it with all the implications of the objective test. The second draft is subjective in character. The minister is the sole judge of the necessity. Yet, in reality, the whole tenure of the legislation would be taken into account, and the *spirit* of the legislation, having regard to all the circumstances, may rule the day. In this area, *Attorney General for Canada v Hallet and Carey Ltd*<sup>10</sup> and *Liversidge v Anderson*<sup>11</sup> and its aftermath afford excellent instruction.

## DELEGATION OF PARTICULAR PURPOSES

*Examples*

- 1 The President may, by legislative instrument, make Regulations for the purposes of preventing the breaking out of the epidemic of cholera.
- 2 The Minister may, by legislative instrument, make such Regulations as are necessary for the proper management of the foreign exchange reserves and for the control of the commercial banks.

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10 [1952] AC 445.

11 [1942] AC 206.

- 3 The Minister may, by legislative instrument, make Regulations for the purpose of regulating the export and import of sugar and for regulating generally the sugar industry.

Expressions such as 'for the control of', 'necessary for the proper management' and 'purposes', confer a wider discretionary power. When Regulations are made to give effect to the provisions of an Act, Parliament is considered to have given effect to the *legislative purposes* of the provisions in the parent Act. The parent Act contains, or should contain, the essential principles of the law as well as the requirements for their implementation. What the Regulations are to establish in those circumstances are the details, especially administrative details, needed for the enforcement or operation of the Act.

Where, however, as in the above examples, power is given to deal with particular purposes, the authority on which or the person on whom the power is conferred has a free hand to deal with the details, as well as the main principles. Questions of *ultra vires* cannot be raised once the Regulations are within the stated purposes.

### DELEGATION BY WAY OF SUBJECT MATTER

#### *Examples*

- 1 The Minister may, by legislative instrument, make Regulations with respect to the production, distribution and marketing of petrol and petroleum products.
- 2 The Governor General may, by statutory instrument, make Regulations with respect to the production, export and import of sugar.
- 3 The Minister may, by legislative instrument, make Regulations regarding the production, transportation and marketing of perishable agricultural or dairy products.

### DELEGATION OF PARTICULAR POWERS

#### *Examples*

- 1 The Minister may, by legislative instrument, make Regulations prohibiting or restricting the export of bananas or sugar.
- 2 The Minister may, by legislative instrument, make Regulations for the purpose of prohibiting or restricting the export of bananas or sugar.

In drafting the delegation of particular powers, care must be taken not to provide for too restrictive a power. In an enabling enactment in the form of example 1 above, there is no statement of the objectives to be achieved by the Regulations. What is provided for is a power limited – very, very limited – to

*prohibiting* or *restricting* the export of bananas or sugar. The intention here is to *regulate* the export of bananas or sugar. It would therefore be better to provide for the power as dealt with in example 2.

Put that way, the objective to be achieved is stated. Thus Regulations having for their purpose the prohibition or restriction of bananas or sugar exports would not be *ultra vires*. Ancillary matters could be catered for; not so under example 1. To provide for particular powers it is customary to use any of the words, 'determining', 'establishing', 'fixing', 'prescribing', 'prohibiting' or 'restricting'.

## DELEGATION, OMNIBUS PROVISIONS

### *Examples*

- 1 (1) The Governor General may, by statutory instrument, make Regulations for carrying into effect the provisions of this Act.  
(2) Without prejudice to the generality of subsection (1), Regulations may be made providing for
  - (a) .....
  - (b) .....
  - (c) .....
- 2 The Governor General may, by statutory instrument, make Regulations establishing the grades, with appropriate grade names, of class or classes of bananas which may be exported, and Regulations so made may
  - (a) determine .....
  - (b) establish .....
  - (c) fix .....
  - (d) prescribe .....
  - (e) prohibit .....
  - (f) restrict .....
- 3 The Minister may, by legislative instrument, make Regulations
  - (a) prescribing .....
  - (b) providing .....
  - (c) generally for carrying into effect any of the provisions of this Act.

## DELEGATION, ENUMERATION IN TABULAR FORM

Enumeration of delegated powers may be achieved by setting out only a set of powers, a set of purposes, a set of subjects or having a mixture of powers, purposes and subjects. The introductory words of the enabling enactment

should make this clear, and it is important to ensure that the rules relating to the paragraphing of a legislative sentence are strictly observed.

*Examples*

- 1 The Governor General may, by statutory instrument, make Regulations for the purpose of
  - (a) .....
  - (b) .....
  - (c) .....
- 2 The Governor General may, by statutory instrument, make Regulations in respect of
  - (a) .....
  - (b) .....
  - (c) .....
- 3 The Minister may, by legislative instrument, make Regulations prescribing
  - (a) .....
  - (b) .....
  - (c) .....
- 4 The Minister may, by legislative instrument, make Regulations
  - (a) determining .....
  - (b) for .....
  - (c) for the purpose of .....
  - (d) in respect of .....
  - (e) prescribing .....
- 5 The Minister may, by legislative instrument, make Regulations for
  - (a) the conservation of and the protection of the indigenous fauna and flora in Draftaria;
  - (b) determining the terms and conditions of licences issued by the Minister; and
  - (c) the grant of permits required under this Act.

**Mixed provisions**

*Examples*

- 1 The Authority may, with the approval of the Minister, by statutory instrument, make Regulations
  - (a) defining the functions and scope of the employment service and the principles to be applied in discharging the duties of the Authority;
  - (b) for obtaining information in respect of the employment of persons in both the private and public sectors;
  - (c) for regulating, prohibiting and licensing the operations of employment agencies.



- 2 The Minister may, by legislative instrument, make Regulations
  - (a) for authorising, in a manner determined by the Minister,
    - (i) persons, other than citizens of Draftaria, who may operate off-shore financial transactions;
    - (ii) in respect of persons who may engage in commercial activities, other than off-shore financial transactions;
  - (b) in respect of the issue, suspension or cancellation of licences required under this Act, and the fees payable for the issue of those licences;
  - (c) for the appointment of persons to whom certain of the powers of the Authority as specified in the Regulations may be delegated and the conditions of the delegation;
  - (d) designating the local government councils within whose areas of authority certain activities as specified in the Regulations may be carried on; and
  - (e) generally for the carrying out of the provisions of this Act.
- 3 The Governor General may, by statutory instrument, make Regulations to give effect to the provisions of this Act, and without restricting the generality of the power hereby conferred, make Regulations
  - (a) for the conservation and protection of the forests of Draftaria;
  - (b) limiting, prohibiting or otherwise regulating the exploitation of the natural resources of Draftaria;
  - (c) in respect of the operations of timber companies;
  - (d) for the seizure, forfeiture and sale of the properties of companies whose activities in relation to the timber industry are in contravention of a provision of this Act;
  - (e) prescribing the powers of Forest Rangers and of other persons employed in the administration of this Act;
  - (f) prescribing the penalties that may be imposed on summary conviction or on indictment for the contravention of a provision of these Regulations.

## **Powers**

### *Examples*

- 1 The Minister may, by legislative instrument, make Regulations for
  - (a) determining the maximum loan that may be made in respect of a project under this Act;
  - (b) determining the minimum period of amortisation of an insured loan;
  - (c) determining the maximum charges that may be made by an approved lender or holder of an insured loan in respect of the making or the administration thereof;
  - (d) authorising the taking of a chattel mortgage, an assignment of rents or their security as a further security for a loan made under this Act;

- (e) prescribing the circumstances in which a security authorised by virtue of Regulations made under paragraph (d) shall be taken;
  - (f) prescribing the form of insurance policy that may be issued in respect of an insured loan and of the mortgage that shall be taken in respect of that policy; and
  - (g) providing generally for any matters that the Minister considers are necessary or desirable to give effect to the provisions of this Act.
- 2 The Authority may, with the prior approval of the Minister, make Regulations
- (a) requiring the owners of commercial vehicles to furnish the Authority with information regarding any matter relating to the operation of their commercial vehicles and other related operations;
  - (b) establishing the classes of commercial vehicles to which section ... shall apply in respect of exemptions;
  - (c) prescribing the forms for the application for a licence, the information that should form part of the application for the licence, the period of the validity of a licence and the fees to be paid for the issue of licences to operate commercial vehicles;
  - (d) prescribing the maximum number of hours, the terms of service, and other working conditions for drivers of commercial vehicles;
  - (e) prescribing the records to be kept in respect of the operations of commercial vehicles; and
  - (f) providing for the effective carrying out of the provisions of this Act.

## Purposes

### *Examples*

- 1 The Minister may, by legislative instrument, make Regulations for
- (a) the conservation of the environment;
  - (b) the creation of forest reserves and the preservation of the fauna and flora in the forest reserves;
  - (c) the creation of public parks, the protection of the wild animals in public parks and the maintenance of the ecological balance of the public parks;
  - (d) the management and regulation of fishing in a public park;
  - (e) the prevention and the manner of extinguishing of fires in a public park and the control of residential areas in the vicinity of a public park;
  - (f) the control of, and the issue of licences for, commercial activities in a public park;
  - (g) the provision and management of facilities for the benefit of persons visiting a public park; and
  - (h) generally for the effective control and management of public parks.

## Subjects

### *Examples*

- 1 (1) The Governor General may, by statutory instrument, make Regulations for giving effect to the purposes and provisions of this Act.  
(2) Without prejudice to the generality of subsection (1), Regulations made thereunder may provide for
  - (a) the information that may be furnished by applicants for licences and the procedure for the application for, and the issue of, licences for the purposes of this Act;
  - (b) the period of validity of licences and the conditions to which they are subject;
  - (c) the reports and other information to be supplied by persons to whom licences have been issued and any other matter associated with their use.
- 2 The Minister may, by legislative instrument, make Regulations for the better carrying out of the provisions of the Act, and without restricting the generality of the power here conferred, may make Regulations in respect of
  - (a) the duties of inspectors and other staff;
  - (b) the methods of inspecting, verifying and stamping weights, measures, weighing machines, measuring machines and local standards and of certifying that verification;
  - (c) the amount of error that may be tolerated in weights, measures, weighing machines and measuring machines;
  - (d) the replacement and use of standards of weights and measures;
  - (e) the shapes, dimensions and proportions to be required in weights, measures, weighing machines and the materials of which they are made;
  - (f) the marking of denominations on weights, measures, weighing machines and measuring machines;
  - (g) the weights, measures, weighing machines or measuring machines that shall or shall not be legal for use in trade and how they shall be marked to so indicate.

## SPECIFIC REGULATIONS

An enabling enactment may provide for the amendment of an Act of Parliament by virtue of the delegated power. This is not normally advisable. The Act, when so amended, becomes wholly incomplete, for the amendments would primarily be in subsidiary legislation and not in the statute book as such. An amending Act is preferable. However, there would be no objection

to an enabling enactment providing for the amendment of a Schedule to an Act of Parliament by a delegated power – especially in customs legislation where each budget requires an amendment to duties, excise and imposts. Such schedules are usually reprinted yearly for the benefit of those concerned.

## Amendment of Act

### Examples

- 1 (1) The Minister may, by legislative instrument, amend the Schedule.  
(2) An instrument made under subsection (1) shall be laid before Parliament within seven days after it has been made, and shall not come into force, unless it is affirmed by a resolution supported by the votes of not less than one-half of all the members of Parliament.  
(3) Where Parliament is not sitting the instrument shall be laid before Parliament within seven days of its first next sitting, and shall not come into force unless it is affirmed by the votes specified in subsection (2).
- 2 (1) The Minister may, by legislative instrument, amend the Schedules.  
(2) An instrument made under subsection (1)
  - (a) shall be laid before Parliament within seven days of its being made;
  - (b) shall come into force on the publication of the instrument in the *Gazette* after being laid before Parliament; and
  - (c) shall cease to have effect on its being annulled by a resolution supported by the votes of not less than one-half of all the members of Parliament.  
(3) Where Parliament is not sitting the instrument shall be laid before Parliament within seven days of the next first sitting of Parliament, and the provisions of paragraphs (b) and (c) of subsection (2) shall apply.
- 3 (1) The Minister may, by legislative instrument, exempt [a person or a class of persons] from the operation of this Act.  
(2) An instrument made under subsection (1) shall be published in the *Gazette*, and is subject to [affirmative resolution] [negative resolution] of Parliament.

## Application

### Example

- 1 The Minister may, by legislative instrument, make Regulations for anything that may be prescribed and in particular may make Regulations
  - (a) in respect of the time, manner and form of making an application, the information required to be submitted in connection with the

application, and the procedure to be followed in the making and consideration of the application;

- (b) prescribing the information and the undertakings to be furnished by applicants for permits, certificates or other authorisations under this Act, the procedure to be followed in applying for and the issuing or granting of permits, certificates or other authorisations, the duration of a permit, certificate or other authorisation, and the terms and conditions under which any other document required for the purposes of this Act may be issued or granted under this Act.

## **Books and records**

### *Example*

- 1 The Minister may, by legislative instrument, make Regulations
  - (a) prescribing the books and records to be kept for the purposes of this Act;
  - (b) prescribing the returns to be made by persons making application for payment under this Act, or to whom payments have been made; and
  - (c) in respect of the records to be kept by persons making application under this Act and the reports to be made by those persons to the Minister.

## **Conservation**

### *Examples*

- 1 The Governor General may, by statutory instrument, make Regulations limiting, prohibiting or otherwise regulating the exploitation of the indigenous fauna and flora of Draftaria.
- 2 The Minister may, by legislative instrument, make Regulations for the purpose of limiting the number of migratory birds that may be taken by a person at a specified time during the migratory season of those birds when the taking of those birds is permitted by the Minister, and providing the manner in which those birds may then be taken and the methods that may be used for the taking.

## STATUTORY CORPORATIONS

### GENERAL

We all owe a duty to obey an Act of Parliament. An Act is almost invariably addressed to a person or a group of persons. A person to whom an Act is addressed is under a legal duty to obey the Act. That person may be a private individual or a corporation or other public body. Sanctions are often imposed for disobedience to the law's commands. There are two types of duty involved here: an absolute duty and an activated duty. An absolute duty arises where a person is bound to obey the Act irrespective of the will of that person. A provision of an Act which states that, 'A person whose income is not less than one hundred and fifty thousand dollars shall pay income tax at the rates specified in the Schedule' imposes an absolute duty. A person to whom the provision applies is bound to pay the relevant tax irrespective of the views of that person on income tax. As Lord Parmoor said in *Attorney General v De Keyser's Hotel*,<sup>1</sup> '... where a matter [is] directly regulated by statute there is a necessary implication that the statutory regulation must be obeyed'.

On the other hand an Act may provide that, 'An appellant who lodges an appeal shall serve, within seven days of the lodging of the appeal, a copy of the notice of appeal and of the grounds of appeal on the respondent'. In such a case there is primarily no obligation imposed on any body. The operation of the law will depend upon its activation by a person who lodges an appeal. Once a person lodges an appeal, then the obligation arises to obey the law and serve the respondent with a copy of the notice of appeal and a copy of the grounds of appeal. In other words the appellant activates the operation of the law by lodging an appeal.

A government may find it necessary to establish a board or a corporation for the purpose of carrying on a duty or perform a function on behalf of the government. These boards and corporations differ in the subject matter they deal with as well as in the functions to be performed or the duty to be carried out. In some cases they are set up as legal entities with their respective *persona*. In other cases they do not have an independent legal status. They may be corporate bodies. Some are completely independent without any governmental control. Some are agents of the government such that their employees are public officers. In others, the authority has powers to appoint its own staff.

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1 [1920] AC 508 at p 567.

The question of finance also looms large in the establishment of these boards and corporations: should they be set up out of funds provided by Parliament or will financial assistance be required? Usually, where the board or corporation has its own legal identity, it is given power to sue and be sued in its corporate name, to execute its own contracts and to own its own property. But that may not preclude 'interference' from the responsible minister in giving directions or directives on matters of policy. Annual reports are a feature of these bodies. These reports are made to the minister who is required to lay the report before Parliament; or the board or corporation may be required to lay the annual report, including the audited accounts, before Parliament.

## ESTABLISHMENT

In some jurisdictions an Act of Parliament may provide that:

- (1) Words establishing a corporation shall be construed
  - (a) to vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold property movable or immovable for the purposes for which the corporation is established and to alienate the same at pleasure;
  - (b) to vest in a majority of the members of the corporation the power to bind, by the acts of majority, the other members of the corporation;
  - (c) to exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment establishing the corporation.
- (2) A corporation shall not be deemed to be authorised to carry on the business of banking unless that power is expressly conferred by the enactment establishing the corporation.

Where such an Act of Parliament is on the statute book, the mere establishment of a board or corporation will simply state that: 'There is hereby established a [board] [commission] [corporation] to be known as Boundary [Board] [Commission] [Corporation].'

The general Act is thus in the nature of an Interpretation Act which applies subject to a contrary intention.

### *Examples*

- 1 (1) There is hereby established a commission to be known as the Corrupt Practices (Investigation) Commission, consisting of
  - (a) a Justice of the Court of Appeal nominated by the Chief Justice, who shall be chairman;
  - (b) an accountant nominated by the Association of Accountants; and

- (c) a person nominated by the Minister with the approval of Parliament.
- (2) The members of the Commission shall be appointed by the President by warrant under the Public Seal.
- 2 (1) There is hereby established a board to be known as the Central Marketing Board.
  - (2) The Board consists of five members all of whom shall be appointed by the Minister with the prior approval of Parliament.
  - (3) The Board shall be a body corporate by that name, with perpetual succession and a common seal and with power to purchase, take, hold, and dispose of lands and other property for the purposes of this Act.
- 3 The seal of the Board shall be authenticated by the signatures of the chairman and two other members of the Board, and a document purporting to be sealed with the seal of the Board so authenticated shall be receivable in evidence of the particulars stated in the document.
- 4 There is hereby constituted an Income Tax Appeal Board to be appointed by the Governor General, consisting of a chairman and not less than three nor more than six other members of whom one may be appointed the vice-chairman.
- 5 (1) There is hereby constituted a board to be known as the Labour Relations Board consisting, subject to subsection (2), of a chairman and such number of other members as the Minister may, with the approval of Parliament, determine.
  - (2) The number of the other members of the Board shall not at any one time exceed eight consisting of an equal number of members representatives of employees and employers.

## FUNCTIONS

### *Example*

- 1 (1) A Board of Education shall
  - (a) provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the Board;
  - (b) provide or enter into an agreement with any other Board to provide, in accordance with Regulations made by the Minister, special education programmes and special education services for its exceptional pupils and for other pupils who need special programmes whether because of a disability or otherwise;
  - (c) keep the school buildings and premises in proper repair and in a proper sanitary condition, provide suitable equipment and furniture and keep them in proper repair and protect the property of the Board;



- (d) make provision for insuring adequately the buildings and equipment and furniture of the Board, and for insuring the Board and its employees and volunteers who are assigned duties by the person in charge of the school against claims in respect of accidents incurred by pupils while under the jurisdiction or supervision of the Board;
  - (e) ensure that each school under its jurisdiction or charge is conducted in accordance with Regulations made by the Minister in that behalf;
  - (f) keep open its schools during the whole period of the school year, except where the Regulations otherwise provide;
  - (g) provide, without charge, for the use of the pupils attending the school or schools operated by the Board, the textbooks that are required by the Regulations to be purchased by the Board;
  - (h) establish and maintain school libraries and resource centres;
  - (i) where it furnishes transportation for pupils in a vehicle whether owned by the Board or not, take and maintain the appropriate insurance policy;
  - (j) ascertain and report to the Minister at least once in each year and in the manner required by the Minister the names and ages of all children of compulsory school age within its jurisdiction who are not enrolled in a school or private school and the reasons therefor;
  - (k) transmit to the Minister all reports and returns required by this or any other enactment.
- (2) A Board may
- (a) determine the number and kind of schools to be established and maintained and the attendance area for each school, and close schools in accordance with the policies established by the Board from the guidelines issued by the Minister;
  - (b) provide instruction in courses of study that are prescribed or approved by the Minister, developed from curriculum guidelines issued by the Minister or approved by the Board where the Minister permits the Board to approve courses of study;
  - (c) make adequate provision for the instruction in computer programming, computer science and computer technology of pupils in schools under the jurisdiction of the Board;
  - (d) purchase milk to be consumed by the pupils in the schools under the jurisdiction of the Board during school days in accordance with the terms and conditions prescribed by the Regulations;
  - (e) provide school supplies, other than textbooks, that are required to be supplied under the Regulations;
  - (f) establish kindergartens and junior kindergartens.

## MEMBERSHIP

### *Examples*

- 1 (1) A commission established under this Act by the President shall consist of three members who shall hold office during good behaviour for an initial period of five years, and a further period of five years.  
(2) A member of the commission shall not hold office for more than ten years in the aggregate.
- 2 (1) A Board of Directors shall consist of a chairman and vice-chairman appointed by the President in accordance with the recommendations made by the Prime Minister in consultation with the Leader of the Opposition, and eight other members, three of whom shall be selected from the public service and the other five members selected from outside the public service.  
(2) The three directors selected from the public service shall be appointed by the Public Service Commission and the five directors selected from outside the public service shall be appointed by the Minister in accordance with recommendations made by the Leader of the Opposition.
- 3 The Minister, with the approval of the Governor General, shall appoint five directors to hold office during the following terms:
  - (a) one director to hold office until the first day of January, 1998;
  - (b) one director to hold office until the first day of January, 1999;
  - (c) one director to hold office until the first day of January, 2000;and shall, with the approval of the Governor General, on the expiration of the terms of office of the directors so appointed, and at intervals of three years thereafter, appoint a corresponding number of directors to hold office for a term of three years.
- 4 The Board shall consist of not less than five nor more than nine members all of whom shall be appointed by the Governor General, and who shall hold office during pleasure.

### **Tenure of office**

#### *Examples*

- 1 A member of the Commission shall hold office during good behaviour but may be removed from office in accordance with article 80 of the Constitution (which provides for the removal from office of a Justice of the Superior Court of Judicature).
- 2 A member of the Board shall be appointed for a period of five years, and is at the expiration of that period, eligible for appointment for a further period of five years.
- 3 A member of the Board shall be appointed for a term of five years except that of the members first appointed to the Board the chairman shall be

appointed for a term of six years and the other members for a term of four years each.

- 4 (1) The chairman and the vice-chairman of the Corporation shall be appointed for such period, not exceeding six years, as the Governor General may determine.  
(2) Any other member of the Corporation shall be appointed for a term of four years, except that of those first appointed not more than three shall be appointed for a term of three years and the other four for a term of two years.

## **Alternate, substitute or temporary members**

### *Examples*

- 1 Where a member of the Board is unable at any time to perform the functions of the office of member by reason of absence or temporary incapacity, the Minister may appoint a temporary substitute member upon such terms and conditions as the Minister may determine.
- 2 (1) Where the chairman of the Board is absent or is unable to act, the remaining directors may elect one of their number to be the acting chairman during that absence, inability or vacancy of the chairman.  
(2) For the purposes of subsection (1) a reference to the chairman in an enactment or document or instrument shall be construed as including a reference to the person so acting as chairman.
- 3 The Board may authorise one of the members of the Board, or an officer of the Bank, to act as President for the time being in the event of the President being absent or unable to act or the office is vacant, but the person so acting has no authority to act as President for a period exceeding sixty days without the approval of the Governor General given on the advice of the Prime Minister.
- 4 (1) The Governor General may, on the recommendations of the Minister, appoint a person to be an alternate director for a member of the Corporation.  
(2) The alternate director so appointed shall act as a director of the Corporation during a period in which the member is, by reason of illness, absence or other incapacity, unable to act as a director and shall, while so acting, be deemed to be a director.
- 5 (1) Where a member by reason of illness or other incapacity or absence from Draftaria is unable at any time to perform the functions of a member of the Council, or where the position of a member is at any time vacant, the Governor General may make a temporary appointment of a qualified person to act in the place of that member or in that position upon such terms and conditions and for such time as the Governor General may determine.  
(2) The Governor General may from time to time appoint not more than three additional temporary members, and in addition may appoint to be

additional members of the Board, without remuneration as such, the Permanent Secretary and, as the alternate to the Permanent Secretary, the Deputy Permanent Secretary, and one other person who is not on the staff of the Department.

(3) The term of office of a temporary member shall not exceed a period of one year, but on the expiration of that term that member [may be appointed for a further term of one year] [is eligible for re-appointment].

- 6 Where a member of the Authority is absent or incapable for any reason of performing the functions of a member of the Authority, or the office thereof is vacant, the Governor General may appoint a temporary substitute member to hold the office upon such terms and conditions as the Governor General may determine.
- 7 Where the chairman or any other member is ill or is otherwise unable to act, or where the office is vacant, the Governor General may appoint a person qualified to hold office to act in stead of the chairman or that other member during the illness or incapacity or until the appropriate appointment is made.

## Qualifications

As regards eligibility for an office, two considerations must be borne in mind: eligibility for appointment and eligibility to continue to hold office. In other words, where a person is qualified at the time of the appointment, but subsequently loses the qualification, the question may arise whether having been *properly appointed* that person should cease to be *so appointed* and thus cannot continue in office. To avoid such arguments it is better to make the matter clear by providing for the continuance in office.

The use of the auxiliary 'shall' may also give rise to quite a problem as regards appointments. Where it is provided that the chairman '... shall be a Justice of the Supreme Court', would it be wrong to appoint a person who is not such a justice but would become so by virtue of the appointment? Or if a person being a justice of the Supreme Court is appointed, would that person continue to hold office as a Justice of the Supreme Court for so long as that person is chairman? It would thus be better to provide for '... a Justice of the Supreme Court, as chairman'.

### Examples

- 1 A person is not eligible to be appointed to the Board or to continue as a member of the Board if that person is not a citizen of Draftaria.
- 2 A person is not eligible to be appointed to the Council or to continue as a member of the Council who has a pecuniary interest, direct or indirect, individually or as a shareholder or a partner or otherwise, in a commercial undertaking with which the Council may have to deal with or is dealing with.

- 3 A person is not eligible to be appointed or to continue as a member of the Authority who
- (a) is not a citizen of Draftaria;
  - (b) is a member of Parliament or of the Legislature of a State;
  - (c) is a public officer or holds an office the emoluments of which are paid out of funds provided by Parliament;
  - (d) is a director, officer or employee of a bank or a financial institution or has an interest as a shareholder in a bank or financial institution;
  - (e) has attained the age of seventy-five years.
- 4 (1) A person is not qualified to be a director unless that person holds stock of the bank as the absolute and sole owner thereof and not as a trustee or in the right of any other person on which not less than
- (a) three thousand dollars, or such greater amount as the bye-laws of the bank require, have been paid up, when the paid-up capital stock of the bank is one million dollars or less;
  - (b) four thousand dollars, or such greater amount as the bye-laws of the bank require, have been paid up, when the paid-up capital stock of the bank is over one million dollars but does not exceed three million dollars;
  - (c) five thousand dollars, or such greater amount as the bye-laws of the bank require, have been paid up, when the paid-up capital stock of the bank exceeds three million dollars;
- except that in the case of not more than one-quarter of the number of directors the minimum requirements of subscriptions to stock in paragraphs (a), (b) and (c) shall be reduced to one thousand five hundred dollars, two thousand dollars and two thousand five hundred dollars respectively.
- (2) A minority of the directors may be persons who are not citizens of Draftaria but who are ordinarily resident in Draftaria.
- (3) The election or appointment of a person as a director is void if the composition of the board of directors would result in a minority of the members being citizens of Draftaria ordinarily resident in Draftaria.
- (4) A person is not eligible to be elected or appointed a director if that person has at the time of the election or appointment attained the age of seventy-five years.
- (5) A person ceases to be a director if
- (a) that person ceases to fulfil the requirements of subsection (1) with respect to the holding of stock; or
  - (b) the composition of the board of directors is at any time such that a majority of the directors are not citizens of Draftaria ordinarily resident in Draftaria.
- 5 A person is qualified to be appointed or to continue as a member of the Board if that person is a citizen of Draftaria who is ordinarily resident in Draftaria and has attained the age of twenty-five years.

## Re-appointment

### *Examples*

- 1 A member is, upon the expiration of the term of office of that member, eligible for re-appointment.
- 2 A retiring member of the Board is eligible for re-appointment.
- 3 A member of the Board may, on leaving office, be re-appointed for a further term [of five years] [not exceeding five years].

## Removal

### *Examples*

- 1 A director is removable from office by the Governor General for a sufficient cause.
- 2 A member of the Board may be removed from office by the Governor General for inability to perform the functions of the office of a member or for a sufficient cause.
- 3 (1) A member of the Council may be removed from office only for inability to perform the functions of office of the member, whether arising from infirmity of body or mind or for a stated misbehaviour, and shall not be so removed except in accordance with the provisions of this section.  
(2) For the purposes of the removal from office of a member, a petition in writing by any person stating that the member be removed from office on any of the grounds stated in subsection (1) shall be presented to the Council of State.  
(3) The petition shall set out in detail the facts, supported by the necessary documents, on which it is claimed that the member be removed from office.  
(4) The Council of State shall decide, having considered the facts as presented, whether or not to call upon the member to make a response.  
(5) Where the Council of State is not satisfied with the response of the member, the Council shall on the recommendations of the Judicial Council, appoint a tribunal consisting of three Justices of the Supreme Court to inquire into the petition and make recommendations to the Council of State which shall act in accordance with the recommendations of the tribunal.  
(6) Proceedings under this article shall be held in camera and the petitioner and the member are each entitled to be heard before the tribunal, and each to be represented by Counsel of their own choice.

## Remuneration

### *Examples*

- 1 A member of the Council shall be paid, but not otherwise, such travelling and other expenses in connection with the services of that member as a member of the Council as may be approved by the Minister.
- 2 The Board may, with the approval of the Minister, determine the emoluments to be paid to members of the Board and the fees to be paid to a person invited to attend a meeting of the Board.
- 3 A director is entitled to be reimbursed in respect of actual expenses reasonably incurred by the director in connection with the performance of the director's functions as a member of the board of directors.
- 4 The emoluments to be paid to members of the Board shall be determined by the Governor General on the recommendations of the Minister.
- 5 A member of the Council shall be paid a fee for each meeting of the Council that the member attends, which fee shall be determined by the Governor General in consultation with the Minister.
- 6 The directors are entitled to be paid for attendance at directors' meetings and executive committee meetings such fees as the Minister may determine.

## Vacancies

### *Examples*

- 1 The exercise of the functions of the Authority is not impaired by reason of a vacancy in its membership.
- 2 In the absence of the chairman, the vice-chairman shall act as chairman, and in the absence of both the chairman and the vice-chairman the members present may elect one of their number to act as chairman.
- 3 A vacancy in the Board does not impair the right of the remaining members to act.
- 4 During the incapacity of the chairman, the vice-chairman may exercise and perform all the powers and functions of the chairman.

## QUORUM

### *Examples*

- 1 An Interpretation Act may provide that
  - (1) Where an act or thing is authorised or required to be done by more than two persons a majority of them may do it;
  - (2) Where an enactment establishes a board, commission or other body consisting of three or more members,

- (a) the quorum at a meeting of that board, commission or other body shall be a number of the members thereof equal to at least one-half
    - (i) of the numbers provided by the enactment, if that number is a fixed number,
    - (ii) of the number of members in office, if the number of members provided by the enactment is not fixed, but the enactment provides for a minimum and a maximum number of members of the board, commission or other body;
  - (b) an act or thing done by a majority of the members present at a meeting, if the members constitute a quorum, shall be deemed to have been done by the members of the board, commission or other body;
  - (c) a vacancy in the membership of the board, commission or other body does not invalidate the constitution of the board, commission or other body or impair the right of the members in office to act, if the number of the members in office is not less than a quorum.
- 2 Where the membership of the committee consists of two or more members, two members constitute a quorum.
  - 3 At all meetings of the board, the votes of a majority of the members shall govern.





## OFFENCES AND PENALTIES

### INTRODUCTION

Under the criminal law, offences were either felonies or misdemeanours. Misdemeanours were lower offences, punishable by a fine, forfeiture or imprisonment otherwise than in a penitentiary. A felony was a serious offence. A simple assault was a misdemeanour. An aggravated assault was a felony. Thus at common law, a felony was a term applied to describe a serious offence the punishment for which 'entailed forfeiture of life, limb and chattels and escheat of land to the felon's lord'.

Section 1(1) of the Criminal Law Act 1967<sup>1</sup> abolished the concept of felony and misdemeanour: 'All distinctions between felony and misdemeanour are hereby abolished.'

Thus for all practical purposes, offences are either summary offences or indictable offences. The difference is one of procedure. It is thus desirable to state whether an offence is subject to summary conviction or is triable on indictment. In this regard it is as well to remember that, in stating an offence, three things should be borne in mind:

- (a) the prohibition, which would specify the course of conduct which is prohibited or should not be done;
- (b) the contravention of the prohibition, that is to say, the doing of what is prohibited; and
- (c) the sanction, that is to say, the punishment for disobeying the law's command.

#### *Example*

- (1) A person shall not make a false statement in filling in an income tax return. (*Prohibition.*)
- (2) A person who contravenes subsection (1) commits an offence. (*Offence.*)
- (3) A person who is convicted of an offence under this section is liable on conviction on indictment to a fine of not less than ten thousand dollars or to imprisonment for a term of not less than ten years. (*Sanction.*)

The above example could be redrafted in one sentence:

A person who makes a false statement in an income tax return commits an offence and is liable on conviction on indictment to a fine of not less than ten thousand dollars or to imprisonment for a term of not less than ten years.

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1 15 & 16 Eliz 2 Ch 58.

The redrafted example, by necessary implication, prohibits the filing of a false income tax return. It does not directly say that it should not be done. But if it is done, an offence is committed. Once the three elements of the offence are stated, there would be no objection to which one of the two drafts is used.

It is not always that the law prohibits a course of conduct or the doing of an act. The law may command a course of conduct or the doing of a certain thing. The statement of what is to be done or not done must be so clearly stated that there can be no ambiguity as to the law's command. For the courts may lean towards a strict construction of a penal provision. In *Tuck v Priestler*,<sup>2</sup> in reference to s 6 of the Copyright Act 1862,<sup>3</sup> Lord Esher MR said:

We must be careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction.

This imposes an obligation on Parliamentary Counsel to state the offence and the penalty in unambiguous language. Even though the distinction between a strict construction and a liberal one may no longer be valid in the construction of a statute, it is as well to bear in mind 'the tenderness of the law for the rights of individuals' and to appreciate the plain principle that:

... the power of punishment is vested in the legislature, and not in the judicial department, for it is the legislature, not the court, which is to define a crime and ordain its punishment.<sup>4</sup>

In *R v Horseferry Road Justices ex p Independent Broadcasting Authority*,<sup>5</sup> the Divisional Court indicated that:

- (a) when Parliament intends to create an offence it does so in clear unambiguous language:

... the mere imposition of a statutory duty does not in every case carry with it the corollary of a criminal offence. It depends in every case on the true construction of the statute whether a failure to comply with the duty creates an offence or not
- (b) breach of a statutory duty is more likely to amount to the common law offence of contempt of statute where the duty is *prohibitory* than where it is *mandatory*;
- (c) where a statutory requirement can be dealt with by some other remedy such as judicial review, it is less likely that Parliament intended a penal sanction. The existence of the other remedy ensures that the enactment will not, without an imputed criminal sanction, be a mere *brutum fulmen*;

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2 (1887) 19 QBD 629 at p 638.

3 25 & 26 Vict c 68.

4 *United States v Wiltberger* (1820) 2 Wheat (US) 76 at p 95, per John Marshall CJ.

5 [1987] QB 54.

(d) it is extremely unlikely that Parliament intended to create a criminal offence where the statutory duty depends on subjective considerations as where a person is under a duty to use that person's best endeavours.

It is unlikely that Parliament intended to create a criminal offence out of anything so subjective as to whether the applicants have or have not used their best endeavours.

In *DPP for Northern Ireland v Lynch*,<sup>6</sup> Lord Wilberforce said that:

The judges have always assumed responsibility for deciding questions of principle relating to criminal liability and guilt and particularly for setting the standards by which the law expects normal men to act. In all such matters as capacity, sanity, drunkenness, coercion, necessity, provocation [and] self-defence the common law, through the judges, accepts and sets the standards of right-thinking men or normal firmness and humanity at a level ... which people can accept and respect.

Thus criminal enactments:

... fall to be construed in the light of general principles of English law so well established that it is the practice of parliamentary draftsmen to leave the unexpressed in criminal statutes, on the confident assumption that a court of law will treat these principles as intended by Parliament to be applicable to the particular offence unless expressly modified or excluded.<sup>7</sup>

This has some relevance as to whether in situations of strict liability *mens rea* is essential to establish guilt as regards a statutory offence.

As was stated by Lord Diplock in *Sweet v Parsley*:<sup>8</sup>

... even where the words used to describe the prohibited conduct would not in any context connote the necessity for any particular [mental] element, they are nevertheless to be read as subject to the implication that a necessary element in the offence is the absence of a belief held honestly and upon reasonable grounds in the existence of facts which if true would make the act innocent.

This restates what Cave J said in *R v Tolson*:<sup>9</sup>

At common law an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the prisoner is indicted an innocent act has always been held to be a good defence ... Honest and reasonable mistakes stand, in fact, on the same footing as absence of the reasoning faculty as in infancy, or perversion of that faculty as in lunacy ... So far as I am aware, it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication.<sup>10</sup>

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6 [1975] AC 653 at pp 684–85.

7 *R v Miller* [1983] 2 AC 161 at p 174, *per* Lord Diplock.

8 [1970] AC 132 at p 163.

9 (1889) 23 QBD 168 at p 181.

10 See also *R v Prince* (1875) LR 2 CCR 154 at p 169 and *R v Wheat* [1921] 2 KB 119 at p 126.

In 1937, in *Evans v Dell*,<sup>11</sup> Goddard J said that:

With the complexity of modern legislation one knows that there are times when the court is constrained to find that, by reason of the clear terms of an Act of Parliament, *mens rea* or the absence of *mens rea* becomes immaterial and that if a certain act is done, an offence is committed whether the person charged knew or did not know of the Act.

In 1946, in *Brend v Wood*,<sup>12</sup> Goddard J stated:

It is of the utmost importance for the liberty of the subject that a court should always bear in mind that unless a statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

Again, in a 1948 case,<sup>13</sup> Lord Goddard stated that:

If a statute contains an absolute prohibition against the doing of some act, as a general rule *mens rea* is not a constituent of the offence, but there is all the difference between prohibiting an act and imposing a duty to do something on the happening of a certain event.

He went on to pose the question: 'Unless a man knows that the event has happened, how is he to carry out the duty imposed?'

In 1949, the Lord Chief Justice said:<sup>14</sup>

*Actus non facit reum nisi sit rea* is a cardinal doctrine of the criminal law. No doubt the legislature can create offences which consist solely in doing an act whatever the intention or state of mind of the actor may be ... of late years the courts have been so accustomed to dealing with a host of offences created by regulations and orders independent of guilty intention, that it is desirable to emphasise that such cases should be regarded as exceptions to the rule that a person cannot be convicted of a crime unless it is shown not only that he has committed a forbidden act or default but also that a wrongful intention or blameworthy condition of mind can be imputed to him.

## OFFENCE UNDER TWO OR MORE ACTS

Where an act or omission is an offence under more than one Act, whether punishable by indictment or on summary conviction, a person who does the act or makes the omission is, unless a contrary intention appears, subject to proceedings under any one of those Acts, but is not liable to be punished more than once for the same offence.

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11 (1937) 53 TLR 310 at p 313.

12 (1946) 62 TLR 462 at p 463.

13 *Hardy v Price* [1948] 1 KB 695 at p 701.

14 *Younghusband v Luftig* [1949] 2 KB 354 at p 370.

## PARTIES TO AN OFFENCE

### *Examples*

- 1 (1) A person is a party to an offence who
  - (a) actually commits the offence;
  - (b) does or omits to do anything for the purpose of aiding any other person to commit the offence; or
  - (c) abets any other person in committing the offence.
- (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.
- 2 (1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled or procured is a party to that offence notwithstanding that the offence was committed in a way different from that which was counselled or procured.
- (2) A person who counsels or procures another person to be a party to an offence is a party to every offence that the other person commits in consequence of the counselling or procuring that the person counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring.
- 3 (1) An accessory after the fact to an offence is a person who, knowing that another person has been a party to an offence, receives, comforts or assists for the purpose of enabling that other person to escape.
- (2) Subsection (1) does not apply to a married person whose spouse has been a party to the commission of an offence, but where an act is done by that married person in the presence and by the authority of the spouse to enable another person to escape, the subsection shall apply to that married person.

## PUNISHMENT

### *Examples*

- 1 A person who contravenes subsection (1) is liable on summary conviction to a fine of not less than one thousand dollars nor more than five thousand dollars.
- 2 Where an enactment provides for a pecuniary penalty as a punishment for an offence or for any other matter under the enactment, the pecuniary penalty that a Court may impose is an amount of money [equivalent to] [not less than] [not exceeding] the product obtained by multiplying the

- minimum wage by two or such other figure as the Court considers appropriate having regard to all the circumstances.
- 3 (1) A person convicted, whether summarily or on indictment, of an offence under an enactment, the punishment for which is a pecuniary penalty or includes a pecuniary penalty, is liable to pay an amount of money [equivalent to] [not less than] [not exceeding] the product obtained by multiplying the minimum wage [payable to that person] by two or such other figure as the Court may determine.
- (2) Subsection (1) applies notwithstanding the pecuniary penalty stated in the enactment, which enactment shall be deemed to have been amended accordingly.
- 4 A person who commits an offence under section 24 is liable on summary conviction to a pecuniary penalty equivalent to the product obtained by multiplying the minimum wage payable to that person by two or such other figure as the court convicting that person may determine.
- 5 A person who is convicted of an offence under section 35 is liable
- (a) to imprisonment for a term of five years; or
  - (b) to a pecuniary penalty equivalent to the product obtained by multiplying the minimum wage by two or such other figure determined by the Court; or
  - (c) to both the imprisonment and the pecuniary penalty.
- 6 (1) A person convicted of an indictable offence punishable with imprisonment for a term of not more than five years may be fined in addition to or in lieu of any other punishment that is authorised, but that person shall not be fined in lieu of imprisonment where the offence of which that person is convicted is punishable by a minimum term of imprisonment.
- (2) A person convicted of an indictable offence punishable with imprisonment for a term of more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorised.
- (3) Where a fine is imposed under this section, a term of imprisonment may be imposed in default of the payment of the fine, but the term of imprisonment shall not exceed
- (a) two years, where the term of imprisonment that may be imposed for the offence is less than five years; or
  - (b) five years, where the term of imprisonment that may be imposed for the offence is greater than five years.
- 7 Where a person is convicted of an offence which is punishable with both a fine and an imprisonment, and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment, the imprisonment that may be imposed in default of payment of the fine shall not exceed the term of imprisonment that is prescribed in respect of the offence.

- 8 (1) A court before which a person is convicted of an offence may direct that the terms of imprisonment to which the accused is subject shall be served consecutively or concurrently.
- (2) Subsection (1) applies where a person
- (a) is convicted while under sentence for an offence and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;
  - (b) is convicted of an offence punishable with both a fine and an imprisonment, and both are imposed with a direction that, in default of payment of the fine, that person shall be imprisoned for a term certain; or
  - (c) is convicted of more than one offence before the same Court at the same sitting, and
    - (i) more than one fine is imposed with a direction in respect of each of the fines that in default of payment of the fine that person shall be imprisoned for a term certain,
    - (ii) terms of imprisonment for the respective offences are imposed, or
    - (iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence with a direction that, in default of payment, that person shall be imprisoned for a term certain.
- 9 Where a corporation or other body of persons is convicted of an offence and the punishment prescribed is a term of imprisonment, the corporation or other body is liable to
- (a) a fine in an amount that is in the discretion of the Court, where the offence is an indictable offence; or
  - (b) a fine in an amount not exceeding one thousand dollars, where the offence is an offence triable summarily.
- 10 A person who commits an offence under this Act is liable, on summary conviction,
- (a) for a first offence, to a fine of not less than twenty dollars and not more than one hundred dollars; and
  - (b) for a second or each subsequent offence, to a fine of not less than one hundred dollars [nor more than one thousand dollars].
- 11 A corporation or other body of persons that authorises or directs or permits any of its employees to carry on a part of the business of the corporation or of that body in contravention of a provision of this Act is liable
- (a) for the first offence, on summary conviction, to a fine of not more than five hundred dollars; and
  - (b) for a second or subsequent offence, on conviction on indictment, to a fine of not less than one hundred thousand dollars.



- 12 A person who contravenes a provision of these Regulations commits an offence and unless a penalty is expressly provided by these Regulations for the contravention, is liable
- (a) upon summary conviction as an individual,
    - (i) for the first offence, to a fine of not more than five hundred dollars or to imprisonment for a term of not more than one year, or to both the fine and the imprisonment, or
    - (ii) for a second or subsequent offence, to imprisonment for a term of not more than five years;
  - (b) on conviction on indictment as a corporation or other body of persons,
    - (i) for the first offence, to a fine of not less than one thousand dollars nor more than ten thousand dollars, or
    - (ii) for a second or subsequent offence, to a fine of not less than ten thousand dollars, and every director or other officer of the corporation or every senior officer of that other body shall be deemed to have contravened that provision of these Regulations and liable in the same manner as an individual, but triable on indictment.

## FINANCIAL OPERATIONS

### INTRODUCTION

All governments operate under a Consolidated Fund. It is a fund into which all government moneys are paid. All revenues go into the Consolidated Fund, unless Parliament otherwise directs. All government expenditures are paid out of the Consolidated Fund. Moneys in the Consolidated Fund cannot be paid out unless under the authority of Parliament and by a warrant under the hand of the minister responsible for finance. Taxes authorised by Parliament are paid into the Consolidated Fund. It is public money. Normally, these moneys are deposited into a bank account to the credit of the government. The aggregate of these public moneys in the banks and before they are paid into the bank accounts constitute the Consolidated Fund.

The Consolidated Fund thus comprises:

- duties and all other moneys that constitute the revenue of a country;
- moneys borrowed for public purposes by the government or received through the issue or sale of securities;
- moneys received or collected for or on behalf of the country;
- moneys paid into the Consolidated Fund for special purposes.

Parliament is the only authority that has power to authorise the expenditure of public funds. It is referred to as appropriation. Parliament each year passes an Appropriation Act which authorises the payment of moneys out of the Consolidated Fund. This power of Parliament regarding revenue and expenditure of public moneys goes back to the 17th century. The Bill of Rights 1688<sup>1</sup> asserted that King James II had subverted the laws and liberties of the people by levying money otherwise than by the authority of Parliament. It declared illegal the levying of money for or to the use of the Crown by royal prerogative without the authority of Parliament:

- 1 That the pretended power of suspending of laws, or the execution of laws, by regal authority, without the consent of Parliament, is illegal. ...
- 4 That the levying of money for or to the use of the Crown, by pretence of prerogative without grant of Parliament, for longer term or in other manner than same is or shall be granted, is illegal.

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1 1 William and Mary, session 2, c 2. It was actually assented to in 1689, and it is thus often referred to as the Bill of Rights 1689.

Subsequent developments led to the Parliament Act 1911,<sup>2</sup> which established the constitutional usage that Parliament for the purposes of raising of revenue means the House of Commons.

In *Attorney General v Wilts United Dairies Ltd*,<sup>3</sup> Atkin LJ said:

Though the attention of our ancestors was directed especially to abuses of the prerogative, there can be no doubt that [the Bill of Rights] declares the law that no money shall be levied for or to the use of the Crown except by grant of Parliament. We know how strictly Parliament had maintained the right – and, in particular, how jealously the House of Commons has asserted its predominance in the power of raising money. An elaborate custom of Parliament has prevailed by which money for the service of the Crown is only granted by the request of the Crown made by a responsible Minister and assented to by a resolution of the House in Committee. By constitutional usage no money proposals can be altered by the [House of Commons] whose powers are confined to acceptance or rejection. Similar elaborate checks exist in respect of authority for expenditure of public revenue.

In most Commonwealth countries, the matter is now dealt with by the Constitution. There would be article of the Constitution which would provide that:

- 1 Parliament shall not, unless the Bill is introduced, or the motion is introduced, by, or on behalf of, the President,
  - (a) proceed upon a Bill including an amendment to a Bill, that, in the opinion of the person presiding, makes provision for
    - (i) the imposition of taxation or the alteration of taxation otherwise than by reduction, or
    - (ii) the imposition of a charge upon the Consolidated Fund or other public funds of Draftaria or the alteration of a charge otherwise than by reduction, or
    - (iii) the payment, issue or withdrawal from the Consolidated Fund or other public funds of Draftaria of moneys not charged upon the Consolidated Fund or an increase in the amount of the payment, issue or withdrawal, or
    - (iv) the composition or remission of a debt due to the Government of Draftaria; or
  - (b) proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in paragraph (a) of this article. (*Settlement of financial matters.*)
- 2 A Money Bill means a Public Bill which in the opinion of the person presiding contains only provisions dealing with
  - (a) the alteration, imposition, regulation, remission or repeal of taxation;

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2 1 & 2 Geo 5, Ch 13.

3 (1921) 37 TLR 884 at p 886.

- (b) the imposition for the payment of debt or other financial purposes or charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges;
  - (c) supply;
  - (d) the appropriation, receipt, custody or audit of accounts of public money;
  - (e) the raising or guarantee of a loan or the repayment thereof; or
  - (f) subordinate matters incidental to any of the matters specified in paragraphs (a), (b), (c), (d) and (e). (*Money Bills.*)
- 3 (1) Taxation shall not be imposed otherwise than by or under the authority of an Act of Parliament.
- (2) Where an Act, enacted pursuant to clause (1), confers power on a person or an authority to waive or vary a tax imposed by that Act, the exercise of the power of waiver or variation, in favour of a person or an authority, shall be subject to the prior approval of Parliament by resolution passed in that behalf. (*Taxation.*)
- 4 (1) There is hereby established a Consolidated Fund into which, subject to the provisions of this article, shall be paid
- (a) all revenue or other moneys raised or received for the purposes of, or on behalf of, the Government; and
  - (b) any other moneys raised or received in trust for, or on behalf of, the Government.
- (2) The revenues or other moneys referred to in clause (1) shall not include revenues or other moneys
- (a) that are payable by or under the authority of an Act of Parliament into some other fund established for specific public purposes; or
  - (b) that may, by or under the authority of an Act of Parliament, be retained by the department of Government that received them for the purposes of defraying the expenses of that department. (*The Consolidated Fund.*)
- 5 (1) Moneys shall not be withdrawn from the Consolidated Fund except
- (a) to meet expenditure that is charged upon the Fund by this Constitution or by an Act of Parliament; or
  - (b) where the issue of those moneys has been authorised
    - (i) by an Appropriation Act, or
    - (ii) by a supplementary estimate approved by a resolution of Parliament passed in that behalf, or
    - (iii) by an Act of Parliament enacted pursuant to a resolution of Parliament for the purpose of meeting expenditure necessary to carry on the services of the Government before the coming into force of the Appropriation Act for the financial year, or

- (iv) by Regulation or Rules made under an Act of Parliament in respect of trust moneys paid into the Consolidated Fund.
- (2) Moneys shall not be withdrawn from a public fund, other than the Consolidated Fund and the Contingency Fund, unless the issue of those moneys has been authorised by or under the authority of an Act of Parliament. (*Withdrawal from the Consolidated Fund.*)
- 6 (1) Parliament shall cause to be prepared and laid before Parliament at least one month before the end of the financial year estimates of the revenues and expenditure of the Government of Draftaria for the next following financial year.
- (2) The estimates of the expenditure of all public offices and public corporations, other than those set up as commercial ventures,
- (a) shall be classified under programmes or activities which shall be included in a Bill to be known as an Appropriation Bill and which shall be introduced into Parliament to provide for the issue from the Consolidated Fund or other appropriate fund of the sums of money necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein; and
- (b) shall, in respect of the Consolidated Fund payments, be laid before Parliament for the information of the members thereof.
- (3) Parliament shall prescribe the procedure for the presentation of Appropriation Bills.
- (4) Where, in respect of a financial year, it is found that the amount of moneys appropriated by the Appropriation Act for any purpose is not sufficient or that a need has arisen for expenditure for a purpose for which an amount of money has not been appropriated by that Act, a supplementary estimate showing the sum of money required shall be laid before Parliament.
- (5) Where, in respect of a financial year, a supplementary estimate has been approved by Parliament in accordance with clause (4), a supplementary Appropriation Bill shall be introduced into Parliament in the financial year next following the financial year to which the estimate relates, providing for the appropriation of the sums so approved for the purposes specified in that estimate.
- (6) Notwithstanding the other provisions of this article, the President may cause to be prepared and laid before Parliament estimates of revenue and expenditure of Draftaria for periods of over one year. (*Authorisation of expenditure.*)
- 7 Where it appears to the President that the Appropriation Act in respect of a financial year will not come into operation by the beginning of that financial year, the President may, with the prior approval of Parliament signified in that behalf by a resolution of Parliament, authorise the withdrawal of moneys from the Consolidated Fund for the purposes of meeting expenditure necessary to carry on the services of the Government

- in respect of the period expiring three months from the beginning of the financial year or on the coming into operation of the Act whichever is earlier. (*Expenditure in advance of appropriation.*)
- 8 (1) There is hereby established a Contingency Fund into which shall be paid moneys voted for that purpose by Parliament and from which advances may be authorised by the Financial Measures Committee of Parliament whenever the Committee is satisfied that there has arisen an urgent or unforeseen need for expenditure for which a provision does not exist to meet that need.
- (2) Where an advance is made from the Contingency Fund a supplementary estimate shall, within thirty days of the advance, be presented to Parliament for the purpose of replacing the amount so advanced.
- (3) Where in the estimates of the revenue and expenditure of the Government of Draftaria presented to Parliament provision is made for an item or vote other than for the Contingency Fund, not relating to a specific item of expenditure, moneys voted by Parliament in respect of that item or vote shall be under the control of the Financial Measures Committee of Parliament. (*The Contingency Fund.*)
- 9 (1) Parliament may, by a resolution passed in that behalf and supported by the votes of a majority of all the members of Parliament, authorise the Government to enter into an agreement for the granting of a loan out of a public fund or a public account.
- (2) An agreement entered into pursuant to clause (1) shall be laid before Parliament and shall not come into operation unless the agreement has been approved by a resolution supported by the votes of a majority of all the members of Parliament.
- (3) A loan shall not be raised by the Government on behalf of itself or of any other public authority or institution otherwise than by or under the authority of an Act of Parliament.
- (4) An Act of Parliament enacted pursuant to clause (3) shall provide
- (a) that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless the term and conditions have been approved by a resolution of Parliament; and
  - (b) that money received in respect of a loan shall be paid into the Consolidated Fund and form part of the Fund or into some other public fund of Draftaria either existing or created for the purposes of the loan.
- (5) For the purposes of this article, the expression "loan" includes moneys lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which
- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or

- (b) moneys from a fund by whatever name called established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly may be used for payment or repayment. (*Loans.*)

## SUPPLY MEASURES – APPROPRIATION ACTS

Moneys required for the purposes of government are provided by the annual Appropriation Acts. Since moneys in the Consolidated Fund cannot be spent without the authority of Parliament, the Appropriation Acts authorise the expenditure of specific sums of money which are specified in the Acts. The language of the Acts clearly state that the authority is to *apply* specified sums out of the Consolidated Fund towards defraying the specific charges and expenses of the public service stated from the beginning of the financial year to the end of the financial year.

An Appropriation Act is normally of a year's duration. Hence the enactment of an Appropriation Act each year. The moneys voted but not expended at the end of the financial year lapse, as there would be no authority beyond the financial year to spend such moneys. The Act will provide for the:

... issue out of the Consolidated Fund and apply towards making good the supply granted to the Government for the service of the year ending on the thirtieth day of June ... , the sum of one thousand billion dollars. (*Grants out of the Consolidated Fund.*)

The borrowing powers would state that the Government may borrow from a person by the issue of Treasury Bills or otherwise or the Bank of Draftaria may advance to the Government on the credit of the sum voted by Parliament out of the Consolidated Fund for the relevant financial year the sum of one thousand billion dollars. The date of payment would be specified to be not later than the end of the financial year to which the loan relates.

The appropriation of grants would state that all sums granted by the Act out of the Consolidated Fund towards making good the supply granted to the Government, amounting to one thousand billion dollars, are appropriated and shall be deemed to have been appropriated from the date of the passing of the Act for the services and purposes expressed in the Schedule.

## CONTINUING APPROPRIATIONS

Although Appropriation Acts are of a year's duration, there may be situations when an Appropriation Act will not be limited in time. It may be enacted for a specific purpose. The expenditure is limited to that purpose only and may be limited as far as the amount is concerned. It will last for as long as the amount is not spent. Such an Act could provide that:

- A (1) Where money is received by a public officer from a person as a deposit to ensure the doing of an act or a thing, the public officer shall hold or dispose of the money in accordance with Regulations made in that behalf.
- (2) Where money is paid by a person to a public officer for a purpose that is not fulfilled, the money may, in accordance with the Regulations, be returned or repaid to that person, less so much of that money that is properly appropriated for the service rendered.
- (3) Money paid to the credit of the Government and not being public money may be returned or repaid in accordance with the Regulations.
- B (1) Money received by or on behalf of the Government for a special purpose and paid into the Consolidated Fund may be paid out of the Fund for that purpose, subject to the Regulations.
- (2) Subject to any other enactment, interest may be allowed and paid out of the Consolidated Fund in respect of money to which subsection (1) applies, in accordance with and at the rates determined by the Minister with the approval of Parliament.

## Advances

### *Examples*

- 1 (1) The Minister responsible for finance may advance to the Minister out of the Consolidated Fund such sums of money as the Minister may require to enable the Minister
- (a) to make loans to agricultural, commercial, industrial or other undertakings for the purchase of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials and any other equipment for the use of the undertaking; or
- (b) to expend or to lend money for the carrying out of co-operative projects by co-operative societies.
- (2) The total amount of outstanding advances to the Minister under subsection (1) shall not at any one time exceed the sum of six hundred and fifty thousand dollars.
- 2 (1) The Minister responsible for finance may, out of the Consolidated Fund, advance to the Corporation moneys required by the Corporation for the purposes of the Corporation.
- (2) The aggregate, outstanding at any one time, of the amounts advanced by the Minister to the Corporation under subsection (1) shall not exceed one hundred million dollars.
- 3 (1) On the application of a Minister, the Minister responsible for finance may authorise an accountable advance out of the Consolidated Fund for the purpose of meeting disbursements for travelling expenses or other contingencies or of making payments on account of expenses incurred or to be incurred.



(2) If at the end of the financial year in which an advance was made an accounting or repayment has not been received, the advance shall be repaid or accounted for within thirty days thereafter.

## Guarantees

### *Examples*

- 1 (1) The authorised capital of the Corporation is five hundred million dollars divided into five thousand shares of the par value of one hundred dollars each.  
(2) The Minister shall subscribe for the shares of the capital stock of the Corporation and shall pay the amount of the subscription out of the Consolidated Fund.
- 2 Where a guarantee has been given under the authority of Parliament by or on behalf of the Government for the payment of a debt or obligation, the amount required to be paid by the terms of the guarantee may, subject to the Act authorising the guarantee, be paid out of the Consolidated Fund.

## Investments

### *Example*

- (1) The Minister responsible for finance may in the interests of the sound and efficient management of public money, the public debt or any sinking fund authorise the Governor of the Bank of Draftaria on behalf of the Government to acquire, enter into, hold or purchase
  - (a) securities issued by or guaranteed as to principal and interest by a government other than the Government of Draftaria or an international banking organisation;
  - (b) securities issued by or guaranteed by the International Bank for Reconstruction and Development payable in Draftarian or other currency determined by the Minister;
  - (c) deposit receipts, deposit notes, certificates of deposit, acceptance and other similar instruments issued, guaranteed or endorsed by a bank specified by the Minister;
  - (d) foreign currency exchange agreements;
  - (e) interest rate exchange agreements;
  - (f) spot and forward foreign currency contracts; and
  - (g) other securities, financial contracts, agreements, and investments authorised by the Minister.
- (2) An acquisition, entering into, holding or a purchase mentioned in subsection (1) may be subject to such terms and conditions as the Governor considers advisable.

(3) The money required for the purposes of subsection (1), or in respect of the performance of a contract or agreement mentioned in subsection (1), is a charge upon and payable out of the Consolidated Fund.

(4) Subject to such directions as the Minister may give, the Governor may sell or dispose of anything mentioned in subsection (1) acquired, entered into, held or purchased by the Governor, and the proceeds of sale or disposition shall be deposited to the credit of the Consolidated Fund.

(5) Commissions, expenses or fees incurred by the Governor in respect of the acquisition, entering into, holding, purchase, performance, sale or disposition of anything mentioned in subsection (1) are a charge upon and payable out of the Consolidated Fund.

### **Limited by purpose**

#### *Example*

The Minister responsible for finance may allow and pay out of the Consolidated Fund to a person entitled by a judgment to any money or costs interest thereon at a rate not exceeding four per cent from the date of the judgment until the money is, or costs are, paid.

### **Limited unascertained amounts**

#### *Example*

Subject to this Act and to Regulations made thereunder, the Minister may pay out of the Consolidated Fund, in respect of an institution specified in the Schedule a monthly payment of such amount as the Minister may determine.

### **Loans**

#### *Examples*

- 1 Where by or under the authority of Parliament power is given to the Minister responsible for finance to raise a sum of money by way of a loan, the sum may be raised, whether wholly or partly,
  - (a) by the issue and sale of a class of, or classes of, securities which
    - (i) may be in such form, or may be in such separate sums, or may bear interest at such rate or rates,
    - (ii) may be payable as to principal and interest at such time and at such placeas the Minister considers expedient;
  - (b) by temporary loan raised by way of cheques or written authorisation creating overdrafts binding on the Government.
- 2 In addition to all money authorised to be raised by way of loan, the Minister responsible for finance may raise money by way of loan in such

manner and at such times as is considered expedient by the issue and sale of a class of, or classes of, securities in such amount as will realise the net sum required for a public purpose.

- 3 Parliament may authorise the Minister responsible for finance to enter into, or execute, on behalf of the Government, such agreements, contracts and documents relating to the raising of loans or the issue and sale of securities as Parliament shall approve.
- 4 (1) An Act that authorises the borrowing or raising by way of loan of a specific or maximum number of dollars or the issue of securities for a specific or maximum number of dollars in principal amount shall be deemed to authorise
  - (a) the borrowing or raising by way of loan, in whole or in part, of the same number of dollars in a currency specified by the Minister responsible for finance, or the issue of securities, in whole or in part, for the same number of dollars in that currency in principal amount, as the case may be; and
  - (b) the borrowing or raising by way of loan, in whole or in part, of an equivalent amount in the currency determined by the Minister responsible for finance, or the issue of securities, in whole or in part, for an equivalent principal amount in that currency, as the case may be, calculated in each case in accordance with the nominal rate of exchange between the currency of Draftaria and that currency as quoted by the Bank of Draftaria as of a time on the business day next preceding the date on which the Minister authorises the raising of the loan or the issue of the securities.
- (2) For the purposes of a borrowing limitation under this or any other Act, the principal amount of any securities previously issued or authorised to be issued, payable in the currency so determined, shall be deemed to be the equivalent thereof in Draftarian dollars as calculated under subsection (1).

## Revolving funds

### *Example*

- (1) An account shall be established in the Consolidated Fund to be known as the Grain and Cereals Board Account to which shall be credited all moneys received from any transaction relating to grain and cereal produce or products.
- (2) The expenditures of the Board, other than expenditure for the acquisition of capital equipment for the Board's own use, shall be shown as expenditures in the Account.
- (3) The Account shall show as receipts,
  - (a) all moneys received by the Accountant General in respect of the operations of the Board; and

- (b) amounts transferred from appropriations made by Parliament for the operations of the Board, in respect of expenditures that have been incurred in operations of the Board for which the moneys were appropriated.
- (4) The expenditures made by the Board and shown in the Account shall not at any one time exceed the receipts shown in the Account by more than five hundred thousand dollars or such lesser amount as the Minister may determine.
- (5) At the end of each financial year the value of the inventory of the Board shall be determined in accordance with the Regulations.
- (6) Where the value of the inventory, added to the receipts shown in the Account, exceeds the total of expenditures shown in the Account and liabilities in respect of the operations of the Board then due and payable, an amount equal to the excess shall be transferred to the Consolidated Fund as revenue, but if the value is less no amount may be credited to the Account to meet the deficiency except pursuant to an appropriation by Parliament for that purpose.

### Special accounts

#### *Example*

- (1) A special account may be established by the Accountant General in the Consolidated Fund under a name designated by the Minister responsible for finance to which shall be credited all sums of money that may be appropriated by Parliament for the purposes of a designated authority or body, and all sums of money received by way of bequest, donation, grant or otherwise for the purposes of that authority or body.
- (2) The Minister may, subject to the provisions of this Act, make disbursements from the Fund on the requisition of that authority or body for the
  - (a) the payment of the salaries of all persons appointed or employed under or pursuant to the provisions of this Act;
  - (b) the payment of all sums of money required by that authority or body for the performance of its functions;
  - (c) such other payments as may be authorised by this Act.

### Specified amounts

#### *Example*

For the purposes of relief in the case of a natural disaster, a sum not exceeding fifty million dollars may be paid out of the Consolidated Fund for such purposes and under such terms and conditions as may be determined by the President.

## **Subsidies**

### *Example*

(1) Parliament may, as an assistance to the construction of a work of public or national importance, authorise the payment out of the Consolidated Fund of a subsidy, and subject to such terms and conditions as Parliament may determine, to an incorporated company approved by Parliament as having the ability to perform the work concerned.

(2) Parliament shall not proceed to debate the resolution for the grant of the subsidy unless it is satisfied, upon the advise of the technical advisers of the Government and on the perusal of all the necessary documents, that the work is needed in the public or national interest.

## MISCELLANEOUS PROVISIONS

### INTRODUCTION

This chapter comprises examples of miscellaneous legislative provisions under various headings.

#### **Abetment**

- 1 A person who abets the commission of an offence under this Act, whether the offence is actually committed or not, commits an offence and is liable to the punishment provided for the offence abetted.
- 2 A person who abets the contravention of a provision of this Act, commits an offence and is liable upon [summary conviction] [conviction on indictment] to the penalty applicable to the contravention.
- 3 A person who abets, aids, commands, counsels or procures the commission of an offence against this Act commits an offence and is punishable as a principal offender.
- 4 A person who abets, aids, assists, incites or induces another person to make or deliver a false or fraudulent account, declaration or statement, of or concerning any gains charges or profits, or the yearly rents or value of an immovable property, or matters affecting that property commits an offence, and is liable to be punished as a principal offender.
- 5 A person shall not in any manner impede or attempt to impede or prevent any other person in the performance of the functions of that person under these Regulations.
- 6 A person shall not by means of an article or a publication or by a written or printed communication or by an oral communication or by a public speech or utterance
  - (a) counsel or advise any other person not to comply with a provision of this Act or of Regulations made thereunder, or an order or a notice given or made pursuant thereto;
  - (b) resist or impede, or attempt to resist or impede, or persuade or induce or attempt to persuade or induce a person or a group of persons to resist or impede the operation or enforcement of this Act or of Regulations made thereunder.

## Accounts and audit

- 1 (1) The Authority shall maintain proper books and documents of account, and shall prepare and submit to the Auditor General, not later than three months after the end of the financial year, a statement of account, including its balance sheet, in the form prescribed by the Auditor General.  
(2) The accounts of the Authority shall, within three months of their submission, be audited by the Auditor General or by an auditor appointed by the Auditor General.  
(3) The report of the Auditor General shall be laid before Parliament and shall form part of the annual report of the Authority.
- 2 (1) The auditor shall examine and audit the accounts of the Authority, and
  - (a) may allow or disallow an item of expenditure;
  - (b) shall certify on the face of every account so audited any books, deeds, goods, moneys or papers found to be due from any person or for which any person may be accountable;
  - (c) shall in every account so audited charge against an accounting officer the amount of a deficiency or loss incurred by misconduct or negligence of that officer, or of a sum which ought to have been, but is not, brought into account by that officer.  
(2) Where the auditor has so certified any books, deeds, goods, moneys or papers to be due from a person, the auditor shall forthwith report that certification to the Minister, and that person shall within thirty days of the report to the Minister deliver or pay to the Authority the books, deeds, goods, moneys or papers certified to be due from that person.  
(3) All moneys so certified to be due shall, on the application of the auditor, be recoverable from all or any of the persons making or authorising the illegal payment or otherwise answerable for the moneys.  
(4) Where a person accountable for the books, deeds, goods, moneys or papers fails, neglects or refuses to deliver them to the auditor or to a person authorised to receive them, the auditor may apply to a Magistrate for an order that the items listed or described in the application be delivered to the auditor.  
(5) Failure to comply with an order made pursuant to subsection (4) constitutes a contempt of court *in limine* and, upon the issue of a warrant of arrest, the person who fails to comply with the order shall be committed for contempt until the contempt is purged, or be committed to prison for a term not less than six months.
- 3 A person interested in the accounts of the Corporation may, upon the payment of the prescribed fee, and subject to such conditions as may be prescribed in writing by the Minister, inspect at all reasonable times, the accounts of the Corporation and the certificates and reports of the auditor and take copies thereof or extracts therefrom.

- 4 Any moneys due from an officer of the Corporation or other accountable person is recoverable as a civil debt.
- 5 The Authority shall lay a copy of the auditor's report before Parliament.
- 6 (1) The Authority shall keep proper books of account and other books in relation thereto and shall prepare, and submit to the Auditor General, not later than three months after the end of the financial year, the annual statement of accounts in the form prescribed by the Auditor General and containing the particulars required under [section ...].  
(2) The accounts shall, within three months of the receipt thereof, be audited by an auditor appointed by the Auditor General, and in accordance with the Regulations made in that behalf by the Auditor General.  
(3) The Authority shall send a copy of the audited accounts with the auditor's report thereon to the Minister who shall lay the audited accounts and the report before Parliament.
- 7 (1) An Institute shall maintain proper accounts and other relevant records, and prepare an annual statement of accounts, including the balance sheet, in the form prescribed by the Auditor General.  
(2) The annual statement of accounts shall be submitted for audit to the Auditor General within three months after the end of the financial year.  
(3) The accounts of an Institute shall be audited, within three months of their submission under subsection (2), by the Auditor General or an auditor appointed by the Auditor General and the expenses of the Auditor General or of the auditor in connection with the audit shall be borne by the Institute.  
(4) The Auditor General or the auditor appointed in connection with the audit shall have the same authority, powers, privileges and rights as has the Auditor General in connection with the accounts of the Government.  
(5) The accounts of an Institute as certified by the Auditor General or the auditor together with the audit report shall be sent annually to the Minister of Finance who shall lay them before Parliament.
- 8 The Commission shall, in each year, before a date specified by the Minister,
  - (a) submit to the Minister a statement of accounts audited by the Auditor General;
  - (b) submit to the Minister for the approval of the Minister estimates of revenue and expenditure for the financial year next following the submission.
- 9 (1) A person who carries on a business subject to this Act shall not fail or neglect, or allow an agent or a person employed by that person to fail or neglect
  - (a) to keep proper books as are required to be kept by this Act or Regulations made thereunder; or
  - (b) to make true and correct entries in the books of all particulars required by this Act or Regulations made thereunder.



(2) A person carrying on a business subject to this Act commits an indictable offence who

- (a) in any way alters or falsifies an entry, or makes, or causes or allows to be made, an untrue entry in a book or other document of the business or relating to the business;
- (b) removes, or causes to be removed, or permits the removal from the book or document of, a leaf or part of a leaf of the book or document;
- (c) defaces or erases, or causes or permits to be defaced or erased, an entry made in the book or document;
- (d) neglects or refuses to prepare and deliver an inventory, to make a return or statement or to give any information or to render any accounts required by this Act or Regulations made thereunder;
- (e) falsifies any account, inventory, return, statement or gives false information; or
- (f) neglects or refuses to produce any account, book, return or statement required by this Act or the Regulations made thereunder to be kept, or any other books or accounts, whether related to the business or not, that are demanded for the inspection of a person duly authorised to demand those books or accounts.

10 A person commits an indictable offence who

- (a) alters, destroys or mutilates a record, any books of account or any other document in order to evade the payment of tax or otherwise to evade compliance with this Act or to assist any other person to evade the payment of tax or otherwise to evade compliance with this Act;
- (b) makes, or acquiesces or assents in the making of, a false or deceptive entry, or omits, or acquiesces or assents in the omission, to enter a material particular in the record, books of account or other document required to be kept under this Act.

## Advances

1 (1) The Minister may, by warrant under the hand of the Minister, authorise a sum of money to be advanced out of the Consolidated Fund for the purposes of providing funds for the Council for the performance of its functions.

(2) Advances made under subsection (1) shall be repaid to the Accountant General out of moneys in the Development Fund established under [section ...].

2 (1) A Corporation may, for the performance of its functions, take advances against its stock of food, grains or other foodstuffs held by it, or may borrow money

- (a) from a scheduled bank; or
- (b) from any other bank or financial institution approved in that behalf by the Minister.

- (2) The Minister may, on behalf of the Government, guarantee an advance or a loan taken by a Corporation under subsection (1) as regards the principal and the payment of interest thereon and other incidental charges.
- 3 A Corporation may, for the purposes of the production of food grains, lend or advance money to a person engaged in the production of food grains upon the security of the food grains or other security approved by the Minister.
- 4 (1) A Corporation may enter into an agreement with a person engaged in the production of food crops for the purchase of food grains from that person after the harvest of the food grains.
- (2) The agreement may provide that moneys payable by the Corporation under subsection (1) to that person shall be paid to a scheduled bank or other financial institution approved by the Minister and to the extent specified in the agreement.
- (3) A scheduled bank or any other financial institution referred to in subsection (2) may, by virtue of the agreement referred to in that subsection, lend money to the person who entered into the agreement with the Corporation.

## Advertisement

- 1 A person, an organisation, a society or other body of persons shall not publish an advertisement in any form or manner unless the name and the postal and the residential addresses and the registered places of business of that person, organisation, society or that body of persons making the advertisement are truly stated and form part of the advertisement.
- 2 A person who advertises, in whatever form or manner, a merchandise or an article for sale shall, as part of the advertisement, state the price at which the merchandise or the article is intended to be sold.
- 3 A person who captures a bull under section 5 shall post up a notice in the neighbourhood of the capture and advertise the notice in four consecutive weekly issues of a newspaper published nearest to the place of residence of the captor or in a newspaper circulating in the neighbourhood of the place where the bull was captured.
- 4 'advertisement' includes a publication, by radio or television, by display of goods, labels, notices, showcards, showrooms or signs, by distribution of catalogues, circulars, price lists, samples or other material, by exhibition of films, models, pictures or in any other way;
- 'advertiser' means, in relation to an advertisement, a person indicated by the advertisement as willing to enter into a transaction to which the advertisement relates.
- 5 An advertisement which conveys information which, in a material particular or respect, is misleading is a false advertisement; and a person who publishes that advertisement commits an offence.

- 6 An information in an advertisement stating or implying an intention which the advertiser has not got constitutes a false advertisement.
- 7 An advertiser shall not indicate in an advertisement that the advertiser is willing to provide credit or facilities in relation to goods or services to be supplied or provided by any other person when, at the time of the publication of the advertisement, that person does not claim to be willing to supply the goods or provide the services.
- 8 The Minister may, by legislative instrument, make Regulations,
  - (a) as to the form and content of an advertisement;
  - (b) to ensure that, having regard to the subject-matter and to the amount of detail involved, the advertisement conveys a fair and reasonably comprehensive indication of the nature of the credit or hire facilities offered by the advertiser and of their true cost to persons using them;
  - (c) in respect of the specific information and matter which should be included or excluded from an advertisement;
  - (d) in respect of the requirements which an advertisement should contain to ensure that specific information is clearly brought to the attention of persons to whom the advertisement is directed, and that one part of an advertisement is not given insufficient or excessive prominence compared with any other part of the advertisement.
- 9 (1) A person shall not, whether directly or indirectly, in pursuance of a trade or the promotion of a business or a business interest, or for the purposes of promoting the supply or use of goods or services, by any means,
  - (a) make a representation to the public that is false or misleading in a material particular or respect;
  - (b) make a representation to the public in the form of a statement, warranty or guarantee of performance, efficacy or length of life of goods which representation is not based on an adequate and proper test;
  - (c) make a representation to the public in the form of a guarantee, warranty or statement, that services are of a particular kind, quality, quantity or standard, or that the goods are supplied by a particular person or by any person of a particular class, qualification, trade or skill, if the guarantee, warranty or statement is materially misleading;
  - (d) make a representation to the public in a form that purports to be
    - (i) a guarantee or warranty of any goods,
    - (ii) a promise to replace, maintain or repeat an article or a part of an article or to repeat or continue service until it has achieved a specified result,if the form of the purported guarantee or warranty or promise is materially misleading or if there is no reasonable prospect that it will be carried out;

- (e) make a representation to the public which is misleading in a material particular in respect of the price at which goods or services or like goods or services have been, are or will be ordinarily supplied.
- (2) A representation as to price is a reference to the price at which the goods or services have been supplied generally to the public by the person by whom, or on whose behalf, the representation is made.
- (3) A representation is made to the public by a person or on behalf of a person where the representation is
- (a) expressed on an article offered or displayed for sale;
  - (b) expressed on anything attached to or inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale;
  - (c) expressed on a display in the place where the article is sold;
  - (d) made in the course of selling the article to the ultimate consumer;
  - (e) contained in or on anything that is delivered, sent, sold, transmitted or in any other manner made available to the public or a member of the public.
- (4) Where an article is imported into Draftaria, the person who imported the article shall be deemed to be the person, for the purposes of this section, who made the representation or the person on whose behalf the representation is made.
- (5) A person who, for the purpose of promoting, whether directly or indirectly, the supply or use of goods or a business interest, supplies to a distributor, retailer or wholesaler or other distributor of goods a material or thing that contains a representation of a kind referred to in subsection (1) shall be deemed to have made a representation to the public.
- 10 (1) A person shall not, whether directly or indirectly, for the purpose of promoting the supply or use of goods or a business interest,
- (a) make a representation to the public that a test as to the efficacy, performance or length of life of the goods has been made by a person; or
  - (b) publish a testimonial with respect to the goods.
- (2) Subsection (1) shall not apply where that person can establish
- (a) that the representation or the testimonial was previously made or published by the person by whom the test was made or the testimonial was given; and
  - (b) that before the representation or the testimonial was made or published, it was approved and permission to make or publish it was given in writing by the person who made the test or gave the testimonial; and

- (c) that the representation or the testimonial to which subsection (1) refers accords with the representation or the testimonial previously approved, made or published.
- 11 (1) A person shall not advertise at a bargain price goods which the advertiser
- (a) does not intend to supply, or
  - (b) does not have reasonable grounds for believing could be supplied by the advertiser,

at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the advertiser carries on business, the nature and size of the enterprise of the advertiser and the nature of the advertisement.

- (2) Subsection (1) does not apply where the advertiser establishes that
- (a) reasonable steps were taken to obtain in adequate time a quantity of the goods that would have been reasonable having regard to the nature of the advertisement, but that the advertiser was unable to obtain such a quantity by reason of events beyond the control of the advertiser which events could not have been reasonably anticipated by the advertiser;
  - (b) a reasonable quantity of the goods were obtained having regard to the nature of the advertisement, but that the demand could not be met because the demand surpassed reasonable expectations of the advertiser; or
  - (c) having become aware that the goods could not be supplied in accordance with the advertisement, steps were taken to supply the goods or equivalent goods or goods of a better quality at the bargain price and within a reasonable time to all persons who requested the goods and who were not supplied with the goods during the time when the bargain price applied.

- 12 (1) A person who advertises goods for sale or rent in a market shall not, during the period and in the market to which the advertisement relates, supply goods at a price that is higher than that advertised.

- (2) Subsection (1) does not apply in respect of an advertisement
- (a) that appears in a catalogue or other publication in which it is prominently stated that the price contained therein is subject to error, and the advertiser establishes that the price advertised is in error;
  - (b) that is immediately followed by another advertisement correcting the price mentioned in the first advertisement.

(3) For the purposes of this section, the market to which an advertisement relates is the market to which it could reasonably be expected to reach, unless the advertisement defines market specifically by reference to a geographical area, store, sale by catalogue or otherwise.

## Advisory boards, committees and councils

- 1 (1) The Governor General shall, within six months of the coming into force of this Act, establish a board to advise the Government on matters arising out of the administration of this Act.
  - (2) The board shall consist of a chairman appointed by the Governor General and not more than six other members appointed by the Speaker of the National Assembly.
  - (3) The tenure of office and the other terms and conditions of the office shall be set out in the letter of appointment.
  - (4) The board may, subject to the approval of the Speaker, make Bye-laws for the regulation of the meetings of the board, and for the conduct of its affairs.
  - (5) The existence of a vacancy in the membership of the board or a defect in the constitution of the board shall not affect the validity of anything done by the board.
- 2 (1) The Authority shall, within six months of the coming into force of this Act, establish an advisory [board] [committee] [council] for the purpose of advising the Authority on the preparation of the master plan and on such other matters relating to the planning of development arising out of, or in connection with, the administration of this Act as may be referred to the [board] [committee] [council] by the Authority.
  - (2) The advisory [committee] shall consist of
    - (a) the chairman of the Authority, *ex officio*, who shall be the chairman of the [committee];
    - (b) two persons with considerable knowledge of town planning or architecture nominated by the governing body of the society of architects registered under the [Registration of Architects Act ...];
    - (c) one representative of the Health Services nominated by the Minister;
    - (d) four representatives of the local government councils whose areas of authority fall within a planning zone, nominated by the Minister responsible for local government acting in accordance with the recommendations of those councils;
    - (e) three persons representing public utilities nominated by the [Public Utilities Board];
    - (f) three persons representing the national Chamber of Commerce, the Confederation of Industry and the Trades Union Congress nominated respectively by those organisations.
  - (3) The members of the [committee], other than the chairman, shall hold office for an initial period of four years and are eligible for re-appointment, but a member shall not hold office in the aggregate for more than twelve years.

- 3 (1) The Governor General may, acting in accordance with the recommendations of the Prime Minister, appoint a number of advisory [councils] made up of such number of persons as the Governor General may determine.
- (2) An advisory [council] shall advise the Corporation with respect to any of the matters set out in [section ...].
- 4 (1) For the purpose of giving advice and assistance to the Principal in connection with the performance of the functions of the office of Principal under this Act, there is constituted a committee to be known as the Principal's Advisory Committee, consisting of the Principal, *ex officio*, as chairman and not more than five other members appointed by the Minister.
- (2) The members of the Committee, other than the Principal, shall hold office for a period of three years and are eligible for re-appointment.
- (3) Where a member becomes, in the opinion of the Minister unable, for any sufficient reason, to continue in office or incapable of discharging the duties of a member, the Minister shall so inform that member and fill the vacancy that thereby had occurred.
- (4) The Committee shall, within three months of the coming into force of this Act, make a careful study of this Act and make recommendations to the Principal on matters in respect of which action needs to be taken for the successful implementation of this Act.
- (5) Subsection (4) shall be without prejudice to any representations which the Committee may make to the Minister or the Principal with respect to matters on which the Committee, under this Act, may make representation to the Minister or the Principal.
- (6) The Principal shall publish in the *Gazette* recommendations or representations made under subsection (4) within one month of their being made, and indicate in the publication the measures to be taken to give effect to the recommendations so made.
- (7) The Minister may determine what remuneration shall be paid to the members of the Committee.
- (8) The Committee may, with the approval of the Minister, make Bye-laws
- (a) for regulating its proceedings, and
  - (b) for authorising the delegation of any of its functions to a subcommittee of not more than three members.
- (9) For the efficient performance of its functions the Committee may, by notice in writing, require a person
- (a) to furnish it with documents, information or returns, or
  - (b) to attend a meeting of the Committee as a co-opted member, or to give evidence or produce documents relevant to the business of the Committee.
- 5 (1) For the purpose of advising on matters concerning the development and regulation of [industries], the Minister may, by legislative instrument, establish a council to be known as the [Industrial] Advisory Council.

- (2) The Advisory Council shall consist of a chairman and not more than [thirty] other members, all of whom shall be appointed by the Minister from among persons who are capable of representing the interests of
- (a) owners of industrial undertakings in specified industries;
  - (b) persons employed in industrial undertakings in specified industries;
  - (c) consumers of goods, whether imported into Draftaria or manufactured or produced by specified industries;
  - (d) such other persons or class of persons including primary producers who, in the public interest, ought to be represented on the Advisory Council.
- (3) The term of office of, the procedure to be followed in the performance of their functions by, and the manner of filling vacancies among, members of the Advisory Council shall be prescribed by the Minister by Regulations.
- (4) The Minister
- (a) shall consult the Advisory Council with regard to
    - (i) the making of Regulations, other than Regulations made under subsection (3), and
    - (ii) the exercise by the Minister of any of the powers conferred on the Minister under [section ...];
  - (b) may consult the Advisory Council as regards any other matter connected with the administration of this Act in respect of which the Minister may consider it necessary to obtain the advice of the Advisory Council.
- 6 (1) With effect from such date as the Minister may by legislative instrument specify, there shall be established, for the purposes of this Act, a board to be known as the [Flowers] Board.
- (2) The Board shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and manage property both immovable and movable, and to execute contracts, and may sue and be sued by its corporate name.
- (3) The Board shall consist of a chairman and such number of other members not exceeding [twenty] as the Minister may consider expedient, to be appointed by the Minister from among persons who, in the public interest, are capable of representing
- (a) owners of estates, gardens and growers of flowers;
  - (b) persons employed in flower estates or gardens or otherwise engaged in the flower industry;
  - (c) dealers including both exporters and internal traders of flowers;
  - (d) associations of persons interested in flower gardening and flower gardens;
  - (e) such other persons or class of persons who, in the public interest, ought to be represented on the Board.



- (4) The number of persons to be appointed from each of the categories specified under subsection (3), the term of office of, the procedure to be followed in the performance of the functions of the Board, and the manner of filling vacancies among the members of the Board shall be prescribed by Regulations made by the Minister.
- (5) The Minister may appoint a public officer who may attend the meetings of the Board, take part in the deliberations of the Board, but who shall not vote on any matter for decision by the Board.
- 7 The Minister may, by statutory instrument, establish an advisory committee consisting of not more than five members, and may refer to the committee for advice any matters arising out of the administration of this Act as the Minister may think fit.
- 8 The Minister may, by statutory instrument, establish an advisory committee to advise on matters on which the Minister or the [Board] is required by this Act to consult the committee and on any other matters arising out of the administration of this Act which the Minister may refer to the committee for advice.
- 9 The Corporation may appoint one advisory committee or more advisory committees for the purpose of assisting the Corporation in the efficient performance of its functions and in particular for the purpose of securing that those functions are performed with due regard to the circumstances of, the conditions prevailing in, and the requirements of, particular areas or industries.
- 10 For the purpose of advising the Minister on the matters referred to in [paragraph (a) of section ...] in respect of the applications referred to in [paragraph (b)] of that section and on such other matters as the Minister may think fit, the Governor General shall, by statutory instrument,
- (a) constitute an advisory commission consisting of not more than five members with suitable qualifications, and
- (b) appoint the chairman of the advisory commission.
- 11 (1) For the purposes of this section and in the prescribed manner, the Minister may establish two or more advisory committees of persons with considerable knowledge in the practices and usages of the textile trade.
- (2) The Registrar shall consult an advisory committee with respect to any circumstances peculiar to the textile trade arising out of an application to register a trade mark in respect of textile goods.
- (3) The place of meeting and the conduct of business of an advisory committee shall be determined by Regulations made under this Act.
- 12 (1) The Governor General may, by statutory instrument, establish for each area specified in the Schedule a National Advisory Committee to perform the functions assigned to that Committee by this Act.
- (2) A Committee shall consist of not less than four nor more than seven members, one of whom shall be an officer of the Armed Forces nominated by the Defence Council and the others shall be persons, not being public officers, appointed by the Governor General.

- (3) The chairman of a Committee shall be appointed by the Committee from among the members of the Committee.
  - (4) A Committee may co-opt, in respect of a matter to be dealt with by the Committee, a suitable person to assist the Committee.
  - (5) A Committee may meet at such times and at such places as it thinks fit and shall meet when required to do so by the Minister or by the competent authority.
  - (6) The chairman of a Committee and not less than one-half of the members of the Committee shall constitute a quorum.
- 13 (1) The Minister may, by statutory instrument, within six months of the coming into force of this Act,
- (a) establish a Board to be known as the Drugs Technical Advisory Board to advise the Minister on technical matters arising out of the administration of this Act and to perform the other functions assigned to it by this Act, and
  - (b) establish a committee to be known as the Drugs Consultative Committee to advise the Minister and the Drugs Technical Advisory Board on any matters tending to secure uniformity throughout Draftaria in the administration of this Act.
- 14 (1) The President may, by legislative instrument, establish an advisory committee for each State of the Republic to advise the President on any matters arising out of the Administration of this Act or the Fund.
- (2) The members of the advisory committee shall be appointed by the President in accordance with Regulations made under this Act.
- (3) A committee established under subsection (1) shall include
- (a) an equal number of members representing commerce, industry and trade,
  - (b) a woman, and
  - (c) a member of the legislature of the State concerned.
- 15 (1) Where a Controller is appointed in exercise of the powers conferred by section 3, the Minister shall appoint a committee to assist the Controller in the performance of the functions of the Controller.
- (2) The committee shall consist of such number of persons having knowledge of the cotton or cotton cloth industry as the Minister thinks fit.
- (3) The Controller shall not, without consulting the committee, issue an order declaring or defining the classes of standard cloth or determining the prices to be paid for cotton or standard cloth.
- (4) The Controller may consult the committee on any other matter in connection with the performance of the functions of the Controller.
- (5) Where the majority of the members of the committee who are present at a meeting of the committee are against the issue of an order under subsection (3), the Controller shall refer the matter for decision by the Minister where the Controller does not accept the advice of the committee.

- 16 (1) The Governor General may, by legislative instrument, constitute one advisory committee or more than one advisory committee consisting of such number of persons and on such terms and conditions as the Governor General may prescribe.
- (2) An advisory committee shall advise the Minister or the Board with regard to any matter connected with the administration of this Act which the Minister or the Board refers to the committee for advise.

## Age

- 1 A person attains the age of twenty-one years on the commencement of the twenty-first anniversary of the day of that person's birth.
- 2 A person attains the age of one year on the commencement of the first anniversary of that person's birth.
- 3 In a prosecution for an offence under this Act, the court may determine the age of a person by that person's physical appearance without requiring any other evidence of that person's age.
- 4 Where the age of a person is in dispute it shall lie on the person who disputes the age asserted in the dispute to establish the correct age.
- 5 Where in an indictment for an offence under this Act it is alleged that the person by or in respect of whom the offence is committed was a child at the time of the commission of the offence, or is a child at the time of the trial, unless the contrary is established, the court shall presume that the age of the child is the age alleged.
- 6 (1) Where a person, whether charged with an offence or not, is before a court and the question of that person's age calls for determination, the court shall make due inquiry as to the age of that person.
- (2) For the purposes of subsection (1), the court shall take such evidence as may be forthcoming at the hearing of the case in order to determine the age of that person.
- (3) A determination made pursuant to subsection (1) shall not be invalidated by a subsequent proof that the age of that person has not been correctly stated to the court.
- (4) The age declared by the court pursuant to subsection (1) shall, for the purposes of this Act, be the true age of that person.
- 7 Where in proceedings for an offence under this Act, it is alleged that the person who is alleged to have committed the offence was under age or has attained a specified age at the time of the commission of the alleged offence, or at the time of the proceedings, the court shall, unless the contrary is established, accept the age as stated to the court as the age of that person.
- 8 (1) A person under age [under the age of twenty-one years] shall not purchase a [merchandise] nor shall a person sell a [merchandise] to a person under age [under the age of twenty-one years] or to a person whom

the seller knows, or ought to have known, or on reasonable grounds ought to believe, to be a person under age [under the age of twenty-one years].

(2) A person under age [under the age of twenty-one years] shall not accept as a gift or borrow [an article] nor shall a person give or lend [an article] to a person whom the giver or lender knows, or ought to know, or has reasonable grounds to believe, to be a person under age [under the age of twenty-one years].

## **Alimony etc**

- 1 (1) For the purpose of maintenance pending suit, on the presentation of a petition for divorce, nullity of marriage or judicial separation, the court may make an order requiring either party to the marriage to make to the other party such periodical payments and for such term as the court thinks reasonable.  
(2) The term for which an order is made under subsection (1) shall not be earlier than the beginning of the date of the presentation of the petition nor later than the date of the determination of the suit.
- 2 A(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, the court may make
  - (a) an order that either party to the marriage shall make to the other party the periodical payments and for the term specified in the order;
  - (b) an order that either party to the marriage shall secure to the other party to the satisfaction of the court the periodical payments and for the term specified in the order;
  - (c) an order that either party to the marriage shall pay to the other party the lump sum or sums specified in the order;
  - (d) an order that a party to the marriage shall make to a person specified in the order for the benefit of a child of the family, or to that child the periodical payments and for the term specified in the order;
  - (e) an order that a party to the marriage shall secure, to the satisfaction of the court, to a person specified in the order for the benefit of a child or to that child, the periodical payments and for the period specified in the order;
  - (f) an order that a party to the marriage shall pay to a person specified in the order for the benefit of a child or to that child, the lump sum specified in the order.

(2) An order under subsection (1) shall be subject to such restrictions as the court may consider reasonable in the circumstances.

(3) The court may also make, subject to such restrictions as the court considers reasonable in the circumstances, any of the orders mentioned in subsection (1)

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting the decree;
  - (b) where the proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (4) An order under subsection (1)
- (a) that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by that other party in respect of maintenance personally or for a child of the family before the making of an application under this section;
  - (b) for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met;
  - (c) for the payment of a lump sum may provide for the payment of that sum by instalments of the amounts specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (5) The power of the court under subsection (1) to make an order in favour of a child of the family shall be exercisable from time to time.
- (6) Where the court makes an order under subsection (3) in favour of a child, it may, from time to time, subject to the restrictions mentioned in that subsection, make a further order in favour of the child as the court considers reasonable in the circumstances.
- (7) Where an order is made under subsection (1), on or after granting a decree of divorce or nullity of marriage, neither the order nor a settlement made in pursuance of the order shall take effect unless the decree has been made absolute.
- (8) Where the court makes an order under this section for the payment of a lump sum and the court directs that,
- (a) payment of that sum or a part of that sum shall be deferred, or
  - (b) that sum or a part of it shall be paid by instalments,
- the court may order that the amount deferred or the instalments shall carry interest at the rate specified in the order, and from the date so specified, being a date not earlier than the date of the order, until the date when payment is due.
- B(1)** On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, the court may make
- (a) an order that a party to the marriage shall transfer to the other party, to a child of the family or to any other person specified in the order for the benefit of that child the property so specified in the order, being property to which the party ordered to make the transfer is entitled either in possession or reversion;

- (b) an order that a settlement of the property specified in the order, being property to which a party to the marriage is entitled either in possession or reversion, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
  - (c) an order varying, for the benefit of the parties to the marriage and of the children of the marriage or either or any of them, any ante-nuptial or post-nuptial settlement, including a settlement made by will or codicil, made on the parties to the marriage;
  - (d) an order extinguishing or reducing the interest of either of the parties to the marriage under a settlement.
- (2) An order under subsection (1) is subject to such restrictions as the court may consider reasonable in the circumstances.
- (3) Without prejudice to the power of the court to give direction for the settlement of an instrument, where an order is made under this section on or after the granting of a decree of divorce or nullity of marriage, neither the order nor a settlement made in pursuance of the order shall take effect unless the decree has been made absolute.
- C(1) In making an order under section A or B in respect of a secured periodical payment, for the payment of a lump sum or a property adjustment, the court may make a further order for the sale of the property specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.
- (2) An order made under subsection (1) may contain such consequential or supplementary provisions as the court may determine, which may include
- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
  - (b) provision requiring the property to be offered for sale to a person or class of person specified in the order.
- (3) Where an order is made under subsection (1),
- (a) on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute;
  - (b) the court may direct that the order or a provision of the order shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified;
  - (c) containing a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of that party.
- (4) Where a party to a marriage has a beneficial interest in a property, or in the proceeds of sale of that property, and a person who is not a party to the marriage also has a beneficial interest in that property or in the

proceeds of sale of that property, then, before deciding to make an order under this section in relation to that property, the court shall give to the person who is not a party to the marriage an opportunity to make representations with respect to the order.

(5) Representations made under subsection (4) shall be included among the circumstances to which the court is required to have regard under section D.

**D(1)** In exercising its powers under section A, B or C the court shall have regard

- (a) to the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including, in the case of earning capacity, an increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire;
- (b) to the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) to the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) to the age of each party to the marriage and the duration of the marriage;
- (e) to any physical or mental disability of either of the parties to the marriage;
- (f) to the contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family including any contribution by looking after the home or caring for the family;
- (g) to the conduct of each of the parties, if that conduct is such that it would, in the opinion of the court, be inequitable to disregard it;
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of a benefit, such as a pension which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(2) In the exercise of the powers of the court in relation to a child of the family, the court shall in particular have regard to

- (a) the financial needs of the child;
- (b) the income, earning capacity, property and other financial resources of the child;
- (c) any mental or physical disability of the child;
- (d) the manner in which the child was being, and in which the parties to the marriage expected the child to be, educated or trained;

- (e) the considerations mentioned in subsection (1) in relation to the parties to the marriage.
- (3) In the exercise of the powers of the court in favour of a child who is the child of one only of the parties to the marriage, the court shall have regard to
- (a) whether that party assumed any responsibility for the maintenance of the child and, if so, the extent to which, and the basis upon which, that party assumed that responsibility;
  - (b) whether, in assuming and discharging responsibility for the child, that party did so knowing that the child was not the child of the party assuming responsibility;
  - (c) the liability of any other person to maintain the child.

## Annual reports

- 1 (1) The Commission shall, not later than the thirty-first day of March each year, present to the President an annual report on the work and activities of the Commission for the period of twelve months preceding the date of the report, and the plan of action and of activities of the Commission for the ensuing twelve months.  
(2) The annual report shall contain the report of the Auditor General on the accounts and other financial transactions of the Commission.  
(3) A copy of the annual report shall be laid before Parliament.
- 2 (1) The Commission shall, within three months after the end of the financial year, submit to the Minister a report dealing with the activities of the Commission in respect of the preceding year.  
(2) The Commission shall furnish to the Minister a report relating to a particular matter which requires the special attention of the Minister.  
(3) The Minister shall lay a copy of the reports submitted under subsections (1) and (2) before Parliament not later than seven days from the date of the submission of the report.

## Appeals

- 1 A person aggrieved by the decision of the licensing officer may, within fourteen days of being informed of that decision, appeal to the Minister with the right of further appeal to the High Court.
- 2 A person aggrieved by an order made by the Registrar [of Companies] [Copyrights] may, within three months of the date the order is received by that person, appeal to the Board.
- 3 A person aggrieved by an order made under [subsection (2) of section ...] may, within fourteen days of the date the order is served on that person, appeal to the High Court.



- 4 A person aggrieved by the decision or order of the [Board], not being a decision or order made under [subsection 4], may, within three months of the date the decision or order was received by that person, appeal to the High Court having jurisdiction within the locality within which that person ordinarily resides or carries on business or personally works for gain.
- 5 (1) A person aggrieved by the decision of a [licensing officer] made under [section 6 or section 7] may, within fourteen days of the decision being communicated to that person, appeal to the Minister.
- (2) The Minister may entertain an appeal after the expiry of the fourteen days specified in subsection (1) if satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified.
- (3) On receipt of an appeal under subsection (1), the Minister shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.
- 6 (1) Where a licensing authority refuses to issue or revokes or refuses to renew a licence, it shall, within seven days, so inform the applicant or the holder of the licence, giving in writing the reasons for the refusal or revocation.
- (2) A person aggrieved by the refusal of a licensing authority to grant or renew a licence or by the revocation of a licence may, within thirty days of the service on that person of the refusal or revocation, appeal to the Minister.
- (3) An appeal under subsection (2) operates as a stay of execution, unless the Minister, conditionally or unconditionally, otherwise directs.
- 7 (1) Subject to this section, where an order is made in respect of the financial resources or property held by a person other than the person convicted, the other person may, within thirty days after the date of the making of the order appeal against the order to the Court of Appeal.
- (2) On an appeal under subsection (1), the Court of Appeal may
- (a) confirm the order, with or without modification, or
  - (b) quash the order and make such other order as the Court thinks appropriate having regard to all the circumstances.
- (3) An appeal under this section does not operate as a stay of execution of the order unless the Court of Appeal otherwise directs, subject to such conditions as the Court of Appeal may determine.
- (4) An appeal under this section shall be brought in accordance with the Rules of the Court of Appeal made by the Chief Justice.
- (5) The Chief Justice may, by legislative instrument, make Rules of Court for the purposes of this section.
- (6) Nothing in this section shall prejudice or affect the right of a convicted person to appeal against sentence.

- 8 Where an appeal has been lodged or an application for revision has been made against an order made by an authority under this Act, the appeal or the application shall operate as a stay of execution of the order unless the prescribed appellate authority or revision authority on an application made thereto otherwise directs.

## Applications

- (1) A person suspected of having committed an offence under this Act, a person against whom an allegation has been made before the Commission, the Commission or a third person on whom a restraining order has been served in accordance with [section 14 or section 16] may at any time apply to the High Court for directions.
- (2) The parties to an application under subsection (1) shall be
- (a) the person suspected of having committed an offence under this Act,
  - (b) the person against whom an allegation has been made before the Commission,
  - (c) the Commission; and
  - (d) the third person on whom a restraining order has been served.
- (3) A person applying for directions under subsection (1) shall give to each of the parties to the application such notice of the day fixed for the hearing of the application as the High Court may order.
- (4) On the hearing of an application under subsection (1), the High Court may give such directions as the Court thinks fit so to do.

## Application of Act

- 1 (1) This Act applies to
- (a) an industrial establishment in which not less than one hundred workmen are employed or were employed on any day of the preceding twelve months; and
  - (b) such class or classes of other industrial establishments as the Minister may, by legislative instrument, specify.
- (2) Nothing in this Act shall apply to an industry to which, before the commencement of this Act, Part Five of the Industrial Disputes Act 1925, has been applied.
- 2 Nothing in this Act applies to
- (a) combinations or activities of employees for their own reasonable protection;
  - (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of determining the terms and conditions of employment;

- (c) the entering into an agreement in so far as the agreement contains a provision relating to the use, licence or assignment of rights under, or existing by virtue of, a copyright, a patent or a trade mark;
- (d) the entering into, or the carrying out of, an agreement or the engagement in a business authorised by the Commissioner under this Act;
- (e) an act done to give effect to a provision of an arrangement referred to in paragraph (b);
- (f) activities expressly approved or required under a treaty or an agreement to which Draftaria is a party;
- (g) activities of professional associations designed to develop or enforce professional standards of competence and behaviour compatible with the protection of the public;
- (h) an activity or a business declared by the Minister, by a legislative instrument made in that behalf, to which this Act shall not apply.

## Appointments

### 1 Assessors

- (1) For the purposes of an inquiry under this Act, the Minister may appoint as assessors two or more persons possessing special knowledge of any matter relevant to the inquiry to assist the Commission.
- (2) The names of the persons appointed under subsection (1) shall be published in the *Gazette* within seven days of the appointment.

### 2 Controllers

The Minister may, by statutory instrument, appoint any number of persons to be controllers for the purposes of this Act, and shall specify in the instrument the areas in which a controller so appointed shall exercise the powers of a controller.

### 3 Governors

- (1) The appointment of the Governor of a State of the Republic shall be under the hand and seal of the President.
- (2) A person is not eligible to be appointed a Governor of a State unless that person is a citizen of Draftaria and has attained the age of thirty-five years.

### 4 Inspectors

- (1) The Minister may, acting in accordance with the recommendations of the Public Services Commission, appoint such number of persons within the area of authority of a local authority as the Minister thinks appropriate, to be inspectors for the inspection of any of the factories located within that area.
- (2) One of the persons appointed under subsection (1) may be designated as chief inspector, who shall, in addition to the powers conferred upon an inspector, exercise in relation to that area the powers conferred upon the Chief Inspector of Factories under this Act or any other enactment.

(3) A person appointed under subsection (1) shall be deemed to be a public officer within the meaning of the [Criminal Code].

(4) A person shall not be appointed an inspector under subsection (1), or having been so appointed continue to hold office as such, who is or becomes directly or indirectly interested in a factory or in a process or business carried on in a factory or in a patent or machinery connected with a factory.

(5) The Minister may, in addition to the inspectors appointed under subsection (1), appoint a public officer to be an inspector for the purposes of this Act.

## 5 Commissions of Inquiry

(1) The Governor General may, in the public interest, appoint a Commission of Inquiry to inquire into the matters specified in its terms of reference.

(2) A Commission appointed under subsection (1) shall consist of

- (a) a Judge of the Superior Court of Judicature as chairman, and
- (b) two other members nominated by such professional body or association as the Governor General may designate.

(3) The Governor General shall specify the date by which the Commission shall complete its inquiry.

(4) On completion of its inquiry, the Commission shall

- (a) submit its report to the Governor General,
- (b) publish its recommendations in the *Gazette*, and
- (c) lay a copy of its report before Parliament.

(4) The appointment of the Commission and its terms of reference shall be published in the *Gazette*.

## 6 Extension of term

Notwithstanding anything contained in any other enactment, the term of office of a member of the Medical Research Council holding office immediately before the coming into force of this section shall extend to the date on which the Medical Research Council first established after the commencement of sections 2 and 3, enters upon office.

## 7 Staff

(1) The Authority shall appoint an Executive Director who shall hold office for a period of five years and who may be re-appointed for further periods not exceeding five years at a time.

(2) The Executive Director shall be in charge of the day-to-day management of the affairs of the Authority subject to the directions on matters of policy by the Board.

(3) The Authority may appoint such other staff as the Board may determine.

(4) The terms and conditions of service of the Executive Director and of the other staff of the Authority shall be determined by the Board subject to the approval of Parliament.

(5) The Governor General may, acting in accordance with the recommendations of the Public Services Commission, approve the appointment of a public officer to an office with the Authority on the terms and conditions approved by the Governor General.

## Arbitration

- 1 (1) A dispute arising out of a contract between the Institute and any of its officers or teachers shall be referred to arbitration by a tribunal consisting of one member nominated by the Board of the Institute, one member nominated by the officer or teacher concerned and an umpire appointed by the Visitor.  
(2) The decision of the tribunal is subject as of right to appeal to the High Court.
- 2 (1) The Limitation Act ... shall apply to an arbitration as it applies to proceedings in a court of competent jurisdiction.  
(2) Notwithstanding a term in an arbitration agreement to the effect that a cause of action shall not accrue in respect of a matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purposes of limitation of action, be deemed to have accrued in respect of that matter at the time when it would have been accrued but for that term in the agreement.  
(3) For the purposes of this section and of the Limitation Act ..., an arbitration shall be deemed to have been commenced
  - (a) when one party to the arbitration agreement serves on the other parties a notice requiring the appointment of an arbitrator; or
  - (b) where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, when the notice is served by one party to the other parties requiring that the difference be submitted to the person so named or designated in the notice.  
(4) Where the terms of an agreement to refer differences to arbitration provide that a claim to which the agreement applies is barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the court if satisfied that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on the terms specified by the court, extend the time for that period.  
(5) Where the court orders that an award be set aside, or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act ... for the commencement of proceedings, including arbitration with respect to the difference referred.

- 3 (1) In computing the period of limitation provided in this Act or in the Limitation Act ... or in any other enactment for any action, appeal, suit or application to a court to which a seaman is a party, the period during which the seaman has been a serving seaman, and if the seaman has died while a serving seaman, the period from the date of the death to the date on which the next of kin of the seaman was first informed by the shipping master or otherwise of the death, shall be excluded.
- (2) Subsection (1) shall not apply in the case of an action, appeal, application or a suit instituted or made with the object of enforcing a right of pre-emption except in the areas and under the circumstances specified by the Minister by statutory instrument.

### **Arrears of land revenue**

- 1 Where money is due from an insurer under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the collector, and the collector shall proceed to recover the money as if it were an arrear of land revenue.
- 2 An amount certified under [subsection (1) of section ...] as due from an insurer shall, if not paid within sixty days next after the date of the certification thereof, be recoverable in the manner provided for the recovery of an arrear of land revenue.
- 3 (1) In respect of a duty or any other sum of money payable under this Act or under Regulations made thereunder into the Consolidated Fund, the officer empowered by the Commissioner of Income Tax to levy the duty or require the payment of that sum
- (a) may deduct the amount so payable from any money under the control of a public officer and owing to the person from whom that duty or sum is or may be due or recoverable; or
  - (b) may recover the amount by attachment and sale of the excisable goods belonging to that person.
- (2) Where the amount payable is not recovered under subsection (1), the Commissioner shall recover the amount due as if it were a debt due to the Republic.
- 4 A sum of money due under this Act which remains unpaid after the day on which it becomes due shall be recoverable by the Collector from the person liable to pay that sum as if it were an arrear of land revenue.

### **Assimilation of laws**

- 1 Except as provided in section 3, all laws, whether written or unwritten, which immediately before the commencement of this Act applied to, extended to, or were in force in [Bimshire], but which did not apply to, extend to, or were not in force in [Whimshire], shall, as from that commencement, apply to, extend to, or be in force in [Whimshire] as regards things done or omitted to be done before that commencement.

- 2 (1) All laws, whether written or unwritten, which immediately before the appointed day applied to, extended to, or were in force in, [the States specified in Part One of the Schedule] shall, on and after the appointed day, cease to have effect in [those States] except as regards things done or omitted to be done before the appointed day; and accordingly, section ... of the Interpretation Act ... shall apply to the cesser as it applies in relation to the repeal of an Act of Parliament.
- (2) All laws, whether written or unwritten, which immediately before the appointed day applied to, extended to, or were in force in [the States specified in Part Two of the Schedule] shall, as from the appointed day, apply to, extend to, and be in force in [the States specified in Part One of the Schedule].

### **Assumption of obligations**

- (1) An obligation incurred, or a contract entered into, and all matters and things engaged in or to be done by, with or for the benefit of the Government before the commencement of this Act for any of the purposes of this Act, shall be deemed to have been incurred, entered into, or engaged in or to be done by, with or for the benefit of the Authority.
- (2) All suits or other legal proceedings instituted or which might [, but for the issue of the notification under subsection (1) of section 3,] have been instituted by or against the Government, may be continued or instituted by or against the Authority.

### **Authentication of orders etc**

- 1 All decisions, documents or orders of the Authority shall be authenticated by the signature of the chairman or a member of the Board authorised by the Authority in that behalf.
- 2 A document or any other instrument of the Authority shall be authenticated by the signature of the Director or any other officer of the Authority authorised by the Authority in that behalf.
- 3 The orders and the decisions of the Commission shall be authenticated by the signature of the chairman or any other member of the Commission authorised in that behalf by the Commission, and all instruments issued by the Commission shall be authenticated by the signature of the Secretary to the Commission.

### **Bar of jurisdiction**

- 1 Except on an application for an order of *certiorari* or any other order under a prerogative writ, or on an application for judicial review, or on an appeal, or otherwise expressly provided by this Act, a court shall not entertain a suit or proceeding in respect of a matter which the Government or an

officer or authority appointed under this Act is empowered by or under this Act to determine, and an injunction shall not be granted in respect of an action taken or to be taken in pursuance of a power conferred by or under this Act.

- 2 Except on an application for an order of *certiorari* or any other order under a prerogative writ, or on an application for judicial review, or on an appeal, a court shall not entertain a matter which the [Chief Resettlement Commissioner] or a [Resettlement Officer] is empowered by or under this Act to determine, and an injunction shall not be granted in respect of an action taken or to be taken in pursuance of a power conferred by or under this Act.
- 3 Subject to the [State Proceedings Act ...] an action shall not be brought against the Government or a person acting as the agent of the government under [section ...] for the refund of moneys paid or purporting to have been paid by way of premium on a policy of insurance taken out or purporting to have been taken out under this Act.
- 4 (1) A suit or any other legal proceeding does not lie against the Government or against an officer in respect of an order made in good faith or an act in good faith done or ordered to be done under this Act.  
(2) After the expiration of six months from the date the cause of action arose, a suit, prosecution or other legal proceeding shall not be instituted against the Government or against an officer for anything done or ordered to be done under this Act.

## Bar of liquidation

A provision of an enactment relating to the winding up of a company shall not apply to the [Bank], and, accordingly, the [Bank] shall not be placed in liquidation except by or under an order made in that behalf by the Governor General and in the manner directed by the Governor General.

## Books open for inspection

- (1) The [Register of Marriages] kept under this Act shall at all reasonable times be open to inspection and is admissible in evidence as to the matters contained therein
- (2) A certified extract from the [Register] shall on application by a person be given by the [Registrar] and that extract as certified is admissible in evidence in a court of competent jurisdiction.

## Borrowing powers of corporations

- (1) A corporation may, in consultation with the Central Bank, and with the prior approval of the Minister of Finance, issue and sell bonds and debentures carrying interest for the purpose of raising funds.



(2) The total amount of bonds and debentures and outstanding and of other borrowings under [section 9] of a corporation shall not at any time exceed ten times the amount of the paid up share capital and the reserve fund of the corporation.

(3) A corporation may, for the purposes of carrying out its functions under this Act, borrow money from the Central Bank, or from a commercial bank for the periods for which, and upon any of the securities against which, it is authorised to advance and lend moneys, under the [Central Bank Act].

(4) Subject to subsection (2), a corporation may borrow money from the Government on such securities and on such terms and conditions as may be determined by the Minister of Finance.

(5) The bonds and debentures of a corporation may be guaranteed by the Government as to the repayment of principal and the payment of interest at such rate as may be determined by the Government on the recommendations of the Central Bank.

## Bribery

- 1 A person shall not give, offer or promise to give, or procure to be given, a bribe, recompense or reward to, or make a collusive agreement with an officer to induce that officer in any way to neglect the duty of that officer or to conceal or connive at an act whereby the provisions of this Act or of any other enactment may be evaded.
- 2 The provisions of the Criminal Code relating to bribery and corrupt practices extend to a person appointed under this Act.
- 3 A person who gives, offers, or promises to give, or procures to be given, a bribe, recompense or reward to, or makes a collusive agreement with an officer or induces that officer in any way to neglect a duty imposed on that officer, or to conceal or connive at an act whereby a provision of this Act or any other enactment may be evaded, commits an indictable offence, and is liable for every such offence to a fine of one thousand dollars and to imprisonment for a term of not less than one year nor more than five years.
- 4 A person commits an indictable offence who
  - (a) corruptly makes an offer, a gift, loan, promise or proposal or gives or offers a compensation or consideration, directly or indirectly, to a public officer or to a member of the board of directors of a company or to a person concerned in the administration of an enactment for the purpose of influencing that person or member in the performance of the functions of that person's or member's office;
  - (b) being an officer concerned in the administration of this or any other enactment, accepts or allows to be accepted by any person for the benefit of the officer an offer, a compensation, consideration, gift, loan, promise or proposal.

- 5 A person commits an indictable offence who bribes or attempts to bribe, or makes any gift, loan, offer, promise or proposal, or gives or offers compensation or consideration, directly or indirectly, to induce a public officer to issue a certificate in connection with a matter relating to the duties of that officer.

## Burden of proof

- 1 (1) Notwithstanding anything contained in [section ...],
- (a) where the whole of a consignment of goods, or the whole of a package forming part of the consignment carried at the owner's risk is not delivered to the consignee and the non-delivery is not proved by the [transport authority] to have been due to fire or to any other accident, or
  - (b) where, in respect of a consignment of goods or of a package which had been so covered or protected that the covering or the protection was not readily removable by hand, it is pointed out to the [transport authority] on or before delivery that a part of the consignment or package had been pilfered in transit,
- the [transport authority] shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in the possession or control of the [transport authority].
- (2) Where misconduct or negligence on the part of the [transport authority] or of any of its employees cannot be fairly inferred from the disclosure under subsection (1), the burden of proving misconduct or negligence shall lie on the consignor.
- 2 Where a person is prosecuted for contravening a provision of this Act or of an order made thereunder which prohibits that person from doing an act without the consent or permission of an authority, the burden of proving the consent or permission shall be on that person.
- 3 Where a person alleged to be domiciled in Draftaria and to be subject to this Act pleads to not being so domiciled, or that this Act does not apply, the onus of establishing that plea shall be on that person.
- 4 Where in a case not falling under section 9 a question arises with reference to this Act or an order made or direction given thereunder, whether a person is or is not a foreigner of a particular class or description the burden of proof lies on that person notwithstanding anything contained in the [Evidence Act ...].
- 5 In proceedings against a person for an offence under this Act, the burden of proving a defence of lawful authority or reasonable excuse lies upon the accused.

## Certificate of marriage

- (1) When a marriage is solemnised or contracted, the Marriage Officer, the parties to the marriage and their witnesses shall complete the certificate of marriage in the form set out in the Fourth Schedule and append their signatures to the duly completed certificate.
- (2) A certificate of marriage as completed and signed under subsection (1), or a certified true copy of that certificate shall be conclusive evidence of the fact
  - (a) that a marriage under this Act has been solemnised or contracted, and
  - (b) that all formalities in respect of the marriage and of the signatures on the marriage certificate have been complied with.

## Chairman and vice-chairman

- 1 (1) A member of a district board or a local board is eligible for appointment or election as chairman of the board, and when so appointed or elected shall hold office for a term not exceeding three years.
  - (2) The Minister shall determine, as regards a board or as regards a class of boards, whether the chairman of the board shall be a person appointed *ex officio* or by name or be elected.
- 2 (1) A district board or a local board may elect one or two of its members not being public servants to be vice-chairman or vice-chairmen; and when two vice-chairmen are elected on the same day, the board shall declare which of the two takes seniority over the other.
  - (2) A vice-chairman so elected shall hold office for such term as the board may by resolution determine.

## Cognisance and trial of offences

- (1) A prosecution for an offence under this Act shall not be instituted except by, or with the written consent of, the Attorney General or of a law officer authorised in that behalf by the Attorney General.
- (2) A court inferior to the High Court of Justice does not have jurisdiction to try an offence under this Act.

## Commencement

- 1 (1) Except as provided in this section, this Act shall come into force on its publication in the *Gazette*.
  - (2) The Governor General may, by statutory instrument, determine the date on which
    - (a) Chapter Three shall take effect in the whole of Draftaria; and

- (b) the legislature of a State shall, by resolution supported by the votes of not less than one-half of all the members of that legislature, declare that Chapter Four shall take effect in that State.
- 2 This Act shall come into force in a State or in a specified area within a State when the legislature of that State so determines by a resolution supported by the votes of not less than a majority of all the members of the legislature.
- 3 Section 84 shall come into force on the date of the publication of this Act in the *Gazette*; and the other sections of this Act shall come into force on such date not being later than six months after the publication of this Act in the *Gazette*.
- 4 (1) This Act extends to the whole of the Federation, but it shall not come into force
  - (a) in the States specified in Part One of the Schedule;
  - (b) in a State specified in Part Two of the Schedule, unless the legislature of that State appoints a date, by a resolution supported by the votes of not less than three-fourths of all the members of that legislature, on which this Act shall come into force in that State.(2) A resolution passed pursuant to paragraph (b) of subsection (1) shall be published in the *Gazette* of the State.
- 5 This Act shall come into force on such date as the President may, by statutory instrument, appoint, and different dates may be appointed for different provisions of this Act and for different parts of the States specified in the Schedule.
- 6 This Act shall come into force on the 1st day of October, 1996, except [section ...] which shall come into force on the 1st day of October, 1997.
- 7 This section shall come into force on the publication of this Act in the *Gazette*, and the remaining provisions of this Act shall come into force on such day as the Minister may, by statutory instrument, appoint.
- 8 This Part and sections ... to ... shall come into force on the publication of this Act in the *Gazette*, and all the other provisions of this Act shall come into force on the 1st day of October, 1997.
- 9 (1) This Act shall come into force in a State to which this Act extends on such date as the Minister may, by statutory instrument, appoint for that State, and different dates may be appointed for different states.  
(2) A statutory instrument shall not be issued in respect of a State specified in Part One of the Schedule unless on the recommendations of the government of the State concerned.
- 10 (1) This Act shall be deemed to have come into force on the 1st day of October, 1996, and shall cease to have effect on the 1st day of January, 2000, except as respects things done or omitted to be done before the cesser of operation of this Act.

- (2) Section ... of the Interpretation Act ... shall apply upon the cesser of operation as if this Act had then been repealed by Parliament.
- 11 (1) This Act shall come into operation on such date, not being later than five years from the date of assent thereto, as the Minister may, by legislative instrument, appoint.
- (2) An instrument made under subsection (1) is subject to a negative resolution.

## Commissions

- 1 A(1) With effect from such date as the Governor General may, by statutory instrument, determine, there shall be established a commission by the name of the University Grants Commission.
- (2) The Commission shall be a body corporate having perpetual succession and a common seal, and may sue and be sued by its corporate name.
- B(1) The Commission shall consist of nine members to be appointed by the Governor General on the recommendations of the Prime Minister who shall, before making a recommendation to the Governor General, agree with the Leader of the Opposition as to the persons to be recommended to the Governor General.
- (2) Of the persons agreed upon under subsection (1),
- (a) not more than three shall be chosen from among the Vice-Chancellors of the Universities in Draftaria;
  - (b) two shall be chosen from among the rank of the Permanent Secretaries in the public service to represent the government; and
  - (c) the remaining persons shall be chosen from among persons who are educationists of high repute or who have obtained high academic distinction.
- (3) The Governor General shall appoint one the members of the Commission, not being a public officer, to be the chairman of the Commission.
- (4) An appointment under this section shall take effect from the date on which it is notified by the Governor General in the *Gazette*.
- C(1) A member shall, unless removed from office for a stated misbehaviour or other sufficient cause, continue to hold office for a period of six years, and is eligible for re-appointment for a further term of six years, but no further.
- (2) A member may resign by writing under the hand of the member addressed to the Governor General, but shall continue in office until the resignation is accepted by the Governor General.
- (3) A vacancy created by the removal from office under subsection (1) or by a resignation under subsection (2) shall be filled by a fresh appointment;

and a member so appointed shall hold office for the remaining period of the term of office of the member whose removal or resignation caused the vacancy.

(4) The office of chairman shall be a full-time office, and subject thereto, the terms and conditions of service of the chairman and of the other members shall be as prescribed by the Governor General.

**D** The Commission shall, in the performance of its functions be governed by such Regulations as may be prescribed by the Governor General.

**E** An act or proceeding of the Commission shall not be invalid by reason only of a vacancy in, or a defect in the appointment or constitution of, the Commission.

- 2 (1) A person shall not be appointed a member of a Commission where that person has such financial or other interest, whether directly or indirectly, as is likely to affect prejudicially the integrity of the Commission.  
(2) A person appointed a member of a Commission shall, whenever required so to do, furnish the Governor General with such information as the Governor General considers necessary to determine the suitability of that person for appointment as a member of a Commission.
- 3 A Commission shall have all the powers and privileges that are vested in the High Court in respect of
  - (a) the discovery and production of documents;
  - (b) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
  - (c) compelling the production of documents; and
  - (d) the issue of commission for the examination of witnesses.
- 4 A Commission may hold such enquiries as it considers necessary or desirable for the purposes of the Commission, and may order or require a person, subject to the payment of witnesses' expenses, to attend as a witness and give evidence, or to produce a document in that person's possession or power which relates to a matter in question before the Commission.
- 5 (1) A commission of inquiry shall have the powers, privileges and rights that are vested in the High Court of Justice or a Justice thereof, in respect of
  - (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
  - (b) compelling the production of documents; and
  - (c) the issue of a commission or request to examine witnesses abroad.

(2) A sole commissioner or a member of a commission of inquiry is not liable to an action or suit in respect of a matter or thing done by the commissioner or member in the performance of the functions conferred on the commissioner or member.

- 6 (1) A commission of inquiry shall
- (a) make a full, faithful and an impartial inquiry into a matter specified in the commission of appointment;
  - (b) furnish in the report the reasons leading to the conclusions arrived at or reported; and
  - (c) publish the report in the *Gazette*, send a copy of the report to the President and lay a copy of the report before Parliament.
- (2) Where a commission of inquiry makes an adverse finding against a person, the report of the commission of inquiry shall be deemed to be a judgment of the High Court of Justice, and accordingly an appeal lies as of right to the Court of Appeal.
- (3) The Government may publish, within three months of the publication of the report of a commission of inquiry, a White Paper on the report.
- (4) The White Paper shall contain the views of the Government on the report of the commission of inquiry and the proposals of the Government for the implementation of the recommendations of the report.
- 7 (1) A Commissioner appointed pursuant to [section ...] of this Act
- (a) shall receive and consider a complaint alleging a corrupt practice and investigate the complaint;
  - (b) shall investigate an alleged or suspected offence under any enactment dealing with corrupt or illegal practices and an allegation of blackmail or misuse of office;
  - (c) shall investigate the conduct of a public officer or of any other person which is connected with or conducive to corrupt practices;
  - (d) shall examine the practices and procedures of government departments and Ministries and other public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of the methods of work or procedures which may be conducive to corrupt practices;
  - (e) may advise, assist or instruct a person, at that person's request, on ways in which corrupt practices may be eliminated by that person;
  - (f) shall advise heads of government departments and Ministries or other public bodies of changes in practices or procedures compatible with the effective performance of the functions of those departments, Ministries and public bodies in order to eliminate the likelihood of the occurrence of corrupt practices;
  - (g) shall educate the public regarding the evils of corrupt practices;
  - (h) shall enlist and foster public support in combating corrupt practices.
- (2) For the purposes of subsection (1) and of any other functions conferred by or under this Act or any other law, the Commissioner may
- (a) authorise in writing an investigating officer to conduct an inquiry or examination;

- (b) enter a government building or any other building and require a public officer or a person in that building to answer questions concerning the duties of that officer or that person and require the production of any directions, office instructions, office manuals or standing orders relating thereto;
  - (c) require a person to provide information which the Commissioner considers necessary.
- (3) For the purposes of the performance of the functions of the Commissioner conferred by or under this Act or any other law, the Commissioner or a person authorised in writing by the Commissioner shall have access to all books, documents and records relating to the work of a government department or Ministry or other body public or private.
- (4) The Government shall,
- (a) within three months of the submission of the report of the Commissioner, publish a Green Paper containing the views of the Government on the report, and
  - (b) within three months of the publication of the Green Paper, publish a White Paper containing the proposals of the Government for the implementation of the recommendations of the Commissioner.

### **Commissions for the examination of prisoners**

- 1 A court may issue a commission under the [Civil Procedure Code] for the examination in the prison in which a person is confined within the jurisdiction of the court where it appears to the court that the evidence of that person is material on a matter before it, but
  - (a) for a sufficient reason that person cannot be removed from that prison;
  - (b) the prison in which that person is confined is more than ten miles distant from the place at which the court sits; or
  - (c) the relevant authority declines to countersign the order for the removal of that person from that prison.
- 2 Where it appears to the High Court that the evidence of a person confined in a prison beyond its jurisdiction is material in a cause or matter pending before it or before a court subordinate to it, the High Court may issue a commission under the [Civil Procedure Code] for the examination of that person in the prison in which that person is confined.
- 3 A commission for the examination of a person issued under [section ... or section ...] shall be directed to the Magistrate within whose jurisdiction the prison is situate, and the Magistrate shall commit the execution of the commission to the officer in charge of the prison.



## Compensation

- 1 (1) A person shall not claim compensation under this or any other enactment for any damage, injury or loss caused or alleged to have been caused pursuant to an order
  - (a) granting permission but imposing conditions on the grant
    - (i) to make or extend an excavation, or refusing that permission,
    - (ii) to lay out a means of access to a road, or refusing that permission; or
  - (b) granting permission to erect or re-erect a building, but imposing conditions on the grant.
- 2 (1) On the conviction of a person for an offence under this Act, the court may, where it appears to it that an injury to a person or damage to property has been caused by the offence, order the person convicted of that offence to pay a reasonable sum of money as compensation for the injury or damage so caused.

(2) A compensation ordered under subsection (1) is recoverable as a civil debt.
- 3 Where, in the exercise of the powers conferred under [section ...], the terms of an existing permit are modified so as to curtail the area or route of a vehicle authorised to be used under that permit, the compensation payable to the holder of the permit on account of the curtailment shall be an amount compiled in accordance with the formula specified in the Regulations made under this Act.

## Compounding offences

- 1 The Licensing Authority may accept, from a person whose licence, pass or permit is liable to be cancelled or suspended, or who is reasonably suspected of having committed an offence under this Act, a sum of money not exceeding five thousand dollars in lieu of the cancellation or suspension or by way of composition for an offence which may have been committed by that person.
- 2 An offence punishable under this Act may, either before or after the institution of a prosecution, be compounded by the Comptroller or any other officer authorised by the Comptroller in that behalf on payment to the Government, for the purposes of this Act, of such sum of money as the Comptroller may determine.
- 3 An offence under this Act may, before or after the institution of the prosecution, be compounded by the Attorney General on payment into the Consolidated Fund of the amount of money specified in writing by the Attorney General.

## Concealment

A person who harbours or conceals a person afflicted with an infectious disease, or having a reason to suspect or believe that a person is so afflicted, with the intent to prevent the person so harboured or concealed from being examined by a registered medical practitioner, or to prevent that person being apprehended under this Act, commits an offence and is liable

- (a) to a fine of not less than twenty dollars and not exceeding one hundred dollars, or
- (b) to a term of imprisonment of not less than one month nor more than one year.

## Confiscation

- 1 (1) Where an offence is committed under this Act, the apparatus, dangerous drug, material, or utensil in respect of which or by means of which the offence was committed, shall be confiscated.  
(2) Any thing which is lawfully imported, transported, manufactured, possessed or sold along with, or in addition to, an apparatus, a dangerous drug, a material or an utensil which is confiscated under subsection (1), and the receptacle, package, or covering in which an apparatus, a dangerous drug, a material or an utensil confiscated under subsection (1) is found, and any other contents of that receptacle or package shall be confiscated.  
(3) Any animal, vehicle, vessel or any other means of conveyance used in carrying any item specified in subsection (2) shall not be confiscated unless it is proved that the owner thereof knew that the offence was being, or was about to be, or was likely to be, committed.
- 2 (1) In a trial of an offence under this Act, whether the accused is acquitted or convicted, the court may order the confiscation of an article seized under this Act.  
(2) Where an article seized under this Act is liable to early or natural decay, the court shall order
  - (a) that the article be sold by public auction, and
  - (b) that the proceeds of sale shall be paid into the Consolidated Fund or into the Police Welfare Fund.
- 3 (1) A vehicle, vessel or any other means of conveyance or of transport specified in this section is liable to seizure and confiscation, that is to say,
  - (a) a vessel which is or has been within the territorial waters of Draftaria, an aircraft which is or has been in Draftaria, or a vehicle which is or has been in a place in Draftaria, while being constructed, adapted, altered or fitted in any manner for the purpose of concealing gold;

- (b) a means of conveyance or of transport from which the whole or a part of gold is thrown overboard, staved, destroyed or in any other manner dealt with so as to prevent seizure by an officer authorised in that behalf by the Comptroller;
  - (c) a means of conveyance or of transport which, having been required to stop or land under subsection (10) of section 123, fails to do so;
  - (d) a means of conveyance or of transport from which any gold cleared for export is unloaded without the permission of the relevant authority;
  - (e) a means of conveyance or of transport carrying or in which is carried imported gold which has entered Draftaria and is afterwards found with the whole or a portion of the gold missing, unless the master of the vessel or aircraft or the owner of the means of conveyance or transport is able to account satisfactorily for the loss of, or deficiency in, the gold.
- (2) A means of conveyance or of transport or an animal used as a means of transport in the carriage of gold in respect of which a provision of this Act is, has been, is being or is about to be contravened shall be confiscated unless the owner thereof proves
- (a) that it was so used without the knowledge or connivance of the owner, and
  - (b) that the owner had taken all reasonable steps or precautions as are specified in Regulations made in that behalf by the Minister to prevent the contravention.
- 4 Where a person is convicted of an offence under this Act or of Regulations made thereunder, the court may order the confiscation of a matter or thing with which or in respect of which the offence was committed.
- 5 (1) Where a person is convicted of an offence under this Act, the court may, in addition to the penalty imposed, order the confiscation of
- (a) any pecuniary resources or property found at the trial to be in the control of the convicted person, and
  - (b) an amount or value not exceeding the amount or value of the pecuniary resources or property the acquisition of which by that person was not explained to the satisfaction of the court.
- (2) An application for an order under subsection (1) shall be made by the Attorney General within twenty-eight days after the date of the conviction.
- (3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that an application has been made under subsection (2) and has had an opportunity to show cause why the order should not be made.
- (4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted where that person satisfies the court in any proceedings to show cause under subsection (3) that

- (a) as regards the circumstances in which the pecuniary resources or the property came to be held, that person acted in good faith, and
  - (b) that person so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.
- (5) Nothing in subsection (4) shall be construed as limiting the discretion of the court to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).
- (6) An order under subsection (1) may be made subject to such conditions as the court thinks appropriate having regard to all the circumstances of the case.
- (7) An order under subsection (1) may make provision for the taking possession of pecuniary resources or property to which the order applies and for the disposal of the resources or property by or on behalf of the Republic.

## **Consent to prosecution**

- (1) A prosecution for an offence under this Act shall not be instituted without the prior consent in writing of the Attorney General.
- (2) Notwithstanding subsection (1), a person
- (a) may be arrested and charged with an offence under this Act, or a warrant for the arrest of that person may be issued and executed;
  - (b) may be remanded in custody or on bail for not more than ten days unless, in the meantime, the consent of the Attorney General has been obtained.
- (3) Where a person is brought before a Magistrate before the consent of the Attorney General is obtained, the charge shall, notwithstanding any other law to the contrary, be explained to that person who shall not be called upon to plead.

## **Conspiracy**

- (1) A person convicted of conspiracy to commit an offence under this Act shall be dealt with and punished in like manner as if convicted of the principal offence, and the rules of evidence which apply with respect to the proof of the principal offence shall apply in like manner to the proof of the conspiracy.
- (2) The powers of investigation conferred by this Act shall apply with respect to a conspiracy to commit an offence under this Act.

## **Constitution of Tribunals**

- (1) A Tribunal may consist of one person or of three or more persons as the Governor General may determine.
- (2) Where a Tribunal consists of three or more persons, the Governor General shall appoint one of them as the chairman of the Tribunal.
- (3) A person shall not be appointed a member of a Tribunal unless that person
  - (a) is or has been a Justice of the Superior Court of Judicature or is qualified to be appointed as such Justice; or
  - (b) has specialised knowledge having regard to the functions to be performed by the Tribunal, or is well versed in the matters relating to the functions of the Tribunal.

## **Contracts in evasion of Act**

- (1) A person shall not enter into any agreement or contract which would directly or indirectly evade or avoid the operation of a provision of this Act or of a direction, an order or a regulation made thereunder.
- (2) A provision of, or having effect under, this Act that a thing shall not be done without the permission of the Minister of Finance or of the Central Bank shall not render invalid an agreement by a person to do that thing, if it is a term of the agreement that, unless permission is granted by the Minister of Finance or the Central Bank, that thing shall not be done.
- (3) It is an implied term of a contract governed by the law of a State that anything agreed to be done by a term of a contract which is prohibited by or under this Act except with the permission of the Minister of Finance or the Central Bank, shall not be done unless the permission is obtained.

## **Copyright Board**

### *The Board*

- (1) Within six months after the commencement of this Act, the Minister shall, by legislative instrument, constitute a board to be known as the Copyright Board, consisting of a chairman and not less than two nor more than eight other members.
- (2) The chairman and the other members of the Board shall hold office for such period and on such terms and conditions as the Minister may determine.
- (3) A person shall not be appointed as chairman of the Board unless that person is, or has been, or is qualified to be appointed, a Judge of the Superior Court of Judicature.

(4) The Registrar of Copyrights shall be the Secretary to the Board and shall perform the functions assigned to the Secretary by the Board.

*Powers and procedure*

(1) The Board may, subject to Regulations made under this Act, regulate its own procedure.

(2) The Board shall ordinarily hear and determine proceedings instituted before it within the zone in which, at the time of the institution of the proceedings, the person instituting the proceedings actually or voluntarily resides or carries on business or is gainfully employed.

(3) The Board may exercise its powers and perform its functions through committees constituted by the chairman from among its members, each committee consisting of not more than three members.

(4) Where there is a difference of opinion among the members of the Board or of a committee thereof in respect of a matter before it for decision, the opinion of the majority shall prevail.

(5) The Board may authorise a member to exercise any of the powers conferred upon it by [section 231], and an order made or an act done in the exercise of those powers by the member so authorised shall be deemed to be the order or act of the Board.

(6) A member of the Board shall not take part in a proceeding before the Board or a committee thereof in respect of a matter in which the member has, directly or indirectly, a personal or a financial interest.

(7) An act done or proceeding taken by the Board under this Act shall not be questioned on the ground merely of the existence of a vacancy in, or a defect in the constitution of, the Board.

*Extension of copyright to foreign works*

(1) The Minister may, by statutory instrument, direct that this Act or a provision of this Act shall apply

- (a) to a work first published in a country to which the order relates in like manner as if it were first published in Draftaria;
- (b) to an unpublished work or a class of unpublished works the author[s] of which [was] [were], at the time of the making of the work, [a] subject[s] or citizen[s] of a foreign country to which the instrument relates in like manner as if the author[s] [was] [were] [a] citizen[s] of Draftaria;
- (c) in respect of domicile in a country outside Draftaria to which the instrument relates in like manner as if the domicile were in Draftaria;

- (d) to a work of which the author was at the date of the first publication of the work or in a case where the author was dead at that date, was at the time of the death, a subject or citizen of a foreign country to which the instrument relates in like manner as if the author was a citizen of Draftaria at that date or time.
- (2) Before making an instrument under subsection (1) in respect of a foreign country, other than a country with which Draftaria has entered into a treaty or which is a party to a convention relating to copyright to which Draftaria is a party, the Minister shall be satisfied that there are in place in that foreign country reciprocal arrangements as appear to the Minister expedient for the protection in that country of works entitled to copyright under this Act.
- (3) The instrument may provide
- (a) that this Act shall apply generally or in relation to the classes of works or the classes of cases specified in the instrument;
  - (b) that the term of copyright in Draftaria shall not exceed that conferred by the law of the country to which the instrument relates;
  - (c) that the enjoyment of the rights conferred by this Act shall be subject to the compliance with such conditions and formalities as may be prescribed by the Minister;
  - (d) that this Act or a provision of this Act
    - (i) shall not apply to works made before the commencement of the instrument, or
    - (ii) shall not apply to works first published before the commencement of this Act.
- (4) In applying this Act to the ownership of a copyright, the Minister may make such exceptions and modifications as appear necessary having regard to the law of the foreign country.
- (5) Where it appears to the Minister that a foreign country does not give, or has not undertaken to give, adequate protection to the works of Draftarian authors, the Minister may, by statutory instrument, direct that the provisions of this Act as confer copyright on works first published in Draftaria shall not apply to works of authors who are citizens of that foreign country and are not domiciled in Draftaria.

## Corporations

### *Qualifications and disqualifications*

- (1) A person is qualified to be appointed a member of the board of directors of a corporation if that person
- (a) is a citizen of Draftaria or is resident in, or has resided in, Draftaria in the aggregate for a period of not less than five years preceding the appointment, and continues so to reside while a member of the board, and

- (b) has sufficient knowledge of the matters that form the basis of the functions of the corporation.
- (2) A person shall not be appointed a chairman or other member of the board of directors of a corporation where that person
- (a) is, or has at any time been, adjudged or otherwise declared bankrupt or insolvent under a law in force in Draftaria or in any other country and has not been discharged;
  - (b) has been declared incompetent to hold public office by the report of a Commission of Inquiry;
  - (c) has been convicted for treason or for an offence involving the security of the state, fraud, dishonesty or moral turpitude or for any other offence on indictment;
  - (d) being a person possessed of professional qualifications has been disqualified by the competent professional authority from being a member of that profession;
  - (e) has been removed or dismissed from the public service or the service of a corporation established out of moneys provided by Parliament;
  - (f) has such financial or other interest as is likely to affect prejudicially the status, or the performance by that person of the functions, of the board of directors; or
  - (g) has made a declaration of allegiance to a country other than Draftaria.

### *Defence*

A person shall not be convicted of an offence under [subsection (1) of section ...] if that person proves that the offence was committed without that person's knowledge or connivance and that all due diligence was exercised to prevent the commission of the offence, having regard to all the circumstances.

### *Disability in voting*

Where a member of the Board has a pecuniary or other interest, directly or indirectly, in a contract or proposed contract or any other matter and is present at a meeting of the Board at which the contract or the other matter is the subject of consideration, that member

- (a) shall declare that interest at the meeting immediately after the commencement of the meeting,
- (b) shall leave the meeting, and
- (c) shall not in any other manner take part in the consideration or discussion of or vote on a matter or question with respect to the contract or the other matter.



### *Dissolution of Board*

- (1) When the President, by statutory instrument, vacates all nominations to the Board of Directors of the Corporation and appoints trustees in accordance with [section ...], the Board shall cease to exist and the direction and control of the Corporation and its undertakings shall vest in the trustees.
- (2) The trustees become the successors in office to the Board, and accordingly they may, subject to this Act, exercise all the immunities, powers, privileges and rights, and perform all the functions which before the dissolution were vested in the Board.
- (3) A reference in any enactment, document or other instrument to the Board shall be read and construed as a reference to the trustees.

### *Domicile*

For the purposes of this Act, a body corporate is domiciled in Draftaria if

- (a) it is incorporated in, or has a registered place of business in, Draftaria;  
or
- (b) a majority of the directors or of the shareholders take residence in Draftaria for not less than six months in a year, or are ordinarily resident in Draftaria.

### *Exclusive rights*

Except as expressly provided in this Act, from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance business in Draftaria; and from that day a certificate or registration under the [Insurance Act ...] held by an insurer immediately before that day shall cease to have effect in so far as it authorises that insurer to carry on life insurance business in Draftaria.

### *Exemptions*

- (1) The Board may, under the seal of the Corporation, exempt [a person to whom this Act applies] from the operation of all or any of the provisions of this Act where in the opinion of the Board that person is in enjoyment of benefits in the nature of provident fund or pension and those benefits, jointly or severally, are on the whole not less favourable to that person than the benefits provided by or under this Act by the Corporation.
- (2) Where an exemption is granted under subsection (1), the employer shall not, at any time after the grant of the exemption, without the leave of the Board, reduce the total quantum of benefits to which that person was entitled at the time of the grant of the exemption.
- (3) An exemption granted under this section may be cancelled by the Board by order under the seal of the Corporation if the employer fails to comply with the requirements of subsection (2).

(4) An order under subsection (3) shall not be made unless the employer has been given reasonable opportunity of showing cause against the proposed cancellation.

### *Functions*

(1) The Corporation shall, by such measures as it thinks appropriate, promote the development of the sugar industry.

(2) Without prejudice to the generality of the provisions of subsection (1), the measures referred to therein may provide for

- (a) regulating the production and extent of the cultivation of sugar;
- (b) improving the quality of the sugar produced;
- (c) promoting co-operative efforts among growers and manufacturers of sugar;
- (d) undertaking, assisting or encouraging economic, scientific and technological research and maintaining or assisting in the maintenance of demonstration farms and manufacturing stations;
- (e) assisting in the control of insects and other pests and diseases affecting sugar;
- (f) regulating the export, import and sale of sugar;
- (g) increasing the consumption of, and improving the marketing of, sugar in and outside Draftaria and carrying on advertisements for those purposes;
- (h) registering and licensing of brokers, dealers, manufacturers and other persons engaged in the sugar industry;
- (i) collecting statistics from dealers, growers, manufacturers and other persons, whether engaged in the sugar industry or not, on matters relating to the sugar industry; and
- (j) securing better conditions of service for the workers in the sugar industry and the provision of, and improvements in, the amenities and incentives for those workers.

### *Liability of directors*

A director shall not be personally liable for any act or default done or made by the Board or by a director in good faith in the course of the operations of the Board.

### *Meetings*

- 1 The Corporation shall meet at the places and at the times, and shall observe the procedures for the transaction of its business specified or provided by Regulations made under this Act.
- 2 The meetings of the Corporation shall be conducted in accordance with the

Regulations made by the Minister under [section ... of this Act.]

- 3 (1) The chairman shall preside at the meetings of the Corporation, but in the absence of the chairman, such member as the members present at the meeting may appoint shall preside at that meeting.
- (2) The quorum at a meeting of the Corporation shall not be less than one-half of all the members of the Corporation.
- (3) A question at a meeting of the Corporation shall be decided by a majority of the members present and voting, and in the case of an equality of votes, the member presiding shall have a casting vote.
- 4 (1) Where there is a difference of opinion between the members of the Corporation and the chairman on a question for decision by the Corporation, the chairman shall, with the concurrence of the other members, refer the question to the Minister for determination.
- (2) The Corporation shall be bound by the directions of the Minister on a question referred to the Minister under subsection (1).

### *Offences*

- 1 (1) Where an offence is committed under this Act by a body of persons, then
- (a) in the case of a body corporate, every director or other officer of that body shall be deemed to have committed that offence; and
  - (b) in the case of a partnership, every partner or officer of the partnership shall be deemed to have committed that offence.
- (2) A person shall not be convicted of an offence under subsection (1) where that person establishes before the court that the offence was committed without the consent or connivance of that person and that reasonable steps had been taken before the occurrence of the offence to prevent the occurrence of the offence.
- 2 (1) Where a provision of this Act is contravened by a company, a person who at the time of the contravention was in charge of, or was responsible to, the company for the conduct of the business of the company shall be deemed to have contravened the provision and is liable to be proceeded against, without prejudice to the liability to prosecution of the company.
- (2) A person shall not be convicted of a contravention under subsection (1) where absence of knowledge of, and the exercise of due diligence to prevent, the contravention is established by that person.
- (3) Notwithstanding subsection (1), where an offence under this Act is committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to a neglect on the part of, a director, manager, secretary or other officer of the company, the director, manager, secretary or other officer and not the company shall be proceeded against.

### *Powers vested in corporations*

(1) Where an enactment establishes a corporation, the words of establishment shall be construed as

- (a) vesting in the corporation the power to sue and be sued, the power to contract and be contracted with in the name of the corporation, the power to have a common seal and the power to change the seal at the discretion of the corporation, the power of perpetual succession, the power to acquire land and hold personal property and other movables for the purposes for which the corporation is established and to dispose of that property at the discretion of the corporation;
- (b) vesting in the majority of the members of the corporation the power to bind the other members by the acts of the majority;
- (c) exempting from personal liability the debts, obligations or acts of the members of the corporation who do not contravene the provisions of the enactment establishing the corporation.

(2) A corporation shall not be deemed to be authorised to carry on the business of banking unless that power is expressly conferred upon the corporation by the enactment establishing the corporation.

### *Powers of entry*

(1) A person authorised in that behalf by the Board may, for the purposes of this Act, on the production of that person's authority, enter and inspect any land.

(2) A person who prevents or obstructs an entry pursuant to subsection (1) commits an offence and is liable on conviction on indictment to a fine of not less than five thousand dollars or to imprisonment for a term of not less than five years.

## **Corrupt practices**

- 1 A public officer shall not accept or solicit
- (a) a commission, fee, gift, loan or reward consisting of money or a valuable security or of any other property or interest in property of any description;
  - (b) any contract, employment or office;
  - (c) any payment, release, discharge or liquidation of a loan, obligation or other liability, whether in whole or in part;
  - (d) a service or favour, including protection from a penalty or disability incurred or apprehended or from an action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
  - (e) the exercise or forbearance from exercise of a right or a power or duty;
  - (f) any offer, undertaking or promise, whether conditional or unconditional, of an advantage which results to the benefit of the

- public officer.
- 2 A person shall not, without lawful authority or reasonable excuse, offer an advantage to a public officer as an inducement to or reward for or otherwise on account of that public officer
    - (a) performing or abstaining from performing, or having performed or abstained from performing, an act in the capacity of a public officer;
    - (b) delaying, expediting, hindering or preventing, or having delayed, expedited, hindered or prevented, the performance of an act, whether by that public officer or by any other public officer in the capacity of a public officer;
    - (c) assisting, delaying, favouring or hindering, or having assisted, delayed, favoured or hindered, a person in the transaction of a business with a public body.
  - 3 A public officer shall not, without lawful authority or reasonable excuse, solicit or accept an advantage as an inducement to or reward for or otherwise on account of the public officer
    - (a) performing or abstaining from performing, or having performed or abstained from performing, an act in the capacity of a public officer;
    - (b) delaying, expediting, hindering or preventing, or having delayed, expedited, hindered or prevented, the performance of an act, whether personally or by any other public officer in the capacity of a public officer; or
    - (c) assisting, delaying, favouring or hindering, or having assisted, delayed, favoured or hindered, a person in the transaction of a business with a public body.
  - 4 (1) A person shall not, without lawful authority or reasonable excuse, offer an advantage to a public officer as an inducement to or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in,
    - (a) the execution, procuring or promotion of
      - (i) a contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance;
      - (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under a contract with a public body; or
    - (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in a contract or subcontract referred to in paragraph (a).
  - (2) A public officer shall not, without lawful authority or reasonable excuse, accept or solicit an advantage as an inducement to or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in
    - (a) the execution, promotion or procuring of, or

- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,  
a contract or subcontract referred to in subsection (1).
- 5 (1) A person shall not, without lawful authority or reasonable excuse, offer an advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from making of a tender, for a contract with a public body for the performance of a work, the providing of a service, the doing of any thing or the supplying of an article, a material or substance.
- (2) A person shall not, without lawful authority or reasonable excuse, accept or solicit an advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for a contract referred to in subsection (1).
- 6 (1) A person shall not, without lawful authority or reasonable excuse, offer an advantage to any other person as an inducement to or reward for or otherwise on account of that other person refraining or having refrained from bidding at an auction conducted by or on behalf of a public body.
- (2) A person shall not, without lawful authority or reasonable excuse, accept or solicit an advantage as an inducement to or reward for or otherwise on account of that person refraining or having refrained from bidding at an auction conducted by or on behalf of a public body.
- 7 (1) A person shall not, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through a department, establishment or office of the Government, offer an advantage to a public officer employed in that department, establishment or office of the Government.
- (2) A person shall not, without lawful authority or reasonable excuse, while having dealings of any kind with any other public officer, offer an advantage to a public officer employed by that public body.
- 8 (1) An agent shall not, without lawful authority or reasonable excuse, accept or solicit an advantage as an inducement to or reward for or otherwise on account of the agent
- (a) doing or forbearing to do, or having done or forborne to do, an act in relation to the affairs or business of the principal, or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to a person in relation to the affairs or business of the principal.
- (2) A person shall not, without lawful authority or reasonable excuse, offer an advantage to an agent as an inducement to or reward for or otherwise on account of the agent
- (a) doing or forbearing to do, or having done or forborne to do, an act in relation to the affairs or business of the principal, or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to a person in relation to the affairs or business of the principal.
- (3) An agent shall not, with intent to deceive the principal of that agent,

use an account, a receipt or other document

- (a) in respect of which the principal is interested;
- (b) which contains a statement which is false or erroneous or defective in a material particular; or
- (c) which, to the knowledge of the agent, is intended to mislead the principal.

(4) Where an agent accepts or solicits an advantage with the permission of the principal of the agent, being permission which complies with subsection (5), the agent or the person who offered the advantage does not commit an offence under this Act.

(5) For the purposes of subsection (4), the permission shall be in writing and shall be given, having regard to the circumstances in which it is sought, before the advantage is accepted, offered or solicited.

9 (1) A public officer shall not

- (a) maintain a standard of living above that which is commensurate with the present or past emoluments of that public officer; or
- (b) have control of, or be in control of, pecuniary resources or property disproportionate to the present and past emoluments of that public officer.

(2) A public officer shall not be convicted of an offence under subsection (1) where the court is satisfied as to the circumstances regarding that standard of living or how the pecuniary resources or property came under the control of that public officer.

(3) Where the court is satisfied, in proceedings for an offence under subsection (1), that, having regard to the closeness of the relationship with the accused and to other circumstances, there is reason to believe that a person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired the pecuniary resources or property as a gift from the accused, the resources or property shall, unless the contrary is established, be presumed to be in the control of the accused.

10 (1) Where in proceedings for an offence under this Act it is proved that the accused accepted an advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of the doing or forbearing to do, or having done or forborne to do, an act in contravention of a provision of this Act, it is not a defence to establish that the accused

- (a) did not actually have the power or opportunity so to do or forbear;
- (b) accepted the advantage without intending so to do or forbear; or
- (c) did not in fact so do or forbear.

(2) Where, in proceedings for an offence under this Act, it is proved that the accused offered an advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do an act, believing or

suspecting or having reason to believe or suspect that the other person had the power, right or opportunity so to do or forbear, it is no defence that the other person did not have the power, right or opportunity.

## Costs

- 1 A sum of money awarded as costs under [section ...] may be recovered, on application made to a Magistrate, by the distress and sale of the movable property of the person against whom the costs have been awarded, which property is within the limits of the jurisdiction of the Magistrate.
- 2 The court or the Court of Appeal may award costs to a person in respect of proceedings before it in relation to an order made under this Act or an appeal.

## Dealing in articles

A person shall not import or have in that person's possession in Draftaria or buy or sell or otherwise deal in an article specified under [section ...] unless a certificate under the hand of the Minister has been obtained therefor.

## Declaration of fidelity and secrecy

- 1 A director, auditor, officer or other employee of the Corporation shall, before assuming office, take the oath of office, or make a declaration of fidelity and secrecy, in the form set out in the Schedule.
- 2 Where a person who
  - (a) is employed in a Government department communicates or publishes without lawful authority to any other person otherwise than in the ordinary course of duty any information acquired by that person in the course of employment, or
  - (b) having possession of any information which to that person's knowledge has been disclosed in contravention of this Act, communicates or publishes that information to any other person,that person commits an offence and is liable on conviction on indictment to imprisonment for a term not less than ten years.
- 3 Where a person discloses information obtained by that person in connection with the exercise of the powers of that person under this Act, other than to any other person acting in the execution of a duty under this Act, or to any other person authorised by law to receive that information, that person commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than ten years.
- 4 Nothing contained in this Act shall prejudice a claim to privilege which a



person may have at common law in respect of a communication, document or other thing made or given to a solicitor or counsel.

- 5 A Minister of State shall, before assuming office, take and subscribe the oath of allegiance, the oath of a Minister of State and the oath of secrecy required of member of the Cabinet.
- 6 A public officer shall, on appointment, take and subscribe the oath of secrecy provided for public officers.
- 7 A person shall not disclose any information furnished under this Act or Regulations made thereunder without the consent of the person from whom it was obtained or the consent of the Attorney General, except
  - (a) to a public officer in the performance of the functions of the office of that officer;
  - (b) in a prosecution for an offence under this Act;
  - (c) under a certificate under the hand of the Minister, in a civil action or proceeding.
- 8 A person commits an indictable offence who, being employed in the execution of a duty under this Act or Regulations made thereunder,
  - (a) after having taken the prescribed oath, deserts from duty under this Act or makes a false declaration, statement or return in relation that duty;
  - (b) obtains or seeks to obtain information which that person is not duly authorised to obtain, in the pretended performance of a function under this Act or Regulations made thereunder;
  - (c) fails to keep inviolate the secrecy of an information gathered in pursuance of a provision of this Act or Regulations made thereunder and divulges the contents of that information.
- 9 A person who obtains, under or by virtue of this Act, information in relation to the business of any other person shall not, without the consent of the Attorney General, disclose or allow to be disclosed to a person not legally entitled thereto the information so obtained and in a manner as to be identifiable as being in relation to that business.

## Definitions

- 1 In this Act, unless the context otherwise requires, “advantage” means
  - (a) a gift, fee, loan, reward or commission consisting of money or of a valuable security or of other property or interest in property of any description;
  - (b) a contract, an employment or an office;
  - (c) a discharge, payment, release or liquidation of a loan or an obligation or other liability, whether in whole or in part;
  - (d) any other service or favour including protection from a penalty

or disability incurred or apprehended or from any action or proceedings of a disciplinary nature civil or criminal, whether or not already instituted;

- (e) the exercise or forbearing from the exercise of a right or a power or the discharge of a duty; or
- (f) an offer, undertaking or a promise, whether conditional or unconditional, of an advantage, as defined in this section;

“agent” includes a public officer and a person employed by or acting on the behalf of any other person;

“business” includes

- (a) any commerce, manufacture or trade or any adventure in the nature of commerce, manufacture or trade or a profession or vocation, other than a profession carried on by an individual or by individuals in partnership if the profits of the profession or vocation depend mainly or wholly on the personal qualifications of the partners unless the profession or vocation consists mainly or wholly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of a contract; and
- (b) the functions of a company or of a society incorporated by or under an enactment consisting mainly or wholly in the holding of investments or property;

“clinical establishment” includes a clinical laboratory, a nursing home, a physical therapy establishment, and an establishment analogous to any of them by whatever name called;

“clinical laboratory” includes an establishment where

- (a) bacteriological, biological, chemical, microscopic, radiological or other analysis, examinations or tests are carried on;
- (b) the preparation of cultures, serums, vaccines or other bacteriological or biological products are carried on;

“consumer” means a person

- (a) to whom goods are or are intended to be supplied in the course of a business carried on by the supplier or potential supplier;
- (b) for whom services are supplied in the course of a business carried on by the supplier or potential supplier,

and who does not seek to receive the goods or services in the course of a business carried on by that person;

“day” means the period of twenty-four hours beginning at midnight;

“document” includes a book, record, register, tape recording, any form of computer input or output, and any other material whether produced electrically, electronically, manually, mechanically or by any other means;

“entertainment” includes the provision of food or drink for consumption

on the occasion when it is provided, and of any other entertainment connected with, or provided at the time of, the provisions;

“establishment” means a restaurant, a shop or a theatre;

“expert” includes an accountant, an engineer, a valuer or any other person whose profession or vocation gives authority to a statement made by that accountant, engineer, valuer or that other person;

“Federal purposes” means the purposes of the Federal Government relating to any of the matters mentioned in the Exclusive List in the Seventh Schedule to the Constitution;

“functions” includes powers and duties;

“gainfully occupied person” has the meaning assigned to it in the [War Injuries Act ...];

“goods” means all kinds of property other than choses in action, money, real property or securities;

“margin” means the difference between the rate specified in a contract relating to the sale or purchase of goods made on a forward basis and the rate prevailing on the date subsequent to the date of the contract as may be specified in the contract;

“Minister” includes a department of the Government, but not the chambers of the Attorney General, the department of the Director of Public Prosecutions, the Registrar General of Births, Deaths and Marriages and a Commission established by or under an Act of Parliament;

“minor” means a person who, according to the personal law to which that person is subject, has not attained the age of majority;

“nursing home” includes a maternity home and an establishment where persons suffering from illness, injury or infirmity whether of body or of mind are usually received and accommodated for the purpose of nursing and treatment;

“officer who is in default” means an officer of a company who is found guilty of a contravention, default, failure, non-compliance or refusal in respect of a provision of this Act, or who knowingly or wilfully authorises or permits the contravention, default, failure, non-compliance or refusal;

“pecuniary advantage” means an advantage obtained by a person, whether for that person’s benefit or for any other person, in a case where

- (a) a debt or charge for which that person undertakes liability, or is, or may be become liable, including one that is not legally enforceable, is reduced, or in whole or in part evaded or deferred; or
- (b) that person is allowed whether for that person’s benefit or for any other person to borrow by way of overdraft, or to take out a policy of insurance or annuity contract, or obtains an improvement of the terms on which that person is allowed to do so; or

- (c) that person whether for that person's benefit or for any other person is given an opportunity to earn remuneration in an office or employment, or to win money by betting;

"prescribed" means prescribed by the Act in which the word occurs or by Regulations or Rules made under that Act;

"principal" includes an employer, a beneficiary under a trust, a trust estate as if the trust estate were a person, a person beneficially interested in the estate of a deceased person, the estate of a deceased person as if that estate were a person, and, in the case of an employee of a public body that public body;

"property" includes

- (a) a right and an interest in property of any description;  
(b) a thing in action and an interest in real or personal property;  
(c) any property over which or the profits of which a person has a disposing power which that person may exercise for that person's own benefit;

"public building" means a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship or as an hospital, a college, a school, a theatre, a public hall, or as a public place of assembly for persons admitted by ticket or otherwise, or used or adapted to be used for any other public purpose;

"public corporation" means a corporation or any other body of persons established by an Act of Parliament or set up out of funds provided by Parliament or other public funds;

"public interest" includes an advantage or a right which enures or is intended to enure for the benefit generally of the people of Draftaria;

"public place" includes a public park or a public garden, or a ground to which the public have or are permitted to have access, whether on payment or otherwise [a public park, garden, sea beach, or railway station, or a ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise] [a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass];

"public servant" includes a public officer, a member of a public body, a member of an association or club who is an office holder in that association or club, and a person vested with any responsibility for the conduct or management of the affairs of that association or club, a member of the board, committee, council or other body of an educational institution, or vested with any responsibility for the conduct or management of the affairs of that educational institution, and, for the purposes of the criminal law, a member of Parliament;

"public thoroughfare" includes all public streets, roads, bridges, thoroughfares and all other places over which the public have a right of way for wheeled vehicles;

“public utility service” includes an undertaking which supplies gas, light, power or water to the public, or carries on a public transport, or maintains a system of public conservancy or sanitation and which is declared by statutory instrument made by the Minister to be a public utility service to which this Act applies;

“purchaser for value” includes a transferee, a lessee, and a mortgagee for value;

“restaurant” means any premises in which is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises which premises is not part of a theatre;

“relative” in relation to two persons includes husband and wife and a person related to the husband or wife, whether by legitimate or illegitimate descent or by adoption, and whether by full blood or half blood;

“shop” includes any premises where the business of a barber or hairdresser, a retail business or trade is carried on and retail sales by auction, other than the sale of catalogues, programmes and other similar sales at a theatre, are carried on;

“show house” includes a building, a roofed and enclosed structure used ordinarily or occasionally for the demonstration or exhibition to the public, whether on payment or otherwise, of cinematographic films, dramatic, pantomime or musical performances, dances, physical feats of human beings or animals conjuring tricks or sleights of hand, billiards, boxing, skating or table tennis competitions or any other amusement or diversion;

“spouse” includes a boyfriend, a concubine, a girlfriend, a mistress other than a lawful wife;

“statutory percentages” means

- (a) eight *per centum per annum* in relation to a business carried on by a body corporate, other than a company the directors of which have a controlling interest in the company;
- (b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate, other than a company the directors of which have a controlling interest in the company, such *per centum* as is equivalent to
  - (i) eight *per centum per annum* on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of the body corporate, and
  - (ii) ten *per centum per annum* on the remainder of that amount;
- (c) in relation to a business to which neither paragraph (a) nor (b) applies, ten *per centum per annum*;
- (d) six *per centum per annum* in relation to any decrease of capital;

- (e) an increase from eight, ten and six *per centum* to ten, twelve and eight *per centum* respectively where the business was commenced on or after the [first day of July, 1989];
- “terms and conditions of service” does not include allowances, gratuities and pensions payable on death or retirement;
- “theatre” includes any premises intended principally or wholly for the presentation of dramatic performances, moving pictures or stage entertainments;
- “war injury” has the meaning assigned to it in the [War Injuries Act ...];
- “week” means a period of seven days beginning at midnight on Saturday.
- 2 Words and expressions used in this Act but not defined in this Act and are defined in the [Forestry Act ...] shall have the meanings assigned to them in the Forestry Act.
  - 3 For the purposes of this [Act] [section],
    - (a) a person offers an advantage if that person or any other person acting on behalf of that person, directly or indirectly, affords, gives or holds out or agrees, promises or undertakes to afford, give or hold out, an advantage to or for the benefit of or in trust for any other person;
    - (b) a person solicits an advantage if that person or any other person acting on behalf of that person, directly or indirectly, demands, invites, asks for or indicates willingness to receive, an advantage;
    - (c) a person accepts an advantage if that person or any other person acting on behalf of that person, directly or indirectly obtains, receives or takes or agrees to obtain, receive or take an advantage.

## Delegation of powers

- 1 The Governor General may, by statutory instrument, direct that a power conferred by or under this Act shall, subject to the conditions specified in the instrument, be exercisable also by a public officer or an authority subordinate to the Minister specified in the instrument.
- 2 The Administrator may, by statutory instrument, direct that a power exercisable by the [Administrator] under this Act shall, in such circumstances and under such conditions as may be specified in the instrument, be exercisable also by an officer named therein.
- 3 The Board may, by special or general order in writing, delegate to the chairman or any other member of the Board or to the secretary or any other officer or employee of the Corporation, but subject to the conditions and limitations specified in the order, such of its [functions] [duties and powers] under this Act as it considers necessary.
- 4 (1) Any authority, jurisdiction or power, or a duty which the Minister may discharge, exercise or perform by or under an enactment mentioned in the first column of the Schedule may be discharged, exercised or performed also

- (a) by an authority or officer specified in relation thereto in the second column;
  - (b) by such other authority or officer as the Minister may, by statutory instrument, order.
- (2) The Minister may transfer an appeal or an application for revision or any other matter pending before the Minister to an officer or other authority to dispose of the same, subject to an appeal as of right to the High Court.
- (3) The Minister may withdraw an appeal or application transferred under subsection (2) to be dealt with by the Minister.
- 5 (1) The Governor General may, by statutory instrument, direct that a power exercisable by the Governor General under this Act shall, subject to the conditions specified in the instrument, be exercisable by the Chief Resettlement Officer.
- (2) Subject to [sections ... and ...] and to Regulations made under this Act, the Chief Resettlement Officer may, by notice published in the *Gazette*, delegate any of the powers of the Chief Resettlement Officer to a public officer.
- 6 The Premier of a State may, by statutory instrument, delegate, subject to the conditions specified in the instrument, all or any of the powers of the Premier to make Regulations under this section to an authority specified in the instrument.

## Deprivation of citizenship

- (1) The Minister may, by legislative instrument, deprive a citizen, other than a citizen by birth, of the citizenship of Draftaria where the Minister has reasonable cause to believe that
- (a) the registration or certificate of naturalisation was obtained by means of the concealment of material facts or false representation or fraud; or
  - (b) by act or speech, that citizen has shown disloyalty or disaffection towards the Constitution; or
  - (c) during a war in which Draftaria may be engaged, or during any other state of emergency, that citizen has unlawfully traded or communicated with an enemy or been engaged in, or associated with a business that was carried on in a manner prejudicial to the interests of Draftaria; or
  - (d) within the five years after registration or naturalisation, that citizen has been sentenced in any country or imprisoned for a term of not less than two years; or
  - (e) for a continuous period of seven years, that citizen has been ordinarily resident out of Draftaria and, during that period, has neither been at any time a student of an educational institution in a country outside Draftaria or in the service of the

Government or of an international organisation of which Draftaria is a member, nor registered annually in the prescribed manner at a Draftarian consulate as required by law to retain citizenship of Draftaria.

## Deposit of security

- 1 (1) A person who is required to make a declaration under [section ... of the Books and Newspaper Registration Act ...] shall deposit a security, in the sum of [ten thousand dollars] or its equivalent in bonds or other securities, with the Magistrate before whom the declaration is made.  
(2) Where a security under subsection (1) has been deposited and, for a period of three months from the date of the declaration an order has not been made by the Minister under [section ...], subsection (1) shall cease to apply and any moneys paid thereunder shall be refunded to the person who paid those moneys.
- 2 (1) Where a security is alleged to have been lost, stolen or destroyed whether wholly or in part, a person who claims to be the person to whom, but for the destruction, loss or theft, it would be payable may, on payment of the prescribed fee, apply to the prescribed authority.  
(2) The prescribed authority on satisfactory proof of the destruction, loss or theft and of the justice of the claim order
  - (a) the payment of interest in respect of the security claimed to be destroyed, lost or stolen pending the issue of a duplicate security; and
  - (b) issue of a duplicate security payable to the applicant.
- (3) A list of the securities in respect of which an order is made under subsection (2) shall be published in the *Gazette*.
- (4) Where a security, the whole of which is alleged to have been destroyed, lost or stolen, is found, an order made in respect thereof shall be cancelled.
- (5) Subsection (4) applies at any time before the Government is discharged under this Act from liability in respect of that security.

## Destruction

A person who alters, defaces, pulls down or removes a monument erected, placed or planted pursuant to this Act commits an offence and is liable

- (a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding five months or to both the fine and imprisonment;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.



## Detention

- 1 Where a person is detained in pursuance of an order made under an enactment providing for preventive detention, the authority making the order
  - (a) shall, within fours of the making of the order, inform and serve on the person detained the grounds on which the order is made; and
  - (b) shall afford the person detained the earliest opportunity, within twenty-four hours, of making a representation before the High Court against the order.
- 2 The Minister may, in the public interest, and for the purpose of exercising control over any person, make an order directing the detention of a person
  - (a) who the Minister has reasonable cause to believe is a person of hostile associations;
  - (b) who is a citizen of a country with which Draftaria is at war;
  - (c) who is likely to endanger the maintenance of law and order or disrupt activities or efforts required for the benefit of the public during a state of emergency; or
  - (d) who has recently been concerned
    - (i) in acts prejudicial to the public order or the defence of Draftaria, or
    - (ii) in the preparation or instigation of acts prejudicial to the public order or the defence of Draftaria.
- 3 The Minister may, in the public interest and by executive instrument, make an order to restrict the movements in Draftaria of a person who the Minister has reasonable cause to believe
  - (a) has or professes aims, objectives or tendencies which include the use of force for the overthrow of the Government as by law established; or
  - (b) advocates the overthrow by violent means of the Government as by law established.

## Digging of public land

- (1) A person who, without the permission in writing of the Minister, digs up the surface of an open space in a public place commits an offence and is liable on conviction on indictment to a fine of not less than ten thousand dollars or to imprisonment for a term of not less than five years.
- (2) A person permitted by the Minister in writing to dig up the surface of an open space in a public place shall, after the completion of the work for which the permission was given, restore the surface to its original state as much as possible.
- (3) A person to whom permission is given by the Minister to dig up the surface of an open space in a public place is responsible for any damage or injury caused to person or property as a result of the digging.

## Disclosure of interests

A director of a corporation who, otherwise than as a director, is directly or indirectly interested in an agreement or arrangement entered into or made, or proposed to be entered into or made, by the corporation, shall as soon as the relevant facts come to the knowledge of that director, disclose the nature of that interest at a meeting of the corporation.

## Disqualification from holding office

- 1 A person is disqualified from being [appointed], [nominated as] [or from continuing in office as] a member of the [Corporation] [Board] [Commission] if that person
  - (a) is not a citizen of Draftaria and is less than thirty years of age;
  - (b) is found to be a person of unsound mind;
  - (c) is insolvent or is an undischarged bankrupt;
  - (d) has been convicted of an offence involving fraud or moral turpitude;
  - (e) has, on a previous occasion, been removed from the office of a member of a committee or has been removed by order of a court of competent jurisdiction from a position of trust for a sufficient cause.
- 2 A person shall not be a member of the Federal Parliament and a member of a State Legislature at the same time; and accordingly, the seat of that person in the Federal Parliament and in the State Legislature automatically becomes vacant on that person becoming a member of the Federal Parliament and of the Legislature of a State.
- 3 A person is disqualified from being
  - (a) a member of Parliament if that person is a member of the Legislature of a State; or
  - (b) a member of the Legislature of a State if that person is a member of Parliament.
- 4 Where the chairman or any other member of the [Commission] [Committee] [Council] is or becomes in any way concerned or interested in a contract or an agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, the chairman or the other member becomes disqualified on the ground of moral turpitude.

## Dissolution of Board

- 1 (1) The President may, by legislative instrument, direct that the Board shall be dissolved from the date specified in the instrument.
  - (2) Where the Board is dissolved under subsection (1),

- (a) the members shall, from the date of the dissolution, vacate their offices;
  - (b) the powers and duties of the Board shall be exercised from the date of the dissolution by the person appointed by the President in that behalf, and subject to such conditions as the President may determine;
  - (c) the funds and other property vested in the Board shall vest in the Accountant General.
- 2 (1) Where the Governor General is of the opinion that a Board has performed its functions under this Act, the Governor General may, after consultation with the Prime Minister and the Leader of the Opposition, by statutory instrument declare that the Board shall be dissolved from the date specified in the instrument.
- (2) On the dissolution of the Board under subsection (1),
- (a) all dues, funds and properties, which are vested in, or are realisable by, the Board shall vest in, and be realisable by, the Accountant General or such other authority as may be specified in the instrument; and
  - (b) all liabilities which are enforceable against the Board shall be enforceable against the Government or the authority specified in the instrument.
- 3 (1) Where the Minister has reasonable cause to believe that the Corporation has failed to perform its functions under this Act or that for any other sufficient reason it is not necessary to continue the Corporation, the Minister may, by statutory instrument, dissolve the Corporation.
- (2) Where the Corporation is dissolved under subsection (1),
- (a) all the members of the Corporation shall, from the date of the dissolution, vacate their offices;
  - (b) all powers and duties of the Corporation shall, from the date of the dissolution, be exercised and performed by such person as the Minister may appoint for that purpose; and
  - (c) all moneys and other property of the Corporation shall vest in the Official Trustee.
- 4 (1) Where the Board
- (a) does an act exceeding the powers conferred upon it,
  - (b) acts in a manner contrary to this Act or to the Regulations made thereunder,
  - (c) acts in a manner prejudicial to the interests of the industry, or
  - (d) acts contrary to, or fails to act in accordance with, the directions of the Minister,

the Minister shall call upon the Board to show cause why the Board should not be dissolved, and if a satisfactory explanation is not offered, or if not satisfied with the explanation given, the Minister shall dissolve the Board from the date of the notification in the *Gazette* of the dissolution.

- (2) Where the Board is dissolved under subsection (1),
  - (a) the members shall vacate their offices;
  - (b) the functions of the Board shall be performed by the person appointed by the Minister in that behalf; and
  - (c) the moneys and other property vested in the Board shall vest in the person so appointed to be administered in the manner directed by the Minister.
- 5 The Minister may, by legislative instrument, declare that, with effect from the date specified in the instrument, the Committee shall cease to exist, and that its assets and liabilities shall be transferred to the Accountant General and, on such transfer, this Act shall cease to have effect.

## Duration

- 1 This Act shall cease to have effect on the first day of October, 1998, except as regards things done or omitted to be done before that date and [section ... of the Interpretation Act ...] shall apply upon the expiry of this Act as if it as has then been repealed.
- 2 This Act remains in force up to the 31st day of March, 1997.
- 3 This Act shall come into force of the first day of January, 1997, and shall cease to have effect on such date as the Governor General may, by legislative instrument, appoint.
- 4 This Act shall be in force for a period of two years from the date of its publication in the *Gazette*, and upon the expiry of that period [section ... of the Interpretation Act ...] shall apply.
- 5 This Act shall be deemed to have come into force on the 29th day of October, 1996 and shall remain in force up to the 30th day of March, 1997.
- 6 This Act shall cease to have effect on the first day of April, 1997, save as respects things done or omitted to be done before that date.
- 7 This Act shall cease to have effect
  - (a) in the States specified in Part One of the Schedule on the first day of April, 1997; and
  - (b) in the States specified in Part Two of the Schedule,
    - (i) on the thirty-first day of December, 1996, in respect of a requisitioned land which, at the commencement of the Emergency Regulations, 1995, are subject to requisition by or under the authority of the President;
    - (ii) on the thirty-first day of December, 1996, in respect of other requisitioned lands.
- 8 This Act shall come into force on such date as the President may, by legislative instrument, appoint and shall remain in force for as long as the Tolls Act, 1936, remains in force.

## **Effect of laws and agreements inconsistent with Act**

(1) This Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in the terms of an agreement, award or a contract of service whether made before or after the coming into force of this Act.

(2) Where under an agreement, award, contract of service or otherwise an employee is entitled to benefits in respect of matters which are more favourable to the employee than those to which the employee will be entitled to under this Act, the employee shall continue to be entitled to the more favourable benefits whether or not the employee receives benefits under this Act.

(3) Nothing contained in this Act shall be construed as precluding an employee from entering into an agreement with an employer for the grant of rights or privileges which are more favourable to the employee than those which the employee would be entitled to under this Act.

## **Employment of members of the Armed Forces**

(1) Where a member of the Armed Forces is employed to assist [an agricultural or industrial undertaking], whether the employment was before or is after the coming into force of this Act,

- (a) a provision of the [Agricultural and Industrial Undertakings Act ...] or of Regulations made thereunder which confers a power, status or immunity or imposes a duty or liability upon an employee of that undertaking in connection with the working, use, management and maintenance of the undertaking shall be construed as conferring the same power, status or immunity or imposing the same duty or liability upon the member of the Armed Forces when so employed;
- (b) the employment of a member of the Armed Forces in addition to, or in the place of, an employee shall not affect a liability that would otherwise have attached to the undertaking had that member been an employee of that undertaking.

(2) Nothing in subsection (1) shall be construed as making applicable to a member of the Armed Forces so employed the provisions of any other enactment or as derogating from a provision of a law regulating the control, discipline or governance of members of the Armed Forces.

## Evidence

### *Absence*

Where a member of the Armed Forces fails to appear at the time and at the place at which that member is required to appear, and the absence continues for more than seven days, an entry of that absence shall be made by the commanding officer in the prescribed manner.

### *Appointment*

A letter purporting to be signed by the Minister or Permanent Secretary and giving notice of an appointment or removal of or setting forth instructions to a person employed for the purposes of this Act, is *prima facie* evidence of the appointment, removal or instructions, and that the letter was signed and addressed as it purports to be.

### *Burden of proof*

Where in any proceedings relating to customs or excise a question arises as to the place from which goods have been brought or whether

- (a) duty has been paid or secured in respect of the goods,
- (b) any goods or other things are of the description or nature alleged in the information, writ or other process,
- (c) any goods have been lawfully imported or lawfully unloaded from an aircraft, a ship or vessel,
- (d) any goods have been lawfully loaded into an aircraft, ship or vessel or lawfully exported,
- (e) any goods were lawfully brought to a place for the purpose of being loaded into an aircraft, a ship or vessel or exported,
- (f) any goods are or were subject to a prohibition of or restriction on their importation or exportation,

then, where the proceedings are brought by or against the Commissioner or against any other person in respect of anything purporting to have been done in pursuance of this Act, the burden of proof lies on the other party to the proceedings.

### *Proof of entries in books*

- 1 Subject to this Act, a certified true copy of an entry in the books or other records of a bank shall in all legal proceedings be received as *prima facie* evidence of the existence of the entry, and shall be admitted as evidence of the accounts, matters or transactions therein recorded in every case where, and to the same extent as, the original entry itself is admissible, but no further or otherwise.

- 2 Where it appears that,
  - (a) by the books of account kept by or in the office of a public officer or any other person, or in any accounting by that officer or person, or
  - (b) by the written acknowledgement or confession of that officer or person,  
money has been received by that officer or person for the benefit of the Republic, an affidavit sworn to by a person having knowledge of the facts set out in the affidavit shall be received in evidence as *prima facie* proof of the facts stated in the affidavit.
- 3 A book or other record or document required by this Act to be kept for the purposes of this Act, shall be received in evidence as *prima facie* proof of the contents therein.

### **Executive and other committees**

- (1) There shall be an executive committee of the Board constituted in accordance with this section.
- (2) The executive committee shall exercise the powers and perform the functions of the Board as are prescribed, or delegated to it, by the Board.
- (3) The Board may, subject to such control and restrictions as it may prescribe, constitute other standing committees or *ad hoc* committees for exercising a power or discharging a duty of the Board or for enquiring into or reporting and advising on a matter which the Board may refer to any of those committees.
- (4) A standing committee shall consist exclusively of members of the Board.
- (5) An *ad hoc* committee may include persons who are not members of the Board, but the number of the *ad hoc* members shall not exceed one-half of the number of members of that committee.

### **Execution of deeds abroad**

- (1) The Bank may, by writing under its common seal, empower a member of its board of governors either generally or in respect of a specific matter, as its attorney to execute deeds on its behalf in a place outside of Draftaria.
- (2) A deed executed by virtue of subsection (1) shall bind the Bank.

### **Exemptions**

- 1 The Minister may, in the public interest, exempt for such period as the Minister may consider appropriate an industry specified in the Schedule or any other industrial undertaking from the operation of any or all of the provisions of this Act or of Regulations made thereunder.

- 2 (1) The Minister may, by legislative instrument, exempt an insurer constituted, incorporated or domiciled in a country outside Draftaria from a provision of the Act specified in the instrument whether absolutely or subject to such conditions or modifications as may be specified in the instrument.  
(2) Subsection (1) applies in respect of a society as defined in the instrument.
- 3 The Minister may, by legislative instrument, exempt from the payment of light dues under this Act
  - (a) a ship belonging to the Government or to a foreign country not carrying cargo or passengers for freight or fares;
  - (b) a ship of a tonnage of less than fifty tonnes;
  - (c) any other ship or class of ship or ships performing specified voyages either wholly or to such extent as may be specified in the instrument.
- 4 (1) Nothing contained in an enactment to regulate the alteration, construction, erection, maintenance or re-erection of buildings within the area of authority of a local government authority shall apply to a building used or required for the public service or for a public purpose, which is the property of, or is in the occupation of, the Government, or which is to be erected on land which is the property of, or is in the occupation of, the Government.  
(2) Where the alteration, construction, erection, maintenance or re-erection of the building not being a building connected with the defence of the State, or a building the plan or construction of which ought, in the opinion of the Minister, to be treated as confidential or secret is contemplated, reasonable notice of the proposed work shall be given to the local government authority before it is commenced.
- 5 The Minister may, by statutory instrument, remit or reduce a rate or tax imposed under this Act, or exempt a class of persons or any description of property, wholly or in part, from liability to any such rate or tax having regard to the living conditions of that class of persons or the nature of the property.
- 6 A property which forms part of the compensation pool and which is vested in the Minister for the benefit of a person with a disability is not liable to be proceeded against for a claim in execution of a decree or order or other process of a court or other authority.
- 7 (1) Notwithstanding anything contained in this Act, the Minister may, by statutory instrument, and upon such conditions as the Minister may determine,
  - (a) exempt a [ship or sailing vessel or a master, tindal or seaman] from a specified requirement contained in or prescribed in pursuance of this Act, or
  - (b) dispense with the observance of a specified requirement in the case of a [ship or sailing vessel or a master, tindal or seaman],



where the Minister is satisfied that the exemption is reasonable or that the requirement has been substantially complied with or that compliance with the requirement, having regard to all the circumstances, ought to be dispensed with.

(2) A person who is in breach of a condition to which an exemption is subject under subsection (1) commits an offence and, without prejudice to any other remedy, is liable on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of five years.

- 8 The Minister may, by legislative instrument, exempt from all or any of the provisions of this Act and of Regulations made thereunder, and on such conditions as the Minister thinks fit,
  - (a) a dock, port or place, quay, wharf or similar premises at which the processes are only occasionally carried on, or the traffic is small and confined to small ships; or
  - (b) a specified ship or class of ship.
- 9 The Minister may, by statutory instrument,
  - (a) exempt a person by name or by virtue of office, or a class of persons, or exclude any description of arms and ammunition, or withdraw any part of Draftaria from the operation of a prohibition or direction contained in this Act; and
  - (b) cancel the notification, and subject the person or things or the part comprised therein to the operation of the prohibition or direction.
- 10 The Minister may, by statutory instrument, in the case of a registered society or a class of registered society, remit the income tax payable in respect of the profits of that registered society or class of registered society, or of the dividends or other payments received by the members of the society on account of profits.
- 11 Notwithstanding anything contained in this Act, a State government may, by special order and subject to such conditions as it may impose, exempt a society from any of the requirements of this Act as to registration.
- 12 The Minister may, by legislative instrument, exempt a person who, in the opinion of the Minister, is unable by reason of poverty to pay a tax imposed under this Act for a period not exceeding one year at a time from the payment of a tax or a portion of a tax imposed under this Act.
- 13 The Minister may, by legislative instrument, either retroactively from the 30th day of March, 1987, or prospectively, exempt from the operation of a provision of this Act a person or a class of persons to whom the Minister considers it impossible or inexpedient to apply that provision.
- 14 The Minister may, in respect of an establishment under the control of the Minister,
  - (a) exempt, subject to such conditions as the Minister thinks fit to impose, that establishment to which this Act applies from all or any of the provisions of this Act; and
  - (b) on a special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of this Act.

- 15 The Minister may, by statutory instrument, exempt an employer from the provisions of this Act at the request of the employer where the Minister is satisfied that the employer has, before the coming into force of this Act, entered into a contract with insurers substantially covering the liabilities imposed on the employer by this Act for the period of the subsistence of the contract.
- 16 (1) The Minister may, by statutory instrument, declare that any or all of the provisions of the Regulations made under this Act shall not apply, or shall apply with such modifications or subject to such conditions as may be prescribed in the instrument, to or in relation to an individual foreigner or a class or description of foreigner.
- (2) A copy of the instrument shall be placed before Parliament within seven days after the publication of the instrument.
- 17 (1) The Minister may, by legislative instrument, condone a contravention of a provision of [section ... or section ...], and on the publication of the instrument in the *Gazette*, this Act shall have effect as if an exemption had been granted in respect of the thing done or omitted to be done in contravention of [section ... or section ...].
- (2) An instrument issued under subsection (1) shall be laid before Parliament and shall not come into force unless it is approved by a resolution supported by the votes of not less than [one-half of the members present and voting].
- 18 Where the Minister has reasonable cause to believe
- (a) that the application of [section ...] to a class of industrial establishments or to a class of workmen employed in an industrial establishment affects the [employees] [employers] so prejudicially that the application may cause repercussions in the industry concerned, and
- (b) that the public interest so requires,
- the Minister may, by legislative instrument, direct that [section ...] shall not apply or shall apply subject to such conditions as may be specified in the instrument, to that class of industrial establishments or to that class of workmen in that industrial establishment.
- 19 Where the Minister has reasonable cause to believe that the public interest requires that the advertisement of a drug or a class of drugs should not be permitted, the Minister may, by legislative instrument, direct that [sections ..., ..., ... or ...] shall not apply, or shall apply subject to the conditions specified in the instrument.
- 20 The Minister may, by legislative instrument, and subject to such conditions as may be specified in the instrument, exempt from the operation of any of the provisions of the Family Pension Scheme, an establishment if the employees of that establishment are in enjoyment of benefits in the nature of family pension, and the Minister is satisfied that the benefits are on the whole not less favourable to the employees than the benefits provided under this Act or the Family Pension Scheme.

## Financial provisions

- 1 (1) A corporation shall prepare, three months before the commencement of each year, a statement of its programme of activities as well as the financial estimate in respect of those activities for the ensuing year.  
(2) The statements prepared under subsection (1) shall be submitted to the Minister of Finance for approval.
- 2 A corporation may, upon the terms and conditions approved by the Minister of Finance, guarantee a loan referred to in [subsection (5) of section ...] and any other loan raised by a grower of food crops, which is payable within a period of not more than five years.
- 3 (1) The funds of a corporation shall consist of grants in aid provided by the Government, other moneys voted by Parliament, loans approved by the Minister of Finance, donations made to the corporation, all receipts of the corporation and other payments made to the corporation, and the realisable value of all of its assets.  
(2) The funds of a corporation shall be applied by the corporation to meet its commitments in the performance of its functions under this Act, and its other administrative expenses.  
(3) A corporation may invest its funds in securities of the Government or in any other securities approved in writing by the Minister of Finance.  
(4) A corporation shall establish and maintain a reserve fund to which shall be credited each year such portion of its annual net profits as the Minister of Finance shall determine.  
(5) After making provision for the reserve fund and for bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by a company registered under the Companies Act ..., the balance of the corporation's annual net profits shall be paid into the Consolidated Fund.
- 4 The administrative expenses of the Commission, including salaries and allowances and pensions payable to, or in respect of, persons serving with the Commission shall be a charge on the Consolidated Fund.
- 5 The expenses of the Tribunal shall be borne by the Government out of moneys provided by Parliament.

## Forfeiture

- 1 Where a person is convicted of an offence under this Act the court may order the forfeiture of any article used in the commission of the offence.
- 2 Where a newspaper or other publication contains a prize competition promoted or conducted in contravention of a provision of this Act, the court may order the forfeiture to Government of the newspaper or publication containing the prize competition and any advertisement in respect of the prize competition.

- 3 (1) The Minister may, if of the opinion after consultation with the Attorney General, that a publication is pornographic or harmful, by legislative instrument, declare that each copy of the publication be forfeited to the Government.
- (2) A person aggrieved by an instrument made under subsection (1) may, within seven days of the publication of the instrument, apply to the High Court for redress.

## **Fraud**

- 1 A person commits an offence who
  - (a) alters or forges a certificate of grade or falsely marks or uses the serial number of a certificate issued under this Act;
  - (b) lowers the quality or value of cocoa beans by mixing any other seeds or material therewith after the cocoa beans have been treated or tested as required by this Act;
  - (c) hinders, obstructs, resists or in any other way opposes an inspector in the performance of the functions of that inspector.
- 2 A person shall not falsify or alter, destroy, erase or obliterate a declaration, inspection certificate or other document made or issued under this Act or Regulations made thereunder or any marks placed on a container pursuant to this Act.
- 3 A person commits an indictable offence who
  - (a) makes or participates in, or assents to, or acquiesces in, the making of, deceptive or false statements in an answer, a certificate, return or statement filed or made as requested by or under this Act;
  - (b) evades payment of tax imposed by this Act, alters, destroys, mutilates, secrets or otherwise disposes of the books or records of account of a taxpayer;
  - (c) makes or acquiesces in or assents to the making of, a deceptive or false entry, or omits or acquiesces in or assents to the omission to enter a material particular in the books or records of account of a taxpayer;
  - (d) evades or attempts to evade in any manner compliance with this Act or the payment of a tax imposed by this Act.

## **Grant of copies**

The Registrar shall, on application, furnish to the applicant on payment of the prescribed fee a certified copy of an entry in the [Register of Companies].

## Grant of loans

- 1 The Minister may, after due appropriation made by Parliament, pay the corporation
  - (a) by way of grant each year, such sum of money as is required by the corporation for giving subsidies to farmers engaged in the sugar industry and for meeting its administrative expenses;
  - (b) by way of loan, such sum of money on such terms and subject to such conditions as the Minister may determine.

## Immigration

### *Establishment*

- A There is hereby established a board to be known as the Immigration Appeals Board consisting of not less than three and not more than seven permanent members and not more than five temporary members, each of whom shall be appointed by the Governor General.

### *Term of office*

- B
  - (1) Subject to removal from office by the Governor General for sufficient cause, a permanent member shall hold office during good behaviour and a temporary member shall hold office for a term not exceeding three years.
  - (2) A permanent member ceases to hold office on attaining the age of seventy-five years.
  - (3) A temporary member is eligible for appointment as a permanent member, and a permanent member who ceases to hold office by reason of retirement is eligible for appointment as a temporary member.
  - (4) A person who has not attained the age of sixty years shall not be appointed a permanent member.

### *Chairman and vice-chairmen*

- C The Governor General shall designate one of the permanent members as chairman of the Board and three of the permanent members to be vice-chairmen of the Board.

### *Absence or incapacity*

- D In the absence or incapacity of the chairman, a vice-chairman appointed by the Minister shall act as chairman until the resumption of office of the chairman, but where the chairman is unable to act or the office is vacant and a person has not been appointed to act, a vice-chairman designated by the Minister shall exercise and discharge all of the powers and duties of the chairman.

*Quorum*

- E The chairman and not less than two other permanent members constitute a quorum of the Board, but when the chairman or a vice-chairman is not present, a permanent member and not less than two other members constitute a quorum of the Board.

*Appeal*

- F (1) A permanent member, or with the authorisation of the chairman, a temporary member may hear and determine an appeal to the Board.
- (2) In determining an appeal made to the Board the member
- (a) may exercise all of the powers, rights and privileges that are conferred on the Board by this Act other than the power to make Rules which govern the procedure for appeals to the Board; and
  - (b) is subject to all of the obligations and limitations to which the Board is subject under this Act.
- (3) Where a member hears an appeal pursuant to subsection (1), a decision made by the member in relation to the appeal shall be deemed, subject to subsection (4), to be a decision of the Board.
- (4) At any time before a member determines an appeal, the member may direct that the appeal shall be referred to a quorum of the Board; and that quorum shall dispose of the appeal after holding such hearing or re-hearing of the appeal as it considers desirable.

*Indemnity*

- G A suit or other legal proceeding does not lie against the chairman or any other member of the Board or an officer or employee of the Board for anything done in good faith or intended to be done in good faith in pursuance of this Act.

**Income tax and super tax**

- (1) For the purposes of the Income Tax Act ..., a corporation shall be deemed to be a company within the meaning of that Act and a corporation is thus liable to income tax and super tax according to its gains, income and profits.
- (2) Subsection (1) does not apply,
- (a) in the case of a corporation, to moneys paid by the Government under a guarantee given in pursuance of [section ...] and the interest on the debentures or bonds issued by the corporation shall not be treated as expenditure incurred by the corporation;

- (b) in the case of a shareholder or debenture holder, to a dividend or interest advanced by the Government, which dividend or interest shall be deemed to be income from interest on securities declared to be free of income tax within the meaning of [section ...].

## Indemnity

- 1 A prosecution, suit or other legal proceeding shall not be instituted against a person for anything done in good faith under this Act.
- 2 (1) A member of the board of directors of a corporation shall be indemnified by the corporation against all losses and expenses incurred by that member in the performance of functions under this Act except such as are caused by the default, negligence or wilful act of that member.  
(2) A member is not responsible for any other member of the board or for an officer or other employee of the corporation or for any loss or expense resulting to the corporation
  - (a) from the insufficiency of, or deficiency in the value of, or title to, a property or security acquired or taken on behalf of the corporation in good faith;
  - (b) by the insolvency or wrongful act of a person under an obligation to the corporation; or
  - (c) by anything done in good faith, in the performance of the functions of office or in relation thereto.
- 3 An action, a suit or any other legal proceeding shall not be brought in respect of trespass or of nuisance by reason only of the flight of aircraft in the air space over a property which flight having regard to the weather, the wind and all the circumstances of the case is reasonable, or by reason only of the ordinary incidences of that flight.
- 4 An action, a suit or any other legal proceedings shall not be instituted against a person in respect of anything which is done in good faith or intended to be done in good faith under this Act.
- 5 An action, a suit or any other legal proceeding does not lie against a Council or a committee thereof, a tribunal constituted by the Council, or a member of the Council for an act done in good faith or intended to be done in good faith in pursuance of a power conferred by or under this Act or of Regulations made thereunder.
- 6 All Magistrates and all other persons are hereby indemnified for anything done before the coming into force of this Act which might lawfully have been done if this Act had then been in force, and no suit or other action shall be maintained against a Magistrate or other person in respect of anything so done.
- 7 Notwithstanding anything in [sections ..., ..., ... and ...], the prescribed authority may, in a case arising under any of those sections,

- (a) issue a duplicate or renewed security or convert, consolidate or subdivide a security upon the applicant giving the prescribed indemnity against the claims of all persons claiming under the original security or under the security so renewed, converted, consolidated or subdivided;
  - (b) refuse to issue a duplicate or renewed security or to convert, consolidate or subdivide a security unless the indemnity is given.
- 8 An officer is hereby indemnified for anything done or omitted to be done before the coming into force of this Act which might lawfully have been done if the appointments of the Commission had been valid; and accordingly a suit or any other legal proceedings shall not be brought against that officer in respect of anything so done.
- 9 (1) The members of the Legislative Assembly of a State specified in the Schedule shall be deemed not to have become disqualified from being members of the Assembly by reason only of their having held offices as members of a District Council notwithstanding any law or decision to the contrary.
- (2) The seats of the members referred to in subsection (1) shall not be deemed to have become vacant and accordingly the members are hereby freed and discharged and indemnified from all penal consequences incurred by them by sitting and voting, at any time before the commencement of this Act, as members of the Legislative Assembly.
- 10 (1) A prosecution, a suit or any other legal proceeding shall not lie against the Government or a person in the service of the Government for or on account of an act, a matter or a thing purported to have been done in pursuance of or under the [Forestry Act ...] at any time between the expiration of that Act and the publication in the *Gazette* of the [Forestry Commission Act ...] of this Act.
- (2) For the purposes of subsection (1), "person" includes a person acting under the direction or orders of, or in aid of, a person in the service of the Government.
- 11 A prosecution, a suit or any other legal proceeding shall not lie against a person for or on account of or in respect of a sentence passed or an act ordered or done by that person in good faith whether in the exercise of a jurisdiction or power conferred or purporting to have been conferred on that person by or under this Act or in carrying out a sentence passed by a court in the exercise of that jurisdiction.
- 12 A person shall not bring an action or continue an action against a person referred to in [section ... of the Education Act ...], for having contravened between the 19th day of March, 1986, and the 30th day of June, 1988, a provision of that section as originally enacted.
- 13 An action, a suit or any other legal proceeding does not lie against a director in respect of anything which is done in good faith or intended to be done in good faith, or damage caused or likely to be caused by anything done, in pursuance of a power conferred under this Act.



## Information

- 1 A person shall not, with intent to evade a provision of this Act, refuse to give information lawfully demanded from that person or conceal, deface, destroy or mutilate a book or document.
- 2 A person who makes a statement or gives an information that is false in a material particular for the purpose of having credit made available to that person or on that person's behalf commits an offence.
- 3 A person who in relation to the purpose of this Act and knowing it to be false
  - (a) makes a false representation,
  - (b) makes or causes to be made a false entry in a register or other document,
  - (c) makes or causes a false document to be made or alters the form of a copy of a document, or
  - (d) produces or tenders a document containing false information,commits an offence and is liable upon conviction on indictment to a fine of not less than one hundred thousand dollars.
- 4 A person shall not make a false statement or representation for the purpose of obtaining a permit or any other advantage under these Regulations or of misleading a person engaged in the administration or enforcement of these Regulations.
- 5 A person who in an application for a permit under this Act or for the purpose of procuring a permit under this Act furnishes a false or misleading information commits an offence.
- 6 A person who in an application makes an untrue representation is liable, on summary conviction, to imprisonment for a term of not more than six months.

## Inspection and inspectors

- 1 A landlord or a person authorised in writing by the landlord, may at a reasonable time of the day, and on giving a twenty-four hours notice in writing to the tenant or occupier, enter the premises for the purpose of viewing the state and condition of the premises.
- 2 (1) For the purpose of ascertaining whether a property is the property of the company or for any other purpose relevant to this Act or of Regulations made thereunder, a person authorised by the Minister in that behalf may
  - (a) enter and inspect any premises;
  - (b) require a person having the possession, custody or control of a register or record of the company to produce the register or record;

- (c) require the occupier of a property belonging to, or claimed to be the property of, the company to submit to the person so authorised the accounts, books or other documents or to furnish the information that the person so authorised may reasonably think necessary; and
  - (d) examine a person having the control of, or employed in connection with, the company and require that person to make a statement touching the affairs of the company.
- (2) A person authorised by the Minister under subsection (1) shall be deemed to be a public servant within the meaning of [section ... of the Criminal Code ...].
- 3 (1) The Minister may, by legislative instrument, appoint inspectors for the purposes of this Act, and may, in the instrument, define the limits within which the inspectors shall exercise jurisdiction.
- (2) An inspector appointed under subsection (1) may, for the purpose of ascertaining whether a provision of this Act is being, or has been, complied with,
- (a) require an employer to furnish information which the inspector considers material or necessary;
  - (b) at a reasonable time and with such assistance as the inspector thinks fit, enter an establishment or any premises connected with that establishment and require a person found in charge to produce before the inspector for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wages or bonus in that establishment, or relating otherwise to the affairs of that establishment;
  - (c) examine with respect to a matter relevant to any of the purposes of this Act, the employer, an agent or other employee of the employer or any other person found in charge of the establishment or any premises connected with the establishment or a person whom the inspector has reasonable cause to believe is or has been an employee in the establishment;
  - (d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
  - (e) exercise any other powers as are necessary for the performance of the functions of the inspector.
- (3) An inspector shall be deemed to be a public officer within the meaning of the [Criminal Code ...].
- (4) A person required by an inspector to produce any accounts, book, register or other document or to give information is legally bound to do so.
- (5) Nothing contained in this section empowers an inspector to require a bank to furnish or disclose a statement or an information or to produce, or allow inspection of, any books of account or other documents which a bank cannot be compelled to furnish, disclose, produce or allow inspection of, under [section ... of the Banks Act ...].

*Powers*

- 1 An inspector [appointed under this Act] may, [for the purposes of the this Act],
  - (a) enter at all reasonable times any premises or place where the inspector has reasonable cause for believing that an offence under this Act is being, has been, or is about to be, committed;
  - (b) make an examination or an enquiry which the inspector considers necessary for ascertaining whether the provisions of this Act are being complied with;
  - (c) examine a person whom the inspector finds in any premises or place, or whom the inspector has reasonable cause to believe is, or has been, conversant with the affairs of the [company];
  - (d) require the production to the inspector of any books or documents relating to the business which is the subject matter of the investigation and may inspect and examine or take copies of, or extracts from, those books or documents.
- 2 (1) Subject to Regulations made by the Minister under this Act, an inspector may,
  - (a) enter, and if need be with the assistance of a public officer or employee of a municipal authority, a place which is or is suspected by the inspector to be used as a factory, or is capable of being used as a factory;
  - (b) make an examination of the premises and plant or any prescribed registers, and take evidence from any person which the inspector considers necessary for the purposes of this Act;
  - (c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

(2) For the purposes of subsection (1), a person shall not be required to answer a question or give evidence tending to incriminate that person.
- 3 An inspector has free access, at all reasonable times during working hours, to a factory with or without notice to the owner,
  - (a) for the purpose of examining the purchase, sale and stocks, records and accounts of the factory; and
  - (b) to take copies of, or extracts from, all or any of the records or accounts, in order to test the accuracy of a return or to gather information as to the particulars regarding which information is required for the purposes of this Act or of Regulations made thereunder.
- 4 An officer of the Authority may at any reasonable time inspect a place of storage of sugar or any other merchandise, an estate, a place of business of a dealer or a factory or other premises of a manufacturer, for the purpose of verifying a statement or return submitted under this Act for any of the purposes of this Act.

## Interpretation

- 1 (1) [For the purposes of this Act], [For the purposes of this section] [In this Act], “foreign award” means an award on the differences relating to matters considered as commercial under a law of Draftaria made after the 1st day of July, 1988,
- (a) in pursuance of an agreement for arbitration to which the Convention set forth in the Schedule applies;
  - (b) between persons who are subject to the jurisdiction of a State declared by the Minister, by statutory instrument, to be a party to the Convention; and
  - (c) in one of the countries declared by the instrument to be States Parties to the Convention.
- (2) A statutory instrument under subsection (1) shall not be made unless the Minister is satisfied that reciprocal arrangements are in force with respect to Draftaria.
- (3) A foreign award is not final where there are in place proceedings instituted to test the validity of the award in the jurisdiction in which the award was made.
- 2 (1) In this Act, unless the context otherwise requires,
- “acquiring”, with its grammatical variations and cognate expressions, means hiring, accepting as a gift or borrowing;
- “act”, used in reference to an offence or civil wrong, includes a series of acts, and words which refer to acts done extend to illegal omissions;
- “advantage” means,
- (a) a commission, fee, gift, loan or reward consisting of money or of a valuable security or of other property or interest in property of any description;
  - (b) any contract, employment or office;
  - (c) a discharge, liquidation, payment or release of an obligation, a loan or any other liability whether in whole or in part;
  - (d) protection from a penalty or disability apprehended or incurred or from an action or proceedings of a civil, criminal or disciplinary nature, whether or not already instituted, or any other favour or service, other than an entertainment;
  - (e) the exercise or forbearance from the exercise of a duty, a power or a right;
  - (f) any offer, promise or undertaking, whether conditional or unconditional, of any advantage as defined in this section;
- “agent” includes a public servant and any other person employed by or acting for another person;

- “agriculture”, with its grammatical variations and cognate expressions, includes [horticulture, forestry and the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments] [the use of land for any purpose of husbandry, inclusive of the keeping or breeding of bees, poultry or live stock, or the growth of fruit, vegetables or the like;] [dairy farming or the use of land as grazing, meadow or pasture-land;]
- “alien” includes a person who is not a citizen of Draftaria and a body corporate not incorporated in Draftaria;
- “animal” [means a domestic or captive animal;] [includes birds, fish reptiles and every kind of vertebrate animal and the young thereof and the eggs of birds, fish and reptiles;] [means any ass, boar, bull, bullock, calf, cattle, colt, cow, donkey, ewe, filly, foal, goat, heifer, horse, lamb, mule, ox, pig, ram, steer, wether;]
- “appeal” includes a proceeding by way of discharging or setting aside a judgment and an application for a new trial or a stay of execution;
- “article” means an article of merchandise;
- “assets” includes property and rights of any kind;
- “banker’s books” includes, in relation to the ordinary business of a bank,
- (a) any account book, cash book, day book, ledger, ledger card, statement of account or other book or document of the bank, and a copy thereof;
  - (b) a cheque, letter, record card, report, voucher or other document, and a copy thereof.
- “bond” includes a bond executed in accordance with the [Stamps Act ...];
- “building” includes [fixtures;] [a temporary or movable building or structure;] [a chattel house, a structure for whatever purpose used;] [the curtilage of the building;]
- “building purposes” includes the erection or the improvement of, or an addition to, or the repairing of, a building;
- “business” includes industry, profession or trade;
- “carriage” includes a means of conveyance;
- “charitable purpose” includes education, relief of the poor, medical relief, or the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship;
- “constitutional instrument” means an instrument made pursuant to a power conferred in that behalf by the Constitution;
- “contract of sale” includes an agreement to sell as well as a sale;
- “contravention”, with its grammatical variations and cognate expressions, includes, in relation to a condition or a provision of an enactment, a failure to comply with that condition or provision;

- “costs” includes charges, disbursements, expenses, fees and remuneration;
- “Counsel” means a person registered as a legal practitioner under the [Legal Profession Act ...] and who has been so qualified for not less than five years;
- “court” means a court of competent jurisdiction established under the authority of the Constitution;
- “dairy” includes a cowshed, a farm, a farmhouse, a milk shop, a milk store and any other place from which milk is supplied or in which milk is kept for the purposes of sale;
- “debt” includes a liability in respect of an obligation to repay capital sums by way of annuities and a liability under a guarantee;
- “decree” includes a judgment, an order or a ruling of a court;
- “delivery” means the voluntary transfer of possession from one person to another person;
- “dependant” means, in relation to a person, the husband, wife, son or daughter whether by adoption or affinity or consanguinity;
- “document” includes a book, record, register, tape- recording, any form of computer input or output, and any other material, whether produced electrically, electronically, manually, mechanically or by any other means, and a part thereof;
- “easement” includes an interest in or a right in or over land;
- “emoluments” includes all fees, poundage, salary, wages and other payments made or paid to an officer as such for that officer’s use, the money value of any apartments, rations, or other allowances in kind appertaining to the office of the officer, other than payments made for overtime or a sum paid to the officer to cover travelling expenses, cost of office accommodation, assistance of deputies, or clerical or other assistance;
- “enactment” means an Act of Parliament, a statutory instrument, or a provision of an Act of Parliament or of a statutory instrument;
- “encumbrance” includes a mortgage or a terminable charge;
- “entertainment” includes the provision of food or drink, for consumption on the occasion when it is provided, and any other entertainment connected with, or provided at the same time as, the provisions;
- “estate” means a freehold or leasehold land, or chattel real, or all goods, chattels, choses in action, moneys or other property; [includes any charge, claim, demand, easement, equity, encumbrance, lien, interest or right in, over, to or in respect of land;]
- “executive instrument” means an instrument of an executive or administrative character made under a power conferred by an Act of Parliament;

“financial provision order” means

- (a) an order for the periodical or lump sum provision for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, judicial separation or nullity of marriage, or
- (b) an order made on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family;

“financial year” means a period of twelve months ending on the [thirty-first day of March;] [thirtieth day of June;]

“fine” includes a pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction for an offence;

“forest produce” includes, whether found in, or brought from a forest, bark, caoutchouc, catechu, charcoal, lac, natural varnish, resin, wood-oil, and,

- (a) flowers, fruits, leaves, trees or all other parts or produce of trees;
- (b) plants not being creepers, grass, moss, reeds and trees, and the parts or produce of such plants;
- (c) wild animals, bones, cocoons, honey, horns, skins, tusks, wax, and all other parts or produce of animals; and
- (d) peat, surface soil, rock and minerals, including laterite, limestone, mineral oils, and all products of quarries or mines.

“funds”, used with reference to a local authority, includes a local or municipal fund to the control or management of which the authority is legally entitled, and a cess, duty, rate or tax which the authority is legally entitled to impose, and property vested in the authority;

“goods” includes [all kinds of immovable or movable property;] [all articles, commodities and materials;]

“Government” means an authority by which the executive authority of Draftaria is duly exercised;

“guardian”, in relation to a child, includes a person who is *in loco parentis* to the child, and a person who, in the opinion of the court having cognisance of a case in which the child is concerned, has for the time being the charge of or control over the child;

“highway” includes a place over which the public have a right of way or are granted access, a public bridle path, a footway, a road and a way belonging to the Government;

“highway authority” means the authority which is responsible for the maintenance of the highway;

“horticultural produce” means flowers, fruits, plants and vegetables;

“inland waters” includes [creeks, harbours and rivers;] [a canal, a lagoon, a lake, a river and water which is not a tidal water;]

- “instrument” includes Bye-laws, an order, a notice, a Proclamation, Regulations, Rules, a scheme and a warrant, other than an order made, or a warrant issued, by a court of competent jurisdiction;
- “interest” includes an amount, by whatever name called, in excess of the principal, paid or payable by the borrower in consideration of or otherwise in respect of a loan;
- “judgment” includes a decree or an order of a court of competent jurisdiction;
- “judgment creditor” includes the person in whose favour the judgment was given and a person in whom is vested, whether by way of assignment or succession or otherwise, the rights under the judgment;
- “judgment debtor” includes the person against whom the judgment was given and a person against whom the judgment is enforceable in the place where it was given;
- “judicial proceeding” includes [a proceeding in the course of which evidence is or may be legally taken on oath or affirmation;] [a proceeding before a court, tribunal or a person having by law power to hear, receive and examine evidence on oath or affirmation;
- “knacker” means a person who carries on the business of killing asses, cattle, horses or mules otherwise than for the purpose of the flesh thereof used as butcher’s meat;
- “land” includes [land with grazing rights and all water rights on, over or under land and trees, easements and standing crops]; [any right over or in respect of immovable property]; [water and an interest in land or water and an easement and a right in, to or over land or water]; [messuages, tenements, hereditaments, houses and buildings]; [a building, an erection on land and a cellar, sewer, drain, culvert in or under land];
- “legislative instrument” means an instrument of a legislative character made under a power conferred by or under an Act of Parliament;
- “meeting” includes a period during which Parliament is meeting continually within a session;
- “property adjustment order” means an order dealing with property rights available for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, judicial separation or nullity of marriage;
- “public body” means a body established by or under an Act of Parliament and out of funds, whether wholly or partly, provided by Parliament;
- “public office” includes an office the emoluments attaching to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament;
- “session” means a series of meetings of Parliament within a period of twelve months;



“sitting” includes a period during which Parliament is sitting continuously without adjournment and a period during which it is in committee;

“statutory instrument” means an instrument made, whether directly or indirectly, under a power conferred by an Act of Parliament.

(2) References in this Act to the proceedings of Parliament include references to the proceedings of a committee of Parliament or of the proceedings of a subcommittee of a committee of Parliament.

(3) In this Act and in any other law,

- (a) a reference to the holder of an office by the term designating that office shall, unless the context otherwise requires, be construed as including a reference to a person for the time being lawfully acting in, or performing the functions of, that office;
- (b) references to the power to remove a public officer from office shall be construed as including references to a power conferred by a law to require or permit that officer to retire from the public service;
- (c) a person shall not be considered as holding a public office by reason only of the fact of that person being in receipt of a pension or other like allowance in respect of service under the Government of Draftaria.

(4) For the purposes of this Act,

- (a) a person offers an advantage if that person, or any other person acting on that person’s behalf, directly or indirectly affords, gives or holds out, or agrees, promises or undertakes to afford, give or hold out, an advantage to or for the benefit of or in trust for any other person;
- (b) a person accepts an advantage if that person, or any other person acting on that person’s behalf, directly or indirectly obtains, receives or takes, or agrees to obtain, receive or take an advantage, whether for that person or for any other person;
- (c) a person solicits an advantage if that person, or any other person acting on that person’s behalf, directly or indirectly, demands, invites asks for or indicates willingness to receive, an advantage, whether for that person or for any other person.

*In an interpretation section, the words defined are arranged in an alphabetical order, and the dictionary method of arrangement is followed.*

3 For the purposes of subsection (1), “vehicle” includes

- (a) a motor vehicle, being a vehicle belonging to the holder of a licence, or in that holder’s possession under an agreement for a hire purchase, hire or loan as is specified in the licence issued under this Act;
- (b) a trailer belonging to the holder of a licence, or in the holder’s possession under an agreement for a hire purchase, hire or loan as is specified in the licence.

## Legitimacy

Where a decree of nullity is granted in respect of a marriage under [section ... or ... of the Marriage Act ...], a child of that marriage begotten before the grant of the decree who would otherwise have been legitimate but for the decree of nullity is, for all purposes, a legitimate child.

## Levy by distress

- 1 (1) Where a sum of money in respect of any damage, expense, forfeiture or penalty is adjudged payable under this Act, the amount awarded shall be deemed to be a debt.  
(2) Where a debt under subsection (1) is not paid, a person entitled to the benefit of the debt may levy by distress and sale the goods and chattels of the person liable to pay the debt.  
(3) After deducting from the proceeds of sale the amount due, any moneys thereby remaining shall, on demand, be paid to the person whose goods and chattels were distrained.  
(4) Where the sum of money realised after the sale of the goods and chattels is not sufficient to satisfy the debt, the distrainer may sue for the moneys due in a court of competent jurisdiction.
- 2 A distress levied by virtue of this Act shall not be deemed unlawful, nor shall a person making the distress be deemed a trespasser.

## Licences

- 1 (1) Except as otherwise provided in this Act, an employer shall not use or allow any place or premises to be used as an industrial premises unless the employer has obtained a licence issued under this Act.  
(2) Any place or premises in respect of which a licence is issued shall be used only in accordance with the terms and conditions of the licence.
- 2 (1) The Minister may, for the purposes of this Act, and by statutory instrument, appoint a person to be a licensing authority who shall perform the functions conferred upon the licensing authority by this Act.  
(2) The licensing authority shall, in the performance of the functions of the licensing authority, act in accordance with the general directions of the Minister.
- 3 A person shall not, unless under a licence issued by the licensing authority under this Act, use a vehicle on a road for the carriage of goods
  - (a) for hire or reward, or
  - (b) for, or in connection with, a trade or business carried on by that person.
- 4 (1) A person may apply for a licence to the licensing authority in respect of the area in which the applicant intends to operate.

(2) An applicant shall furnish the licensing authority with such information as the licensing authority may reasonably require regarding the motor vehicles proposed to be used under the licence which

- (a) belong to the applicant,
- (b) are in the possession of the applicant under an agreement for hire-purchase, hire or loan, or
- (c) the applicant intends to acquire or obtain possession of under an agreement for hire-purchase, hire or loan,

as well as information relating to the number and types of the trailers proposed to be used.

(3) In addition to the particulars supplied under subsection (2), the licensing authority may require of an applicant

- (a) such information as the licensing authority may require with respect to the purposes for which the vehicles are proposed to be used;
- (b) particulars of the arrangements made by the applicant to secure compliance with the provisions of this Act;
- (c) particulars of the facilities and arrangements for securing that the vehicles will be maintained in a fit and serviceable condition;
- (d) particulars of the activities carried on before the making of the application by
  - (i) the applicant,
  - (ii) a company of which the applicant is, or has been, a director,
  - (iii) a person who is a director, where the applicant is a company,
  - (iv) a person who is a partner, where the applicant proposes to operate the vehicles in partnership with other persons, being activities in carrying on a trade or business in the course of which vehicles of any description are operated, or as a person employed for the purposes of that trade or business, or as a director of a company carrying on that trade or business;
- (e) particulars of any activities during the five years preceding the making of the application
  - (i) of the applicant, and
  - (ii) of any other person whose activities are material to a licence granted under this Act;
- (f) particulars of the financial resources which are or are likely to be available to the applicant;
- (g) the names of the directors of the company, where the applicant is a company, and of the company of which the first-named company is a subsidiary, or as the case may be, the names of the persons who are partners of the applicant.

- (4) The information required under this section shall be given in such form as the licensing authority may determine.
- 5 (1) The owner of a swimming pool or of a swimming pool in respect of which a licence has been granted under [section ...] may apply to the licensing officer for the issue of a licence for the carrying on of the operations of the swimming pool.
- (2) An application under subsection (1) shall be made [in the prescribed form] [in the form set out in Part A of the Schedule] and shall contain the particulars regarding the location of the swimming pool, the size and type of the swimming pool and such other particulars as the licensing officer may require.
- (3) On receipt of the application, the licensing officer may issue the licence on such conditions as the licensing officer may determine.
- (4) A licence issued under this section is valid for a period of not more than twelve months from the date of the issue of the licence.
- (5) The Minister may, by statutory instrument, determine the fees to be paid for the issue of a licence under this section.
- 6 (1) A licensing authority may on application made to it issue a licence under this Act.
- (2) An application for a licence or the renewal of a licence shall be made in the Form A set out in the First Schedule.
- (3) Where an applicant does not or is unable to subscribe to the declaration provided for in the First Schedule, the provisions of [section ... of the Oaths Act ...] shall apply.
- (4) The fees payable for the issue of a licence or the renewal of a licence shall be as set out in Regulations made under this Act.
- 7 Where the licensing authority has reasonable cause to believe that
- (a) a licence issued under this Act has been obtained by fraud or any other misrepresentation as to a material fact, or
  - (b) the holder of the licence has,
    - (i) without reasonable cause, failed to comply with the conditions subject to which the licence was issued, or
    - (ii) contravened a provision of this Act or of the Regulations made thereunder,
- then, without prejudice to any other penalty to which the holder may be liable under this Act, the licensing authority may, after affording the holder an opportunity of being heard, revoke or suspend the licence or forfeit to the Government the moneys deposited as security for the due compliance with the conditions subject to which the licence was issued.
- 8 (1) Where a person to whom a licence is granted under this Act or an agent or employee of that person commits a breach of a condition of the licence, or of Regulations made under this Act for the purpose of regulating the manner or circumstances in, or the conditions subject to, which anything permitted by the licence is to be done or may be done, the

Board may, without prejudice to any other penalty that may have been incurred under this Act, by order in writing cancel the licence or suspend it for such period as the Board thinks fit.

(2) An order under subsection (1) shall not be made unless an opportunity has been given to the holder of the licence to show cause why the order should not be made.

9 (1) A Magistrate may, for reasons to be recorded by the Magistrate, cancel or suspend the licence of a licensee on the ground of misconduct or wilful neglect or default in the discharge of a duty imposed by or under this Act.

(2) A licence shall not be cancelled or suspended under subsection (1) unless the holder has been given an opportunity to show cause against the cancellation or suspension.

10 (1) The licensing authority may, after giving the holder of a licence issued under this Act a reasonable opportunity of being heard, cancel or suspend the licence on the ground that,

(a) there has been a breach of any of the conditions subject to which the licence was granted;

(b) the holder of the licence has contravened a provision of this Act.

(2) Where a licence is cancelled or suspended, the licensing authority shall record the reasons for the cancellation or suspension and furnish a copy thereof to the person whose licence has been cancelled or suspended.

## Limitation

1 A court shall not try a person for an offence made punishable by or under this Act after the expiration of a period of six months from the date of the commission of the offence unless a Magistrate otherwise determines.

2 A court shall not take cognisance of an offence under this Act, unless a complaint of the offence has been made

(a) within six months of the date on which the offence is alleged to have been committed; or

(b) within six months of the date on which the alleged commission of the offence came to the knowledge of the police; or

(c) within six months after the date of the publication in the *Gazette* of the report referred to in [section ... of this Act].

3 (1) An action under this Act shall not be commenced after the expiration of three months from the date of the complaint.

(2) Notice of an action under this Act shall be given to the defendant at least one month before the commencement of the action.

(3) Where tender of sufficient amends has been made before the action is commenced, or where a sufficient sum of money has been paid into court after the action is brought, by or on behalf of the defendant, a plaintiff shall not recover any amount in respect of the action, unless the court otherwise directs.

- 4 (1) A prosecution for an offence under this Act shall not be instituted except with the prior consent in writing of the Attorney General.
- (2) Notwithstanding subsection (1),
  - (a) a person may be arrested for, or charged with, an offence under this Act, or
  - (b) a warrant for the arrest of a person may be issued and executed, and that person may be remanded in custody or on bail even though the consent of the Attorney General has not been obtained therefor.
- (3) A person shall not be remanded in custody or on bail for more than seven days under subsection (2) unless the consent of the Attorney General has been obtained.
- (4) Where a person is brought before a Magistrate before the consent of the Attorney General has been obtained, the charge shall be explained to that person, but a plea to the charge shall not be taken.
- 5 (1) Notwithstanding [section ...] of this Act, a complaint may be made or an information laid in respect of an offence
  - (a) under [sections ... to ...] within two years from the time when the subject matter of the complaint or information respectively arose;
  - (b) under [sections ... to ...] within one year from the time when the subject matter of the complaint or information respectively arose.
- (2) Where a person has, before the commencement of the [Corrupt Practices (Prevention) Act ...], committed an offence under [section ..., ..., ... or ...] of this Act, and but for subsection (1) would not be prosecuted for that offence by virtue of [section ...] of this Act, that person shall not be liable to be prosecuted for that offence.
- 6 Notwithstanding the provisions of any other enactment, a complaint shall not be made or an information laid in respect of an offence
  - (a) under [sections ... to ...], after two years from the time when the matter of the complaint or information arose;
  - (b) under [sections ... to ...], after three years from the time when the matter of the complaint or information arose.
- 7 Any action, suit or other legal proceeding shall not be commenced against a person for anything done in pursuance of this Act,
  - (a) without having given that person one month's notice in writing of the intended proceeding and of the cause thereof, and
  - (b) before the expiration of three months from the date the cause of action arose.

## Loans

- (1) The Corporation may, for the purpose of making a loan or an advance to an industrial concern requiring to be financed in foreign currency, borrow, with the prior consent in writing of the Minister, the required amount from the Central Bank.
- (2) For the purposes of subsection (1), the Corporation may pledge, mortgage, hypothecate or assign to the Central Bank all or part of the security taken by the Corporation from the industrial concern.
- (3) A loan or an advance made to an industrial concern in foreign currency shall be repaid in the currency in which the loan or advance was made, or its equivalent in the currency of Draftaria at the rate of exchange prevailing at the date of the repayment.

## Magistrate's power to impose enhanced penalties

Notwithstanding anything contained in [section ... of the Criminal Procedure Code, ...], a Magistrate may impose a sentence authorised by this Act in excess of the powers conferred under that section.

## Meetings

- (1) The Board shall meet for the transaction of business at the times and the places decided by the Board.
- (2) For the purposes of subsection (1), the first meeting of the Board shall be held at the time and place determined by the Administrator.
- (3) The chairman or in the absence of the chairman a member chosen by the members from amongst themselves shall preside at a meeting of the Board.
- (4) Subject to this Act, all questions which come before a meeting of the Board shall be decided by a majority of the votes of the members present and voting; and in the case of an equality of votes the chairman or the person presiding shall have a second or a casting vote.

## Mode of recovery

- (1) Notwithstanding any other provision of this Act, arrears of a tax or any other money recoverable by the [Commissioner] under this Act may be recovered either by suit or, on application to a court of competent jurisdiction, by distress and sale of the movable and immovable property of the person who is liable to pay the tax or other money.
- (2) Distress and sale under subsection (1) does not apply to the tools of an artisan.
- (3) An application to a court under subsection (1) shall be in accordance with the Rules of Court of that court.

## Notices and service of notices

- 1 (1) A notice, order or requisition issued under this Act or under a statutory instrument made thereunder shall, except as otherwise provided, be served
  - (a) by giving or tendering the notice, order or requisition or sending it by post to the person for whom it is intended; or
  - (b) by affixing the notice, order or requisition, where that person cannot be found, on some conspicuous part of the last known place of abode or of business of that person; or
  - (c) by giving or tendering the notice, order or requisition to an adult member or employee of the family of that person; or
  - (d) by affixing the notice, order or requisition on a conspicuous part of the building or land to which it relates.
- (2) Where the notice, order or requisition is required to be served upon the owner, lessee or occupier of a building or land in respect of that building or land,
  - (a) it is sufficient to affix the notice, order or requisition on a conspicuous part of the building or land to which it relates; or
  - (b) it may be given or tendered or sent by registered post to the owner, lessee or occupier of that building or land.
- (3) Where the person on whom a notice, order or requisition is to be served under this Act is a minor it shall be served on the personal representative or guardian *ad litem* of the minor.
- 2 (1) In addition to the notices required to be displayed in a [factory] by this Act or by Regulations made thereunder, the manager or other person in charge of the [factory] shall at all times display in that [factory] a notice containing the relevant abstracts of this Act and of the Regulations in a language which a worker in the [factory] can read and understand.
  - (2) The notice shall be displayed at a conspicuous place and shall be in a clean and legible condition.
- 3 A notice may be served on a person either personally or by it being sent by registered post, or be served on an adult family member residing with that person or an agent of that person.
- 4 A notice or other document required to be served under this Act may be served
  - (a) be delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode of that person; or
  - (c) by sending it by registered post addressed to that person at the usual or last known place of abode; or
  - (d) in the case of an incorporated company or body,
    - (i) by delivering it to the secretary of the company or body at its registered place of business, or



- (ii) by sending it by registered post addressed to the secretary of the company or body;
  - (e) in the case of an unincorporated body of persons, by sending it by registered post through its known postal address, or to its known place of business.
- 5 A notice required by this Act to be published shall be published by affixing it in some public or conspicuous place or situation in the area affected by the notice and by publishing it in one or more newspapers circulating in that area.
- 6 A public notice required to be given under this Act shall be given
  - (a) by the publication of the notice in the *Gazette*;
  - (b) by posting the notice in a conspicuous place within the area of authority of the local authority concerned; or
  - (c) in such other manner as appears to the Minister to be desirable for giving publicity to the notice.
- 7 (1) A document, notice or order by or under this Act required to be served on a person may be served by registered post or left,
  - (a) where the Government, a Ministry or a Department of government is the addressee, at the office of the head of office most connected with the subject-matter of the document, notice or order;
  - (b) where a local authority is the addressee, at the headquarters offices of that local authority;
  - (c) where a company is the addressee, at the registered office of the company, or where the registered office of the company is not in Draftaria, at the head office of the company in Draftaria.(2) A document, notice or order by or under this Act authorised or required to be served on the occupier or owner of any premises shall be deemed to be properly served if it is addressed by the description "occupier" or "owner" of the premises, naming the premises and delivered to a person on the premises, or by affixing it on some conspicuous part of the premises.
- 8 (1) A notice, order or requisition issued under this Act or a bye-law or rule made thereunder shall, except as otherwise provided by this Act, be served or presented
  - (a) by giving or tendering the notice, order or requisition or sending it by registered post to the person for whom it is intended; or
  - (b) if that person cannot be found, by affixing the notice, order or requisition on a conspicuous part of the last known place of abode or business of that person, or by giving or tendering the notice, order or requisition to an adult male member or servant of the family of that person, or by causing it to be affixed on a conspicuous part of the building or land to which it relates.

- (2) Where a notice, order or requisition is required or permitted to be served upon an owner, lessee or occupier of a building or land, it shall not be necessary to name the owner, lessee or occupier therein, and the service thereof shall, except as otherwise provided, be effected
- (a) by giving or tendering the notice, order or requisition or sending it by registered post to the owner, lessee or occupier or, if there are more than one of those, to any one of them;
  - (b) if the owner, lessee or occupier cannot be found, by giving or tendering the notice, order or requisition to the authorised agent of the owner, lessee or occupier, or to an adult male member or employee of the family of the owner, lessee or occupier, or by affixing it on a conspicuous part of the building or land to which it relates; or
  - (c) by publication in the *Gazette* and in at least one newspaper circulating in the district where the owner, lessee or occupier has a place or principal place of business.
- (3) Where a person on whom a notice, order or requisition is to be served is a minor, service upon the guardian or upon an adult male member or employee of the family of the minor shall be deemed to be service on the minor.
- 9 A licence, notice, order, permission or requisition in writing or other document issued under this Act shall be valid notwithstanding a defect of form.
- 10 A notice required by this Act to be served otherwise than through the court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement
- (a) by delivering it to the person on whom it is to be served; or
  - (b) by sending it by registered letter addressed to that person at the usual or last known place of abode or business registered under the [Post Office Act ...].
- 11 A notice purporting to have been issued under this Act is valid notwithstanding the fact that the authority issuing it had no jurisdiction or command over the area in which the person to whom the notice was directed was for the time being resident.

## Notice of suit

- (1) A suit shall not be instituted against the Authority, or a member of the Authority, or an officer or other employee of the Authority, or a person acting under the directions of the Authority, in respect of an act done or purporting to have been done in pursuance of this Act or of subsidiary legislation made thereunder unless a period of two months shall have expired after notice of the action has been duly served on the Authority.
- (2) A notice under subsection (1) shall state clearly the cause of action, the nature of the relief sought, the amount of compensation or damages

claimed and the name and place of residence of the person who intends to institute the suit.

(3) A suit under subsection (1) shall not, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiration of six months from the date on which the cause of action arose.

(4) Subsection (1) does not apply to an injunction the object of which would be defeated by the giving of the notice or the postponement of the institution of the suit.

## Offences and penalties

- 1 (1) Notwithstanding anything contained in the [Film and Videos Act ...], a person shall not
  - (a) exhibit in any manner a picture or other optical effect, or
  - (b) produce or take part in a dramatic performance or pantomime,unless in a place or premises in respect of which a licence has been obtained under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment

  - (a) to a fine of not less than one hundred dollars or to a term of imprisonment of not less than five years; and
  - (b) to a fine of not less than five hundred dollars for each day during which the exhibition or performance continues.

(3) This section does not apply to the giving of an exhibition or a dramatic performance or pantomime in a theatre or an institute which is the property of the Government and the exhibition, pantomime or performance is held with the prior written permission of the Minister.
- 2 (1) A person shall not without the written permission of the Board dig up the surface of an open space in a place which is not private property.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of not less than ten thousand dollars for

  - (a) each day during which the digging continues;
  - (b) each day that after the start of the digging, that place is not returned to its former state as much as possible; and
  - (c) each day during which the digging poses a danger or nuisance to the public.
- 3 (1) A place, other than a public market, shall not be used as a market, and a place, other than a public slaughterhouse, shall not be used as a slaughterhouse unless that place has been licensed as a market or slaughterhouse by the Board.

(2) Subsection (1) does not apply

- (a) in the case of a slaughterhouse established and maintained by the Government;
  - (b) to restrict the slaughter of an animal in a place on the occasion of a festival, a ceremony or a religious custom in respect of which a permit has been obtained from the Commissioner of Police, and in accordance with the conditions specified in the permit.
- (3) A person who contravenes a provision of subsection (1) or (2) commits an offence and is liable on conviction on indictment
  - (a) to a fine of not less than one thousand dollars or to a term of imprisonment of not less than five years; and
  - (b) to a fine of five hundred dollars for each day during which the offence continues.
- 4 (1) Where a market or slaughterhouse is open to the public, a person shall not sell an article in that market or slaughter an animal in that slaughterhouse unless in accordance with the terms of a licence issued by the local authority.  
(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of not less than one thousand dollars for each day during which the offence continues.
- 5 Bye-laws made by a Board established under this Act may provide that a contravention of a bye-law so made is subject to
  - (a) a fine not exceeding one hundred dollars; or
  - (b) a fine, in the case of a continuing offence, not exceeding fifty dollars for each day during which the contravention continues after conviction for the first contravention; or
  - (c) a fine not exceeding one thousand dollars for each day during which the contravention continues after the receipt of a notice from the Board by the person who has contravened the bye-law requiring that person to discontinue the contravention.
- 6 (1) An editor of a newspaper shall, before an issue of the newspaper is published, file with the Registrar a declaration setting forth
  - (a) the full name and date of birth and nationality, whether by allegiance, birth or otherwise, of the editor;
  - (b) the name or title under which the newspaper is published;
  - (c) the registered offices of the newspaper; and
  - (d) the place of publication of the newspaper.

(2) Where the editor has not ceased publication of the newspaper on the coming into force of this Act, the declaration shall be filed within thirty days of the commencement of this Act.

(3) Where there is a change in the editorship of a newspaper, the editors affected by the change shall, within seven days of the change, so inform the Registrar, and as appropriate file the declaration required by subsection (1).

- (4) Unless the declaration is filed, an issue of the newspaper shall not be published
- (a) after the thirty days specified in subsection (2); or
  - (b) after the change in the editorship of the newspaper.
- (5) A person who contravenes a provision of this section commits an offence, and on conviction on indictment is liable
- (a) to a fine of not less than ten thousand dollars or to a term of imprisonment of not less than five years; and
  - (b) to a fine of not less than one thousand dollars for [each day during which the contravention continues] [each issue of the newspaper published in contravention of this section].
- 7 A public officer who, without the general or special permission of the Governor General, accepts or solicits an advantage commits an offence.
- 8 (1) A person commits an offence who, whether in Draftaria or elsewhere, without lawful authority or reasonable excuse, offers an advantage to a public officer as an inducement to or a reward for or otherwise on account of that public officer
- (a) performing or abstaining from performing, or having performed or abstained from performing, an act in the capacity of a public officer;
  - (b) delaying, expediting, hindering or preventing, or having delayed, expedited, hindered or prevented, the performance of an act, whether by that public officer or by any other public officer in the capacity of a public officer;
  - (c) assisting, delaying, favouring or hindering, or having assisted, delayed, favoured or hindered a person in the transaction of a business with a public body.
- (2) A public officer commits an offence who, whether in Draftaria or elsewhere, without lawful authority or reasonable excuse, accepts or solicits an advantage as an inducement to or reward for or otherwise on account of that public officer
- (a) performing or abstaining from performing, or having performed or abstained from performing, an act in the capacity of a public officer;
  - (b) delaying, expediting, hindering or preventing, or having delayed, expedited, hindered or prevented, the performance of an act, whether by that public officer or by any other public officer in the capacity of a public officer;
  - (c) assisting, delaying, favouring or hindering, or having assisted, delayed favoured or hindered, a person in the transaction of a business with a public body.
- (3) An offence is not committed under this section where the public officer accepts or solicits an advantage with the prior permission in writing of the relevant public authority.

- 9 (1) A person commits an offence who, without lawful authority or reasonable excuse, offers an advantage to a public officer as an inducement to or reward for or otherwise on account of that public officer giving assistance or using influence, in or having given assistance or used influence in
- (a) the execution, procuring or promotion of,
    - (i) a contract with a public body for the performance of a work, the providing of a service, the doing of a thing or the supplying of an article, material or substance,
    - (ii) a subcontract to perform a work, provide a service, do a thing or supply an article, material or substance required to be performed, provided, done or supplied under a contract with a public body; or
  - (b) the payment of the consideration, price or other moneys stipulated or otherwise provided for in a contract referred to in this section.
- (2) A public officer commits an offence who, without lawful authority or reasonable excuse, accepts or solicits an advantage as an inducement to or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in,
- (a) the execution, procuring or promotion of, or
  - (b) the payment of the consideration, price or other moneys stipulated or otherwise provided for in,
- a contract or subcontract referred to in subsection (1).
- 10 A person commits an offence who, without lawful authority or reasonable excuse,
- (a) offers an advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for a contract with a public body for the performance of a work, the providing of a service, the doing of a thing or the supplying of an article, material or substance;
  - (b) accepts or solicits an advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for a contract referred to in subsection (1).
- 11 A person commits an offence who, without lawful authority or reasonable excuse,
- (a) offers an advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at an auction conducted by or on behalf of a public body;
  - (b) accepts or solicits an advantage as an inducement to or reward for or otherwise on account of that person refraining or having refrained from bidding at an auction conducted by or on behalf of a public body.

- 12 A person commits an offence who, without lawful authority or reasonable excuse, while having dealings of any kind with
- (a) the Government, through a department, an establishment or an office of the Government, offers an advantage to a public officer, whether or not that public officer is employed in that department, establishment or office of the Government;
  - (b) a public body, offers an advantage to a public officer employed by that public body.
- 13 (1) An agent commits an offence who, without lawful authority or reasonable excuse, accepts or solicits an advantage as an inducement to or reward for or otherwise on account of that agent
- (a) doing or forbearing to do, or having done or forborne to do, an act in relation to the affairs or business of the principal of the agent;
  - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to a person in relation to the affairs or business of the principal of the agent.
- (2) A person commits an offence who, without lawful authority or reasonable excuse, offers an advantage to an agent as an inducement to or reward for or otherwise on account of the agent's
- (a) doing or forbearing to do, or having done or forborne to do, an act in relation to the affairs or business of the principal of the agent, or
  - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to a person in relation to the affairs or business of the principal of the agent.
- (3) An agent commits an offence who, with intent to deceive the principal of the agent uses any account, receipt or other document
- (a) in respect of which the principal is interested, and
  - (b) which contains a statement which is defective, erroneous or false in a material particular, and
  - (c) which to the knowledge of the agent is intended to mislead the principal.
- (4) An agent shall not be convicted of an offence under this Act where the agent accepts or solicits an advantage with the prior permission validly and lawfully given in writing by the principal.
- 14 (1) A public officer commits an offence who
- (a) maintains a standard of living above that which is commensurate with the present and past official emoluments of that public officer, or
  - (b) is in control of financial resources or property disproportionate to the present or past official emoluments of that public officer.

- (2) A public officer shall not be convicted of an offence under subsection (1) where a satisfactory explanation is given to the court regarding the circumstances of the standard of living or of the acquisition or control of the financial resources or of the property.
- (3) A person who holds financial resources or property in trust for or otherwise on behalf of a person convicted of an offence under subsection (1) commits an offence unless that person before the conviction surrenders the financial resources or the property to the court.
- (4) For the purposes of this section, “official emoluments” includes all moneys payable or paid to a public officer in respect of holding office as a public officer.
- 15 (1) A person found guilty of an offence under this Act is liable,
- (a) on conviction on indictment, to a fine of not less than one million dollars or to a term of imprisonment of not less than ten years;
  - (b) on summary conviction, to a fine of not more than one million dollars or to a term of imprisonment of not more than ten years.
- (2) In addition to the penalties specified under subsection (1), the court may order that the amount or value of the advantage received or a part of that amount or value shall be paid into court for the benefit of the Consolidated Fund.
- 16 (1) Where a person is convicted on indictment of an offence under this Act, the court may, in addition to the penalty imposed by this Act, order the confiscation of the financial resources or property
- (a) found at the trial to be in that person’s control; and
  - (b) of an amount or value not exceeding the amount or value of the financial resources or property the acquisition of which was not explained to the satisfaction of the court.
- (2) An application for an order under subsection (1) shall be made by the Attorney General not later than thirty days after the date of the conviction.
- (3) An order under subsection (1) shall not be made in respect of financial resources or property held by a person other than the person convicted
- (a) unless it is established that the other person has been given reasonable notice that an application under subsection (2) would be made and has had an opportunity to show cause why the order should not be made; and
  - (b) where the court is satisfied that the other person
    - (i) acted in good faith as regards the circumstances in which the financial resources or property came to be held by that other person, and
    - (ii) so acted in relation to the financial resources or property that an order in the circumstances would be unjust.



- (4) Subsection (3) is in addition to, and not in derogation of, the discretion of the court to make an order under subsection (1) on grounds other than those specified in subsection (3).
- (5) An order under subsection (1)
- (a) may be made subject to such conditions as the court thinks fit having regard to all the circumstances of the case; and
  - (b) may be made in respect of an offence under this Act where the facts that gave rise to that offence occurred before the coming into force of this Act.
- (6) An order under subsection (1) may make provision for the taking of possession of the financial resources or property to which the order applies and for the disposal of the financial resources or property by or on behalf of the Republic.
- 17 (1) A person who
- (a) is employed in the public service shall not communicate, disclose or publish, without lawful authority, to any other person otherwise than in the ordinary course of employment information acquired by that person in the course of employment; or
  - (b) has possession of information which to that person's knowledge has been disclosed in contravention of this Act, shall not communicate, disclose or publish that information to any other person.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than five years.
- (3) In addition to the penalty stipulated by subsection (2), the court may order that any moneys or other property or the value of an advantage gained by reason of the communication, disclosure or publication of the information be forfeited to the [Crown] [Republic].
- (4) A person shall not disclose information obtained by that person whether or not in connection with the exercise of a power under this Act, except to a person acting in the execution of this Act or to a person authorised under any other law to receive the information.
- (5) Subsections (2) and (3) apply to a contravention of subsection (4).
- 18 A person who, having been convicted of an offence under this Act, is again convicted of an offence under this Act, shall, on each subsequent conviction, be liable to a term of imprisonment of not less than twice the term of the first imprisonment.
- 19 A person commits an offence who, during the course of an investigation into, or in proceedings relating to, an offence alleged or suspected to have been committed under this Act,
- (a) makes or causes to be made a false report of the commission of an offence under this Act to an investigating officer or a police officer; or

- (b) in any other manner misleads an investigating officer or a police officer.
- 20 (1) A person commits an offence who, without lawful authority or reasonable excuse,
- (a) discloses to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by that person under this Act the fact of the investigation or any details of the investigation; or
  - (b) discloses to any other person the identity of a person who is the subject of the investigation or any details of the investigation.
- (2) Notwithstanding anything in subsection (1), the Commissioner may disclose the identity of a person where
- (a) that person has failed to comply with the conditions of a notice served under this Act;
  - (b) a restraining order is served on a person under this Act;
  - (c) the residence of that person has been searched under a warrant issued under this Act;
  - (d) that person has been required to surrender travel documents to the police or to the court;
  - (e) a warrant for the arrest of that person is in force.
- 21 A person convicted of an offence under this Act for which a penalty has not been provided is liable,
- (a) where the conviction was on an indictment, to a fine of one hundred thousand dollars or to a term of imprisonment of not less than ten years;
  - (b) where the conviction was summary, to a fine of fifty thousand dollars or to a term of imprisonment of not more than five years.
- 22 (1) A person who fails to comply with [paragraph (c) of subsection (1) of section ...], or supplies under that paragraph a statement which is false in a material particular, commits an offence and is liable on summary conviction to a fine of not less than one thousand dollars.
- (2) A person who receives a payment prohibited by subsection (1) or [subsection (2) of section ...] commits an offence and is liable on conviction on indictment to a fine which is not less than ten times the amount so received by that person and to imprisonment for a term of not less than ten years.
- 23 A person on whom a notice is served under [section ...] who,
- (a) fails to furnish within the specified time the information required, or
  - (b) in furnishing the information makes a statement which that person knows to be false in a material particular,
- commits an offence, and is liable on conviction on indictment to a term of imprisonment of not less than five years.
- 24 A person who contravenes a provision of this Act commits an offence and is liable

- (a) in the case of a first conviction, to a term of imprisonment of not more than six months;
  - (b) in the case of a subsequent conviction, to a term of imprisonment of not less than two years.
- 25 Where in a balance sheet, certificate, prospectus, report, return, statement or any other document required by or for the purpose of a provision of this Act, a person makes a statement
- (a) which is false in a material particular, knowing it to be false, or
  - (b) which omits a material fact, knowing it to be material,
- that person, except as otherwise expressly provided in this Act, commits an offence and is liable on summary conviction to a term of imprisonment of not less than two years.
- 26 A person who, having been convicted of an offence under [section ... or section ...], is found guilty of an offence under this Act, including an offence under [section ... or section ...], is liable for each subsequent offence to three times the amount of punishment to which that person would have been liable for the first commission of an offence under [section ... or section ...].
- 27 A person who without proper authority does any of the following acts, that is to say,
- (a) .....
  - (b) .....
  - (c) .....
- is liable on conviction on indictment to a fine of not less than five thousand dollars or to imprisonment for a term of not less than five years.
- 28 Where a return which is submitted pursuant to a provision of this Act is false in a material particular, the person who signed the return commits an offence.
- 29 A person commits an offence who
- (a) alters, defaces, removes, renders invisible or otherwise tampers with the register number marked on a boiler in accordance with this Act; or
  - (b) fraudulently marks upon a boiler a register number that has not been allotted under this Act to that boiler.
- 30 A person who, having been declared a habitual criminal by a court of competent jurisdiction, is found guilty of an offence under this Act, is liable under this Act
- (a) on a first conviction, to a term of imprisonment of not more than one year;
  - (b) on a second conviction, to a term of imprisonment of not more than five years; and
  - (c) on a subsequent conviction, to a term of imprisonment of not less than seven years.
- 31 A person commits an offence who signs a statement, amending statement, notice or intimation under this Part

- (a) which contains a material particular which that person knows to be false or does not believe to be true or does not care whether it be true or false;
  - (b) which contains particulars which that person knows to be incomplete or does not believe to be complete.
- 32 A person who possesses a wireless telegraphy apparatus, other than a wireless transmitter, in contravention of [section ...] commits an offence.
- 33 (1) Where a newspaper is published or sold in contravention of [section ...], the publisher of the newspaper commits an offence.
- (2) A publisher found guilty pursuant to subsection (1) is liable on conviction on indictment
- (a) to imprisonment for a term not exceeding one year; and
  - (b) to a fine of not less than five hundred dollars for each day that the newspaper was published or sold in contravention of [section ...].[for each issue of the newspaper published or sold in contravention of section ...].
- 34 (1) A person commits an offence who when
- (a) required to furnish an information or submit a return under this Act,
    - (i) refuses or without reasonable excuse neglects to furnish the information or submit the return,
    - (ii) furnishes or causes to be furnished an information, or submits or causes to be submitted a return which that person knows to be false, or
    - (iii) refuses to answer or gives a false answer to a question necessary for obtaining information required to be furnished or submitted under this Act;
  - (b) impedes the right of access to relevant documents or records or the right of entry conferred by [section ...].
- 35 A person commits an offence who being engaged in connection with the collection of statistics under this Act discloses information or the contents of a return given or made under this Act otherwise than in the normal course of duty.
- 36 (1) A manager of a factory who is charged with an offence against this Act may lay a complaint that some other person is the actual offender who should be brought before the court.
- (2) Where it is proved to the satisfaction of the court that
- (a) the manager used due diligence to enforce the execution of this Act, and
  - (b) the other person committed the offence without the connivance, consent or knowledge of the manager,
- that other person shall be convicted of the offence and sentenced to a term of imprisonment of not less than five years; and the manager shall be discharged from liability under this Act.

- (3) For the purposes of this section, “manager” includes an owner and a person in charge of a factory.
- 37 (1) Where a person, being responsible for the payment of wages to an employee, contravenes a provision of [section ...] or of [sections ... to ...], an order may be made for a complaint against that person.
- (2) Before making an order for a complaint against a person for a contravention of the sections specified in subsection (1), the High Court or the Court of Appeal shall give that person an opportunity to show cause against the making of the order.
- (3) An order shall not be made under subsection (1) where that person satisfies the court that the contravention was due to
- (a) a *bona fide* error or a *bona fide* dispute as to the amount payable to the employee;
  - (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment; or
  - (c) the failure of the employee to apply for or accept the payment.
- 38 Where, in the course of proceedings under this Act, a tax officer is satisfied that a person has, without reasonable cause,
- (a) failed to submit a return required under this Act, or
  - (b) failed to produce the accounts or documents or other evidence required by the tax officer, or
  - (c) concealed particulars of the profits made by or of the capital employed in the business, or
  - (d) furnished inaccurate particulars of the profits or capital,
- the tax officer shall impose a penalty, in addition to the amount of the excess profits tax payable.
- (2) A penalty imposed under subsection (1) shall not exceed
- (a) three times the amount of the excess profits tax payable, where that person has failed to furnish the return required under this Act; or
  - (b) the amount of the excess profits tax which would have been avoided if the return submitted had been accepted as correct, in any other case.
- (3) The tax officer shall not impose a penalty under this section without the previous approval of the Commissioner.
- 39 (1) Where a person contravenes a provision of this Act or of Regulations made thereunder, or a direction given in pursuance of this Act, that person commits an offence and is liable to a term of imprisonment not exceeding five years and to a fine of ten thousand dollars.
- (2) Where a person convicted pursuant to subsection (1) has entered into a bond under this Act, the bond shall be forfeited, and a person bound thereby shall pay the penalty of the bond or show cause to the satisfaction of the court why the penalty should not be paid.

- 40 Where a person is convicted of an offence under this Act, the court before which the conviction takes place may order that the name, place of residence of that person, the offence of which that person has been convicted and the penalty which had been imposed shall, at the expense of that person, be published in the *Gazette* and in such other manner as the court may direct.
- 41 A court trying an offence under this Part may order the forfeiture to the Republic of
- (a) goods in respect of which the court is satisfied that an offence under this Part has been committed;
  - (b) a covering, package or receptacle in which the goods are contained;
  - (c) the animal, vehicle, vessel or other conveyance used in carrying the goods; and
  - (d) the implement or machinery used in the manufacture of the goods.

## Operation of Acts

- 1 This Act shall come into force on the first day of April, 1996, but shall not become operative in a part of Draftaria in respect of which the President, by legislative instrument, so directs.
- 2 The President may, by legislative instrument,
- (a) exclude from the operation of a provision of this Act a part of Draftaria specified in the instrument; or
  - (b) direct that a provision of this Act shall not apply in respect of the area of authority of a local government authority specified in the instrument.
- 3 This section shall come into force on the date of the publication of this Act in the *Gazette*, but the President may, by legislative instrument, bring the remaining provisions of this Act or any of them into force on such date and for such time as may be specified in the instrument.
- 4 (1) This Act shall come into force in such areas of a State and on such dates as the government of the State may, by legal notice, direct.
- (2) The government of a State may by like notification withdraw the operation of this Act from any such area.
- 5 This Act shall come into force on the date on which the [Statutory Corporations Act ...] is repealed.
- 6 (1) Part Eight shall not have effect in a State to which this Act applies until the President, by legislative instrument, so directs.
- (2) On the publication of the instrument under subsection (1), a law in force in the State *in pari materia* with the [Road Traffic Act ...] shall cease to have effect, in so far as that law relates to or requires the insurance of a motor vehicle against third party risks.
- 7 This Act shall come into force on the date of its publication in the *Gazette* except that

- (a) Part Three shall take effect from such date as the President may, by legislative instrument, appoint; and
  - (b) Part Four shall take effect in a State from such date as the government of the State may, by legal notice, determine.
- 8 (1) This Act, other than [section ...], shall come into force on such date, not being later than six months from the date on which it is published in the *Gazette*, as the President may, by legislative instrument, appoint.
- (2) [Section ...] shall come into force in a State on such date as the government of the State may, by legal notice, appoint.
- 9 This Act shall come into force on such date as the Governor General may, by statutory instrument, appoint.
- 10 This Act shall come into force on the date of its publication in the *Gazette*, but Part Four shall not have effect until the first day of January, 1999.

### **Overriding of other laws**

(1) The provisions of this Part of this Act and of Regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the [Forestry Act ...] or in the [Criminal Procedure Code ...] or in any other enactment or an instrument having effect by virtue of that enactment.

(2) The provisions of an enactment or instrument so far as that enactment or instrument is not varied by or is inconsistent with, the provisions of this Part of this Act or of Regulations made thereunder shall apply to all proceedings under this Part.

### **Payment of remuneration**

- 1 The salaries, allowances and other emoluments of the chairman and the other members of the Board, and all other persons appointed or employed in connection with the management of the affairs of the Corporation shall be paid out of the funds of the Corporation.
- 2 The administrative expenses of the Commission including all salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission shall be a charge on the Consolidated Fund.
- 3 (1) The salaries, allowances, gratuities and pension of a Justice of the Superior Court of Judicature shall be a charge on the Consolidated Fund.
- (2) The salary, allowances and privileges, the rights in respect of leave of absence, gratuity or pension and other conditions of service of a Justice of the Superior Court of Judicature shall not be varied to the disadvantage of the Justice.

## Penal deductions

- 1 Where a person subject to this Act is in custody or under suspension from duty on a charge for an offence under an enactment, the prescribed authority may direct that the whole or a part of the salary and allowances of that person shall be withheld pending the determination of the charge.
- 2 The total deductions under [section ...] from the salary and allowances of a person to whom that section applies shall not exceed in any one month one-half of the salary and allowances payable to that person.
- 3 Moneys authorised by this Act to be deducted from the salary and allowances of a person may be deducted from any public moneys, other than a pension, due to that person.
- 4 Where the conduct of a person subject to this Act is to be enquired into under this Act or any other enactment, the Minister may order that the whole or a part of the salary and allowances due to that person shall be withheld pending the result of the enquiry.

## Power to adapt and construe laws

- 1 For the purposes of facilitating the application of a law in relation to a State, the President may, by legislative instrument made before the expiration of the period of two years from the appointed day, make such adaptations and modifications of the law as are necessary or expedient to give effect to this Act.
- 2 An instrument under this section
  - (a) may provide
    - (i) that all of the provisions of [section ...] of this Act and of the Schedule, except in so far as those provisions relate to the areas specified in [subsection (1) of section ...] of this Act, shall cease to have effect, or
    - (ii) that those provisions shall continue in force to such extent and subject to such modifications as may be specified in the instrument;
  - (b) may make such adaptations or modifications of
    - (i) an Act, other than this Act, in force at the time of the making of the instrument or enacted before then and coming into force thereafter, or
    - (ii) an instrument having effect under any such Act,  
as appear to the President expedient for the purposes or in consequence of the instrument;
  - (c) may contain consequential, incidental or supplemental provisions.



- 3 Notwithstanding whether or not sufficient provision has been made under [section ...] [under this Act] for the adaptation of a law made before the appointed day, an authority, a court or tribunal empowered or required to enforce that law for the purpose of facilitating its application in relation to a State, may construe the law with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the authority, court or tribunal.

## **Power to call for information**

- 1 The Minister may, by statutory instrument, direct the owners of foreign exchange or foreign securities specified in the instrument to make a return of their holdings to the Central Bank within the periods specified in the instrument.
- 2 (1) In the course of an investigation into, or proceedings relating to, an offence alleged or suspected to have been committed under this Act, the Commissioner may, by notice in writing, require
  - (a) a person to furnish to the investigating officer a statutory declaration or, as the Commissioner considers necessary, a statement in writing enumerating
    - (i) the property, movable or immovable, belonging to or possessed by, or which at any time within the ten years preceding the date of the notice belonged to or was possessed by, or was in the possession of that person or the agents or trustees of that person;
    - (ii) all expenditure incurred by that person for whatever purpose relating to the spouse, parents and children of that person within the ten years preceding the date of the notice;
    - (iii) all liabilities incurred by that person, the agents or trustees of that person at any time within the ten years preceding the date of the notice specifying in respect of each liability, whether it was jointly incurred and with whom it was so jointly incurred, or severally;
  - (b) that person to furnish to the investigating officer a statutory declaration, or as the Commissioner considers necessary, a statement in writing of any money or property or anything of value sent out of Draftaria by that person or on behalf of that person at any time during the ten years preceding the date of the notice;
  - (c) any other person to furnish to the investigating officer a statutory declaration or, as the Commissioner considers necessary, a statement in writing enumerating the property, movable or immovable, the categories or classes of which are specified in the notice, belonging to or possessed by the person who is the subject of the investigation, and further stating, in respect of each property, the date on which and the person from whom the property was acquired;

- (d) any other person whom the Commissioner believes to be acquainted with any facts relevant to the investigation or proceedings
    - (i) to furnish to the investigating officer all the information in that other person's possession or to which that other person may reasonably have access respecting the matters that are specified in the notice, or
    - (ii) as the Commissioner considers necessary, to appear before the investigating officer to answer orally or on oath or affirmation any questions relevant thereto, and
    - (iii) to produce or deliver on demand to the investigating officer or such other officer as the Commissioner may specify in the notice the original copy of any document in the possession, or control, of that person or to which that person may reasonably have access and which may be relevant to the investigation;
  - (e) the person in charge of a public body or department or office or establishment of a public body to produce or furnish to the investigating officer a document or a duly certified copy of a document which is in the possession or under the control of that person or to which that person may have access;
  - (f) the manager of a bank to give to the investigating officer copies of the accounts maintained at the bank of a person or of the spouse, children or parents of that person.
- (2) For the purposes of subsection (1),
- (a) "investigating officer" includes the investigating officer and any other person specified in the notice;
  - (b) the investigating officer shall have authority to administer an oath or take an affirmation;
  - (c) the information required in respect of a property shall include the date on which the property was acquired, the person from whom the property was acquired and the means by which it was acquired; and in respect of property enumerated which has been disposed of, whether it was by gift, sale or otherwise at any time within the ten years preceding the date of the notice and the consideration given therefor.
- (3) Without prejudice to the generality of subsection (1), the powers conferred include the power to require information from, or require the attendance for the purpose of answering questions of
- (a) a person, or an employee of a person, who has acted for or is acting for a party to a particular land or property transaction,
  - (b) a person, or an employee of a person, who was concerned in the passing of a brokerage, commission, consideration or fee, or in the clearing or collection of a cheque or other instrument of exchange, respecting a particular land or property transaction,
- as to any of the following matters, that is to say,

- (c) the full names, including aliases, and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in the possession of that person which may be helpful in identifying or locating any such person;
  - (d) any brokerage, commission, consideration or fee paid or received in respect of or in connection with that land or property transaction; and
  - (e) the terms and conditions of that land or property transaction.
- (4) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to the last known place of business or residence of that person.
- (5) A person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of any other enactment to the contrary, comply with the terms of the notice within the time specified in the notice, or within such other time as the Commissioner may authorise.
- (6) A person commits an offence who,
  - (a) without reasonable excuse, fails or neglects to comply with a notice served under subsection (1) on that person;
  - (b) makes a false statement in answer to a notice under subsection (1).
- 3 An officer authorised in writing by the Minister may, for the purpose of
  - (a) enquiring into the correctness of a statement made in an application for consent or recognition to an issue of capital, or
  - (b) ascertaining whether or not the requirements of a condition attached to an order according to that consent or recognition have been complied with,require a company or an officer of a company which has made an application or obtained an order to submit to the officer accounts, books or other documents, or to furnish the officer with such information as the officer may reasonably consider necessary.
- 4 The Minister of Finance may, by statutory instrument, require companies generally or a class of companies or a particular company to furnish such information or statistics with regard to the constitution or working of the company or companies, and within such time as may be specified in the instrument.
- 5 The Minister may, for the purposes of this Act, by statutory instrument, require a person to furnish to an authority specified in the instrument information in that person's possession relating to a requisitioned land specified in the instrument.
- 6 (1) A public officer authorised in writing by the Minister may, for the purposes of ascertaining whether the requirements of this Act and of the Scheme have been complied with, require an employer to submit such accounts, books or other documents or to furnish such information or to give such certificate as the officer may reasonably consider necessary.

- (2) A person who obstructs a public officer in the exercise of the powers conferred under subsection (1) or fails without reasonable excuse to comply with a request made thereunder commits an offence.
- 7 An officer authorised in that behalf by the Minister may, with a view to securing compliance with this Act,
- (a) require a person to give information in that person's possession with respect to a business carried on by that person or any other person;
  - (b) inspect the books or other documents belonging to or under the control of a person relating to any business;
  - (c) enter and search or authorise a person to enter and search any premises, and seize or authorise the seizure of any materials or substance in respect of which there is reason to believe that an offence under this Act has been committed.

### **Power to arrest, detain, enter, search and seize**

- 1 (1) An officer who has reasonable grounds to believe, from personal knowledge or from information given by a person and taken down in writing, that spirituous preparation in respect of which an offence has been committed is kept or is concealed in a building, house or an enclosed space, or is being transported in any aircraft, vehicle or vessel to a place or is in transit may
- (a) enter at any time by day or night that building, house or enclosed space, or aircraft, vehicle or vessel,
  - (b) break open a door and remove any other obstacle to the entry, in the case of resistance,
  - (c) seize that preparation, a document or other article which may furnish evidence of the commission of an offence punishable under this Act or any other enactment, and
  - (d) arrest, detain or search a person whom the officer has reasonable grounds to believe has committed an offence under this Act or any other enactment.
- (2) A Magistrate may empower an officer of the department of Customs and Excise to investigate an offence under this Act or under Regulations made thereunder.
- (3) An officer empowered under subsection (2) shall, in the conduct of the investigation, exercise the powers conferred by the [Criminal Procedure Code ...] upon an officer in charge of a police station.
- (4) For the purposes of this section, "officer" includes an officer of the department of Customs and Excise, a police officer, an officer of the revenue department and an officer of the health department.
- 2 (1) An officer authorised by the Inspector may
- (a) search the establishment of a dealer or a refinery;

- (b) seize gold in respect of which there is suspicion that a provision of this Act has been, is being, or is about to be, contravened, along with the package, covering or receptacle in which the gold is found;
  - (c) seize the books of account, returns or any other documents relating to gold in respect of which there is suspicion that a provision of this Act has been, is being or is about to be, contravened.
- (2) An officer authorised by the Minister may
- (a) search any premises, not being a refinery or establishment referred to in subsection (1), a locker, a vault or any other place whether above or below ground;
  - (b) seize gold in respect of which there is the suspicion that a provision of this Act has been, or is being, or is about to be contravened, along with the package, covering or receptacle in which the gold is found;
  - (c) seize the books of account, returns or any other documents relating to gold in respect of which there is the suspicion that a provision of this Act has been, or is being, or is about to be contravened.
- (3) An officer authorised by the Inspector may search a person and seize any gold or document relating to that gold if the officer has reasonable cause to believe that that person has gold in respect of which the officer suspects that a provision of this Act has been, is being or is about to be, contravened.
- (4) Where an officer is about to search a person referred to in subsection (3), the officer shall, if that person so requires conduct the search at a police station or before a Magistrate.
- (5) Where an officer suspects that a person has contravened or is contravening or is about to contravene a provision of this Act the officer shall take that person to a police station or to a Magistrate where or before whom the search shall be conducted and any gold or document thereupon found shall be seized by the officer.
- (6) Where there are no reasonable grounds for the search under subsection (4) or (5), the officer in charge of the police station or the Magistrate shall forthwith discharge that person, but otherwise shall direct the search to be made.
- (7) A female person shall not be searched except by a female police officer.
- (8) Where an officer has reasonable cause to believe that a person has contravened, or is contravening, or is about to contravene a provision of this Act, the officer
- (a) may arrest that person;
  - (b) shall as soon as possible inform that person of the grounds of the arrest in a language which that person understands; and

(c) shall take that person to a Magistrate within a period of twenty-four hours of the arrest.

(9) A person arrested under subsection (8) shall not be detained in custody after the twenty-four hours without the authority of a Magistrate.

(10) An officer who arrests a person under this section has, for the purposes of releasing that person, on bail or otherwise, the same powers and is subject to the same provisions as the officer-in-charge of a police station has or is subject to under the [Criminal Procedure Code ...].

(11) Where an officer has reasonable cause to believe that any aircraft, animal, vehicle or vessel is being or is about to be used for carrying gold in respect of which there is the suspicion that a provision of this Act has been, or is being, or is about to be, contravened, the officer may prevent the aircraft from taking off or compel the aircraft to land or stop the animal, vehicle or vessel, and

- (a) search the aircraft, vehicle or vessel;
- (b) examine and search any goods on the animal, in the aircraft, vehicle or vessel;
- (c) seize the gold and any books of account or other documents relating to the gold;
- (d) break open the lock of a door or package for the purposes of exercising the powers conferred by paragraphs (a), (b), and (c), if the keys there are withheld; and

if it becomes necessary to stop the aircraft, animal, vehicle or vessel, the officer may use all lawful means for stopping it and where those means fail, the officer may fire upon the aircraft, animal, vehicle or vessel.

(12) The provisions of the [Criminal Procedure Code ...] relating to search and seizure shall, so far as they are applicable apply to search and seizure made under this section.

(13) The Inspector may

- (a) take samples of gold from a dealer, refiner or any other person in the prescribed manner;
- (b) send the samples of gold for assay or analysis to the prescribed authority and to report thereon to the Minister.

(14) Where at the time of arrest of a person or the seizure under this section a person makes a statement to the officer making the arrest or seizure, the officer shall furnish the person who made the statement with a copy of the statement.

3 (1) A police officer not below the rank of an inspector may, by general or special warrant,

- (a) enter, if necessary by force, whether by day or by night and with such assistance as the police officer considers appropriate, any premises which the officer considers are used for purposes connected with an offence under this Act;

- (b) search the premises and the persons who are in the premises at the time of the search;
  - (c) take into custody and produce before a Magistrate all persons as are concerned with or against whom a complaint has been made or information received or in respect of whom a suspicion exists in connection with the commission of an offence under this Act;
  - (d) seize all things found in the premises which are intended to be used or reasonably suspected to have been used in connection with the commission of an offence under this Act.
- (2) A search under subsection (1) shall be conducted in accordance with the provisions of the [Criminal Procedure Code ...] relating to searches and seizures.
- 4 (1) The Minister may, by statutory instrument, authorise a person by name or by office to search a place where the Minister has reasonable cause to believe that petroleum or a petroleum product is being blended, imported, produced, refined, stored or transported otherwise than in accordance with this Act and Regulations made thereunder, and detain, remove or seize the petroleum or those products.
- (2) The provisions of the [Criminal Procedure Code ...] relating to searches and seizure shall, in so far as they are applicable, apply to a search or seizure under subsection (1).
- (3) The Minister may, by legislative instrument, regulate the procedure for the exercise of the powers conferred under subsection (1), having regard to the applicable provisions of the [Criminal Procedure Code ...].
- 5 (1) The Comptroller of Customs and Excise or an officer authorised by the Minister may detain a package brought into Draftaria by air, land or sea, which package the Comptroller or Minister suspects to contain books, newspapers or other documents of the nature described in [section ...].
- (2) Articles detained under subsection (1) shall be disposed of in such manner as the Minster may determine.
- 6 (1) An officer conducting an investigation into an offence alleged or suspected to have been committed under this Act
- (a) may apply to a public officer or any other person for assistance in the performance of the officer's functions;
  - (b) may, with the written consent of the Commissioner of Police and with such assistance as may be necessary, enter and search any office, registry or other room of or used by a public authority, unless that office registry or other room has been so exempted in writing from such search by the Minister;
  - (c) may, subject to subsection (2), detain a person found in any office, registry or other room which the officer has authority to search until the completion of the search.
- (2) A person may not be detained under subsection (1)(c) for more than three hours after the officer has completed the search unless that person is arrested.

- 7 An excise officer duly authorised by the Minister may arrest a person whom the officer has reason to believe has committed an offence under this Act.
- 8 A person accused of, or reasonably suspected of having committed, an offence under this Act or of Regulations made thereunder who, on demand by an excise officer refuses to give particulars relating to the name or residence of that person, or who gives a name or residence which the officer has reasons to believe is false may be arrested by the officer in order that the relevant information may be ascertained.
- 9 The Authority may, by notice served personally or by registered post, require
  - (a) the master or owner of a ship in respect of which a licence granted by the Shipping Authority under this Act is in force, or
  - (b) the master or the agent in Draftaria of the owner of a ship in respect of which directions have been or may be given under [section ...],  
to furnish within the period specified in the notice, information regarding
  - (c) the classes of passengers or cargo which the ship is about to carry or is capable of carrying or has carried during a specified period;
  - (d) the rates of passenger fares and freight charges applicable to the ship;
  - (e) any other matter which may be prescribed.

### **Power to determine prices**

- (1) The Minister may, acting in accordance with the recommendations of the Advisory Committee and by legislative instrument, determine the maximum or the minimum price to be charged in the course of business of any class specified in the instrument for tobacco of the description specified in the instrument.
- (2) An instrument under subsection (1) may determine the maximum or the minimum prices for the same description of tobacco.
- (3) A person who buys or sells, or agrees to buy or sell, tobacco at a price which is more or less than the maximum or the minimum price specified in the instrument made under subsection (1) commits an offence.

### **Power to issue directions**

- 1 (1) In the performance of its function under this Act, the Board shall be bound by such directions on questions of policy as the Minister may give.
  - (2) In the exercise of the powers conferred by subsection (1), the Minister shall give the Board an opportunity to express its views before a direction is given.
- 2 The Minister may, if satisfied that the public interest so requires, by order in writing for the reasons stated in the order, give general instructions to the Institution which instructions may, notwithstanding anything



contained in the [Land Registration Act ...], include directions to make or amend any Bye-laws relating to the composition of the governing body or other committees of the Institution and its duties and powers in such form and within such period as may be specified in the order.

- 3 The President may, at any time before or after the appointed day, give such directions to a State government as may appear to the President to be necessary for the purpose of giving effect to the provisions of this Part and the State government shall comply with those directions.
- 4 A declaration or order made under [Rule ... of the Defence of the Realm Rules ...] or that Rule as continued in force by the [Emergency Provisions (Continuation) Act ...] and in force immediately before the commencement of this Act, shall, so far as it is not inconsistent with a provision of this Act, continue in force and shall be deemed to have been made under the corresponding provisions of this Act.
- 5 (1) The Minister may, after consultation with the Authority, give general instructions in writing to the Authority, which instructions may include directions relating to the conditions of service and training of its employees, wages to be paid to its employees, reserves to be maintained by the Authority and the disposal of its profits and stocks.  
(2) In the performance of its functions under this Act, the Authority shall not depart from a general instruction issued under subsection (1).
- 6 The President may, in writing, give directions to a State government as to the administration of this Act in that State.

### **Power to give effect to orders**

An authority conferred by, or in pursuance of, this Act to exercise a power may, in addition to any other action expressly provided for in this Act, take such steps and use such force as may be necessary for the effective exercise of the power.

### **Power to order an enquiry**

(1) The Minister may, with a view to ascertaining that the powers and duties of the Authority under this Act are being exercised and discharged in accordance with this Act, institute an inquiry into all or any of the activities of the Authority.

(2) The Authority shall give all facilities for the proper conduct of the inquiry and shall produce before, or furnish to, the person conducting the inquiry any account, document or information in the possession of the Authority which that person may demand for the purposes of the inquiry.

## **Power to control or prohibit imports etc**

(1) The Minister may, acting in accordance with the recommendations of the Board and by legislative instrument, make Regulations for the purpose of prohibiting, restricting or otherwise controlling the exportation or importation of rubber either generally or in specified classes of cases.

(2) Goods to which an instrument under subsection (1) applies shall be deemed to be goods the importation or exportation of which is prohibited or restricted under the [Customs and Excise Act ...], and accordingly that Act shall apply those goods.

## **Power to remove difficulties**

1 (1) The Governor General may, for the purposes of removing any difficulties, particularly in relation to the transition from the provisions of the [Central Bank Act ...] to the provisions of this Act, by statutory instrument, direct that this Act shall, during the period specified in the instrument, have effect subject to the adaptations, additions, modifications or omissions specified in the instrument.

(2) An instrument shall not be made under subsection (1) after the expiration of one year from the appointed day.

2 (1) Where a difficulty arises in relation to the transition from a corresponding provision of an enactment to any other enactment by virtue of [section ...], the Governor General may, by legislative instrument, make such provisions as appear to the Governor General to be necessary or expedient for removing the difficulty that has arisen.

(2) Where a difficulty arises in giving effect to a provision of this Act, otherwise than in relation to the transition from a corresponding enactment, or in connection with the administration of a State, the Governor General may, by legislative instrument, make such provisions not being inconsistent with the purposes of this Act, as appear to the Governor General to be necessary or expedient for removing the difficulty.

(3) An instrument under subsection (1) or subsection (2)

(a) may be made to operate retroactively to a date not earlier than the appointed day;

(b) shall not be made after the expiration of three years from the appointed day.

3 Where a difficulty arises in giving effect to the provisions of this Act, the President may, by legislative instrument do anything not inconsistent with those provisions which appear to the President to be necessary or expedient for the purposes of removing the difficulty.

## **Powers of investigation**

(1) Where it appears to the Commissioner that an offence under this Act may have been committed, the Commissioner may, for the purposes of an investigation of that offence, authorise in writing an investigating officer

- (a) to investigate and inspect any bank account, club account, expense account, investment account, mutual fund account, purchase account, share account, trust account, trust fund account or other account of whatever description, a safe deposit box, and any banker's books or company books, of or relating to a person named or otherwise identified in the authorisation;
  - (b) to require from a person the production of any accounts, books, documents, safe deposit box or other article of or relating to a person named or otherwise identified in the authorisation which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of the accounts, books, documents, or of any relevant entry therein and photographs of the safe deposit box and the contents thereof or other article.
- (2) An authorisation given under subsection (1) includes the power to authorise the investigating officer to require from a person information as to whether or not at any bank, company or other place there is an account, book, document, safe deposit box or other article liable to investigation, inspection or production under the authorisation.
- (3) A requirement under subsection (2) shall be made in writing and a statement therein as to the existence of the appropriate authorisation under subsection (1) shall be accepted as true without further proof of the fact.
- (4) A person who, having been duly required under this section to disclose an information or to produce any accounts, books, documents, safe deposit box or other article to an investigating officer shall, notwithstanding the provisions of any other enactment, comply with the requirement.
- (5) A person commits an offence who
- (a) fails or neglects without reasonable excuse to comply with a request under subsection (4);
  - (b) obstructs an investigating officer in the execution of an authorisation given under subsection (1);
  - (c) falsely represents that an appropriate authorisation has been given under subsection (1).

## Presumptions

- 1 Where a person is prosecuted for an offence under this Act or under Regulations, a direction or an order made thereunder, which prohibits that person from doing an act without permission, the burden of proving the requisite permission lies on that person.
- 2 (1) Where a notice or other document is served by post or registered post, the notice or document shall be deemed to have been served at the time when the letter containing the notice or document would be delivered in the ordinary course of post.

- (2) For the purposes of evidential value it is sufficient to establish that the letter containing the notice or document was properly addressed or registered and posted.
- 3 Where a document is furnished to a person under [subsection (2) of section ...], or has been seized under [subsection (3)] of that section from the custody or control of that person, the court shall, unless the contrary is established, presume
- (a) the truth of the contents of the document;
  - (b) that the signature and every other part of the document which purports to be in the handwriting of a particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of a particular person, is that person's handwriting;
  - (c) in the case of a document attested, executed or stamped, that it was duly attested, executed or stamped by the person by whom it purports to have been so attested, executed or stamped.

### **Prevention of disqualifications**

For the purposes of this Act, the office of member of an Advisory Committee shall not disqualify, and shall not be deemed to have disqualified, a holder of that office from being chosen or elected as a member of Parliament.

### **Proceedings *in camera***

- 1 Proceedings under this Act may be conducted *in camera* if either party thereto so desires or if the court thinks it fit so to do.
- 2 (1) A proceeding under this Act may be conducted *in camera* where the court or tribunal considers that it is in the public interest to do so.  
(2) A matter in relation to a proceeding held *in camera* under subsection (1) shall not be published in any manner by any person without the prior permission in writing of the judge or of the chairman of the tribunal.  
(3) A person who prints or publishes a matter in contravention of subsection (2) commits an offence and is liable on conviction on indictment to a term of imprisonment not less than five years.

### **Prohibition from trading**

A bank established by virtue of this Act shall not, directly or indirectly, deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to, or held by it, or engage in a trade, or buy or sell or barter goods for other persons otherwise than in connection with Bills of Exchange received for collection or negotiation or with such of its business as a banking company as it is permitted to transact under this Act.

## Protection for acts done under Act

- 1 A suit or other legal proceeding shall not be instituted against a person in respect of anything which is done in good faith or intended to be done in good faith under this Act.
- 2 A suit or other legal proceeding does not lie against the [Crown] [Government] [Republic] or any of its officers or a public authority or any other person for damage caused or likely to be caused in consequence of
  - (a) a direction issued under [section ...]; or
  - (b) a compliance with a direction given by that officer, person or public authority.

## Protection against attachment

- (1) The amount in the Fund, standing to the credit of a member,
  - (a) is not in any way capable of being assigned or charged; and
  - (b) is not liable to attachment under a decree or order of a court in respect of a debt or liability incurred by the member.
- (2) An amount in the Fund standing to the credit of a member at the time of that member's death and payable under the Scheme to a nominee of that member shall, subject to a deduction authorised by the Scheme, vest in that nominee and shall be free from a debt or other liability incurred by that member or that nominee before the death of the member.

## Protection of informers

- 1 (1) Except as provided in subsection (4), an information for an offence under this Act shall not be admitted in evidence in any civil or criminal proceedings.
- (2) Where an informer or a person is not a witness, and except as provided in subsection (4), a witness in a civil or criminal proceeding shall not be obliged
  - (a) to disclose the name or address of the informer who has given information to the Commissioner with respect to an offence under this Act or of the person who has assisted the Commissioner in any way with respect to that offence; or
  - (b) to answer a question if the answer to that question would lead, or would tend to lead, to the discovery of the name or address of the informer or of that person.
- (3) Where a book, document or paper which is in evidence or is liable to inspection in a civil or criminal proceeding contains an entry in which an informer or a person is named or described or which might lead to the discovery of the informer or of that person, the court shall cause all the passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or that person from discovery.

(4) Where in a proceeding for an offence under this Act the court is satisfied that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true, or where in any other proceeding a court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Commissioner, the court may permit inquiry and require full disclosure concerning the informer or that person.

## Protection of name

A company or other body shall not be incorporated or registered under an enactment or otherwise under a name which is identical with that of any other corporation or under any other name which in the opinion of the Registrar of Companies so resembles the name of any other corporation as to be likely to deceive.

## Publication

- 1 (1) Where a person is convicted of an offence under this Act, the court may order the publication in the *Gazette* of the name, the place of residence, the offence of which that person has been convicted and the penalty imposed.  
(2) The expenses of the publication shall be paid by the person convicted, shall be deemed to form part of the costs relating to the conviction and shall be recoverable in the manner in which costs are recoverable in a civil suit.
- 2 A court which convicts a person of an offence under this Act may cause the conviction to be published in a manner the court thinks fit.
- 3 A notice issued under this Act shall be published in the *Gazette*, and at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality where the registered office of the company concerned is situated, one of which newspapers is published in a language commonly understood in that locality.

## Public servants

- 1 An officer appointed under this Act shall be deemed to be a public servant within the meaning of [section ...] of the [Criminal Code ...]; and in the definition of "legal remuneration" contained in that section, "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.
- 2 A person shall not bring an action against a police constable, a police officer or a member of a law enforcement agency, or a person acting in aid of the constable, officer or member for anything done in obedience to a warrant of a Magistrate.

- 3 (1) An action, a prosecution or other proceeding shall not be instituted against a person
- (a) for an act done in pursuance or execution or intended execution of a statutory or other public duty or authority, or
  - (b) in respect of an alleged default or neglect in the execution of a statutory or other public duty or authority,
- unless it is commenced within six months next after the cause of action arose, or, in the case of the continuance of a damage or an injury, within six months after the ceasing of the damage or injury.
- (2) Subsection (1) does not apply to an action, prosecution or proceeding against
- (a) a sheriff for an act, default or neglect in certifying as to a writ of execution that binds land; or
  - (b) a land registrar for an act, default or neglect in connection with the registrar's duties under the [Land Registry Act ...].
- 4 Where a public officer refuses to do an act relating to the duties of the office of the public officer, a person requiring that act to be done may, upon an affidavit stating the facts and upon six days notice to the Attorney General and to any other person who may be affected by the act of the public officer, apply to the High Court for an order directing the act to be done.
- 5 An action shall not be brought against a person who has in good faith laid information before a Magistrate or by reason of the information not containing a proper description of the offence or being otherwise defective.
- 6 An action or other proceeding shall not be brought against a person for or by reason of anything done in obedience to a *mandamus* or a mandatory order.
- 7 (1) An action shall not be brought against a public officer for anything done by the public officer under the supposed authority of an Act of Parliament, if the action would not lie against the public officer had the subject matter of the action been within the legislative competence of Parliament.
- (2) Nothing in subsection (1) shall prevent the payment of an *ex gratia* award by way of compensation to a person adversely affected by the act of the public officer.

## Reciprocity

- 1 Where a country specified by the Minister by statutory instrument does not accord to citizens of Draftaria the same rights in respect of the registration and protection of trade marks as it accords to its own citizens, a national of that country shall not be entitled, whether solely or jointly with any other person,
- (a) to apply for the registration of, or be registered as the proprietor of, a trade mark under the law of Draftaria;

- (b) to be registered as the assignee of the proprietor of a registered trade mark; or
  - (c) to apply for registration or be registered as a registered user of a trade mark under this Act.
- 2 Where the Minister is satisfied that provision exists in a country outside Draftaria for the enforcement within that country of maintenance orders made by the courts of Draftaria, the Minister may, by legislative instrument, declare that this Act applies to that country.
- 3 Where the Minister is satisfied that, by the law or practice of a country outside of Draftaria, a vessel having a certificate of registration in force under this Act
- (a) is granted, by reason of the registration, a special exemption in that country while plying in the waters of that country,
  - (b) is required, as a condition of plying in the waters of that country, to comply with a special requirement whether by way of registration or by way of payment of fees or otherwise,
- the Minister may, by legislative instrument, for the purposes of reciprocity, direct that the same exemption or requirement, or an exemption or a requirement as similar thereto be granted to, or imposed upon, vessels registered in that country while plying in the waters to which this Act applies.
- 4 (1) The Minister may enter into reciprocal arrangements with the Government of a country whereby certification trade marks and trade marks registered under this Act shall have in that country protection as if registered in that country.
- (2) Where reciprocal arrangements are entered into under subsection (1), the Minister shall, by legislative instrument, declare that this Act shall apply to that country.
- 5 Where the Minister is satisfied that, by the law of a State, provision is made substantially corresponding to the provision made by this Act imposing liabilities upon employers and requiring them to take out policies of insurance covering those liabilities, the Minister may, by legislative instrument, declare that this section shall apply to that State.

## Reconstitution of committee

On the coming into force of this Act, the committee constituted under [section ...] of the repealed Act shall stand dissolved, and shall be reconstituted by the Minister as provided in [section ...] of this Act.

## Recovery of moneys due

- 1 Moneys due to the [Crown] [Government] [Republic] shall be recovered as if they were a debt due to the [Crown] [Government] [Republic].



- 2 (1) Moneys due to the [Government] under this Act or under Regulations made thereunder
  - (a) may be deducted from any moneys payable to the person from whom the moneys are due;
  - (b) may be recovered by attachment and sale of the property of the person from whom the moneys are due.
- 3 Moneys due from an employer under [section ...] may be recovered in the same manner as an arrear of land revenue or as a public debt is recovered by the Government on an application made to the court by the person entitled to the money.

## **Rectification of errors and mistakes**

- 1 (1) The Registrar may rectify a mistake in order to bring an entry in the Register of Companies relating to a company into conformity with the documents relating to that company filed under this Act.  
(2) On an application made by all of the parties who have signed a document relating to a company filed under this Act, the Registrar may rectify a mistake in the relevant document or record made by the Registrar.
- 2 (1) The Commissioner may, within three years from the date of an order made in compliance with this Act, rectify a mistake in the evidence recorded during an assessment or appellate proceedings or a mistake apparent on the face of the record or a mistake brought to the notice of the Commissioner by a person to whom this Act applies.  
(2) A rectification shall not be made under subsection (1) the effect of which would increase the liability of a person unless that person has been given an opportunity of being heard.
- 3 (1) The Commissioner may, at any time within four years from the date of an order made under this Act, rectify a mistake in the evidence recorded during assessment or appeal proceedings or a mistake apparent on the face of the record.  
(2) Subsection (1) shall apply to a mistake apparent from the record which had been brought to the notice of the Commissioner by a person to whose business this Act applies.
- 4 (1) Where it is proved to the satisfaction of the Registrar of Births and Deaths that an entry of a birth or death in a register kept under this Act is erroneous in substance or form, the Registrar may correct the error by an entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.  
(2) A certified copy of the entry containing the correction made pursuant to subsection (1) shall be sent to the Registrar General of Births and Deaths.
- 5 Where a direction given by the Minister has taken effect or an order has been made by the court on an appeal against the direction, the Registrar shall make the necessary alteration in the register in order to give effect to the direction or order.

- 6 (1) Where the Registrar has reason to believe that an entry in the register is, or has become, incorrect, the Registrar may call for the relevant evidence, and, if satisfied as to the evidence, shall correct the entry and issue an amended certificate of registration.  
(2) On the issue of the amended certificate, the former certificate shall cease to have effect.
- 7 Where a person alleges that an error or an omission has been made in an entry in the register, or that an error or an omission has been procured by mistake, the Registrar shall, if the allegation is satisfactorily established, make the appropriate correction in the register.

## Referential provisions

A reference in [section ...] of this Act to a provision of the [Essential Services Act ...] shall be read and construed as a reference to that provision as it was in force immediately before the coming into force of this Act.

## Registers

- 1 The owner of a cotton factory shall maintain, at the factory and in the prescribed form, a ginning register containing a record of all cotton ginned in the factory and of the names of the persons for whom and the dates on which the cotton has been ginned and of the amount ginned for each person.
- 2 The Registrar shall keep a register in which shall be entered the names, addresses, qualifications and all other particulars required of a person licensed under this Act.
- 3 The Registrar shall file the duplicates or copies of documents presented under this Act in the appropriate register in the order in which the documents had been received.
- 4 The Registrar may refuse to enter in the register the particulars of a document presented for registration if the Registrar is not satisfied as to the identity of the person presenting the documents for registration or the right of that person to present the documents.
- 5 (1) The Registrar may, on the receipt of an application, enter in the register the particulars in the application and issue to the applicant a certificate of registration in the prescribed form.  
(2) The Registrar shall not enter the particulars in the register if satisfied that the applicant is not, for the purposes of this Act, a fit and proper person.
- 6 (1) Before refusing to enter the particulars of an application in the register, the Registrar shall give the applicant not less than seven days notice of the intended refusal, setting out in sufficient detail the reasons for the intended refusal and giving the applicant fourteen days within which to make representations, either personally or by a representative.

- (2) Where the Registrar decides to refuse the registration after giving the applicant the opportunity to be heard, the Registrar shall make the order for the refusal and send the order to the applicant.
- (3) A person aggrieved by an order made under subsection (2) may, as of right, appeal to the High Court within fourteen days of the receipt of the order of refusal.
- 7 (1) For the purposes of this Act, the Registrar shall keep a register in which shall be entered the particulars of a dealer.
- (2) The Registrar shall not enter the particulars of an applicant whom the Registrar considers to be a person who cannot be permitted to carry on business as a dealer.
- (3) A person aggrieved by the refusal of the Register under subsection (2) may within seven days of the refusal appeal as of right to the High Court.
- (4) The Registrar may, if satisfied that a person is no longer carrying on business as a dealer, strike out the particulars of that person from the register.
- (5) Where a dealer is convicted of an offence under this Act, or of an offence against an enactment relating to customs in respect of the export or import of materials used by the dealer in carrying on business, the court may order that
- (a) the particulars of the dealer shall be struck out from the register;
  - (b) neither the dealer nor a person who acquires the business of that dealer, nor a person who took part in the management of the business and was knowingly a party to the offence, shall be registered as a dealer;
  - (c) a person who, after the date of the order, knowingly employs in the management of a business a dealer convicted of an offence under this Act, and a person who was a party to the offence shall not be registered as a dealer, and if so registered shall be struck off the register;
  - (d) stock in hand of the business of the convicted dealer shall be disposed of by public auction in accordance with the directions of the court.
- (6) For purposes of this section, “dealer” means a person engaged in manufacturing, repairing, selling, or testing of an article by way of business or trade.
- 8 (1) A person who carries on a business or trade shall keep a register of transactions and shall enter in the register the particulars specified in the Schedule.
- (2) A list of the particulars entered in the register shall be published in the *Gazette* in the month of January each year, and the additions to, or alterations in, the list shall be published every three months.

## Registration

- 1 (1) A person shall not drive a motor vehicle for the purpose of carrying passengers or goods unless there is in respect of that vehicle a Certificate of Registration issued under this Act.  
(2) The owner of a motor vehicle shall register the vehicle in accordance with this Act.
- 2 (1) The owner of an existing industrial undertaking shall, within thirty days of the coming into force of this Act, register the undertaking in the prescribed manner.  
(2) Subsection (1) applies to an industrial undertaking established out of moneys provided by Parliament.
- 3 An application for registration under this Act shall be in the prescribed form.
- 4 Registration under this Act shall not cure a defect in a document registered or confer upon the document an effect or validity which the document would not otherwise have.
- 5 (1) On or before the first day of July in each year a person to whom a registration certificate has been issued under this Act shall
  - (a) surrender the certificate and apply in the prescribed form for a new certificate; and
  - (b) pay the prescribed fee for registration.  
(2) Where the Registrar is satisfied with the performance of the applicant for the twelve months preceding the application for a new certificate, the Registrar shall issue a new certificate to the applicant.  
(3) Where the Registrar refuses to issue a new certificate, the Registrar shall, within seven days so inform the applicant who may, within fourteen days, appeal as of right to the High Court.  
(4) The Registrar shall, on the thirtieth day of September each year, publish in the *Gazette* the names and addresses of the persons to whom certificates of registration have been issued and the names and addresses of the persons whose applications have been refused.

## Regulation of imports

- (1) The Minister may, by legislative instrument, regulate, whether by prohibition, restriction or otherwise, the importation by any means of
  - (a) livestock which the Minister considers to be affected by a contagious or an infectious disease or disorder; or
  - (b) a substance or material appertaining to livestock that may have been in contact with that livestock.
- (2) An instrument under subsection (1) shall operate as if it had been issued under the [Customs Act ...], and accordingly, an officer so authorised by the Minister may exercise any of the powers conferred on Customs officers under the [Customs Act ...].

## Regulations and Rules

- 1 Regulations or Rules made under an enactment shall be laid for not less than fourteen days before each House of Parliament, and not later than seven days after they have been made; and are subject to amendment by each House during the session in which they are laid.
- 2 A District Council or a Regional Council may, after it is first constituted, make Rules with regard to the matters specified in the Tenth Schedule and may also make Rules regulating
  - (a) .....
  - (b) .....
  - (c) .....
- 3 (1) Rules and notifications made or issued under this Act shall be published in the *Gazette* and laid before Parliament not more than seven days of being made or issued.
  - (2) Rules or notifications laid pursuant to subsection (1)
    - (a) are subject to amendment or annulment;
    - (b) shall have effect, where modified, in the modified form; and
    - (c) shall be published in the *Gazette* in the form approved by Parliament, and shall not come into force unless so published in the *Gazette*.

## Removal of difficulties

- 1 Where at the time of the withdrawal of the Government from entry upon the immovable property of an estate, a difficulty arises in connection with the restoration to the original owner or to the successor of the original owner of the property and the rights possessed and exercised by the Government, the Minister shall authorise the doing of a matter or thing which appears to be necessary to facilitate the restoration.
- 2 Where in the opinion of the Minister a difficulty or doubt has arisen as to the interpretation of a provision of an award as modified by the decision of the Appellate Tribunal, the Minister shall refer the matter in respect of which the difficulty or doubt has arisen to the Court of Appeal; and the parties shall be bound by the decision of the Court of Appeal.
- 3 Where a difficulty arises in giving effect to a provision of this Act, the President may order the doing of anything not inconsistent with this Act for the purpose of removing the difficulty.
- 4 Where a difficulty arises in determining the amount payable as an instalment or deposit by an insurer under this Act, the Minister shall refer the matter to the High Court for determination.
- 5 (1) Where a difficulty arises in giving effect to a provision of the Acts or subsidiary legislation extended to a State in which they were not in force before the coming into force of this Act, the President may, by legislative

instrument, make such provision or give such directions as are necessary for removing the difficulty.

(2) Without prejudice to the generality of subsection (1), the instrument may

- (a) specify the authority to whom or to which a matter may be referred for determination;
  - (b) provide for the transfer of a matter pending before a court, tribunal or other authority immediately before the coming into force of this Act, to a corresponding court, tribunal or other authority for determination;
  - (c) specify the areas or circumstances in which, or the extent to which, or the conditions subject to which, anything done or an action taken under a law repealed by this Act, shall be recognised or given effect to.
- 6 Where a difficulty arises in relation to the transition under [section ...] from one enactment or set of enactments to another enactment or set of enactments, the President may, by legislative instrument, make such provisions as are necessary for the removal of the difficulty.

## Repeal and savings

- 1 (1) The [Forestry Act ...] is repealed.  
(2) Notwithstanding the repeal under subsection (1), an action taken or anything done in exercise of a power conferred by or under the repealed Act shall be deemed to have been taken or done under this Act.
- 2 A(1) The enactments specified in the second column of the First Schedule are hereby repealed to the extent specified in the fourth column of the First Schedule.  
(2) In the [Customs Act ...],
  - (a) substitute for [section ...] the following section:  
"The rates at which duties of customs shall be levied under the Customs Act, 1947, are as specified in the Second and Third Schedules.";
  - (b) [sections ... and ...] are repealed.
- (3) Notwithstanding the repeals under subsections (1) and (2),
  - (a) an action taken or a thing done under the repealed enactment shall, so far as it is not inconsistent with this Act, be deemed to have been taken or done under the corresponding provisions of this Act;
  - (b) a reference in a document to an enactment hereby repealed shall be construed as a reference to this Act or a corresponding provision of this Act.
- (4) This Act shall apply to all goods which are subject to the control of customs on the coming into force of this Act notwithstanding that the goods were imported before the coming into force of this Act.

(5) Where the period prescribed for any appeal, application, revision or other proceeding under a repealed enactment has expired before or on the coming into force of this Act, nothing in this Act shall be construed as enabling that appeal, application or revision to be made or a proceeding to be instituted under this Act by reason only that a longer period therefor is prescribed or provision is made for extension of time in appropriate cases under this Act.

(6) [Section ...] shall apply to goods placed in a warehouse before the coming into force of this Act as if the operation permissible under that section were carried on after the commencement.

(7) A duty or penalty payable under a repealed enactment may be recovered in the manner provided under this Act, but without prejudice to an action already taken for the recovery of the duty or penalty under the repealed enactment.

(8) The provisions of subsection (4), (5), (6) or (7) are not prejudicial to, and do not affect the general application of, [section ... of the Interpretation Act ...] with respect to the effect of the repeals.

(9) Nothing in this Act shall affect a law relating to the constitution and powers of a Port Authority as defined in the [Ports Act ...].

**B** Where a difficulty arises in giving effect to this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Governor General may, by statutory instrument, do anything not inconsistent with this Act which appears to the Governor General to be expedient or necessary for the purpose of removing the difficulty.

**3** (1) Where before the coming into force of this Act there is in force in a State a law corresponding to this Act, that law shall be repealed on the coming into force of this Act.

(2) The repeal by virtue of subsection (1) shall not affect

- (a) the previous operation of a repealed law, or anything duly done or suffered thereunder;
- (b) any liability, obligation, privilege or right accrued, acquired or incurred under the law so repealed;
- (c) any investigation, legal proceeding or remedy in respect of any forfeiture, liability, obligation, penalty, privilege, punishment or right commenced before the repeal; and accordingly the investigation, legal proceeding or remedy may be continued, enforced or instituted, and the forfeiture, penalty or punishment may be imposed as if this Act had not been enacted.

(2) Subject to subsection (1), an action taken or anything done under a repealed law in so far as it is not inconsistent with this Act shall have effect as if it has been taken or done under this Act.

- (3) A reference in an enactment or in a document to a repealed law shall be construed and read as a reference to this Act.
- 4 (1) Where before the commencement of this Act there is in force in a State an enactment which corresponds to this Act, that enactment shall stand repealed without prejudice to a jurisdiction or form of procedure not then existing or followed or to render unlawful the continuance of a confinement which is then lawful.
- (2) An action taken or anything done under a repealed enactment shall be deemed to have been respectively taken or done under this Act.
- (3) This Act shall apply to all proceedings under a repealed enactment instituted after the coming into force of this Act.
- 5 (1) The enactments specified in the first column of the First Schedule are repealed to the extent specified in the fourth column of the Schedule.
- (2) The enactments specified in the Second Schedule in so far as they extend to, or operate as part of the law of, Draftaria are hereby repealed.
- (3) Notwithstanding the repeals under subsections (1) and (2),
- (a) any Bye-laws, exemption, Regulations, Rules or statutory instrument granted, issued or made under a repealed enactment shall, unless revoked, have effect as if it had been granted, issued or made under this Act;
  - (b) an officer appointed and a person constituted or elected under a repealed enactment shall continue in office and shall be deemed to have been appointed, constituted or elected under this Act;
  - (c) a reference in a document to a repealed enactment shall be construed as a reference to the corresponding provision of this Act;
  - (d) a fine levied under a repealed enactment may be recovered as if it had been levied under this Act;
  - (e) an offence committed under a repealed enactment may be prosecuted and dealt with as if it had been committed under this Act;
  - (f) a sailing vessel registered under a repealed enactment shall be deemed to have been registered under this Act;
  - (g) a mortgage of a ship recorded in a register maintained by virtue of a repealed enactment shall be deemed to have been recorded in the register maintained under this Act;
  - (h) a document of whatever nature issued under a repealed enactment shall be deemed to have been issued under this Act.
- (4) The mention of a particular matter in this section shall not affect or prejudice the application of the [Interpretation Act ...].



FIRST SCHEDULE

Year	No	Short Title	Extent of Repeal
...	...	... ..	... ..
...	...	... ..	... ..

SECOND SCHEDULE

Year	Short title
...	... ..
...	... ..

- 6 (1) The [Forestry Commission Act ...] and the [Agricultural Holdings Act ...] are hereby repealed.
- (2) Without prejudice to the provisions of the [Interpretation Act ...] relating to repeals, an action taken or a thing done under the [Forestry Commission Act ...] and the [Agricultural Holdings Act ...] shall, if lawfully taken or validly done before the coming into force of this Act, continue with effect as if taken or done under this Act.
- (3) This Act shall apply to an application for registration of a concession pending at the time of the coming into force of this Act and to the proceedings consequent thereon.
- (4) Notwithstanding anything contained in this Act, a legal proceeding pending in a court at the commencement of this Act may be continued in that court as if this Act had not been enacted.
- 7 (1) The following enactments of the Parliament of the United Kingdom, that is to say,
- (a) The [Charitable Endowments Act ...];
  - (b) [Section ... of the Religious Endowments Act ...];
  - (c) The [Charitable Endowments Act ...]; and
  - (d) The [Charitable and Religious Trusts Act ...],
- shall not apply to a charity or a trust as defined in this Act.
- (2) Subsection (1) shall not affect the previous operation of the enactments therein specified; and accordingly an action taken or a thing done under any of those enactments shall be deemed to have been done under the corresponding provisions of this Act.
- 8 The repeal by this Act of an enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to, and accordingly this Act shall not
- (a) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any liability, obligation, right or title already accrued, acquired or incurred, or any remedy or proceeding in respect thereof, or any discharge or release of or from a claim, debt, demand, liability, obligation or penalty, or an indemnity granted or the proof of a past act or thing;

- (b) affect a principle or rule of law, or established jurisdiction, course or form of pleading, practice or procedure, or existing appointment, custom, exemption, office, privilege, restriction or usage, notwithstanding that the same may have been in any manner affirmed or derived by or recognised in or from an enactment hereby repealed;
  - (c) restore or revive any appointment custom, exemption, jurisdiction, office, practice, privilege, procedure, restriction or usage, or any other matter or thing not in force at the coming into force of this Act.
- 9 From the date of an extension under [section ...], so much of a rule having the force of law which is in operation in a State specified in the Schedule as is in contravention of, or inconsistent with, or repugnant to, a law so extended, shall cease to have effect in that State.

### Repeals, savings and transitional provisions

- 1 (1) The [Copyright Act ...] and the [Copyright Act ...]<sup>1</sup> enacted by the Parliament of the United Kingdom, as modified in its application to Draftaria by the [Copyright Act ...], are hereby repealed.
- (2) Where a person has, before the coming into force of this Act, incurred expenditure or liability in connection with the performance or reproduction of a work in a manner which was lawful, nothing in this section shall diminish or prejudice a right or interest arising out of, or in connection with, that performance or reproduction.
- (3) Subsection (2) does not affect a right to compensation arising out of an agreement made in respect of the performance or reproduction.
- (4) Copyright does not subsist under this Act in a work in which copyright did not subsist immediately before the coming into force of this Act.
- (5) Where copyright subsisted in a work immediately before the coming into force of this Act, the rights comprising that copyright shall, as from the date of the coming into force of this Act, be the rights specified in [section ...] in relation to the class of work to which that work belongs.
- (6) Where a new right is conferred by [section ...], the owner of the right shall be
- (a) the assignee or the assignee's successor-in-interest, in a case where copyright in the work was wholly assigned before the coming into force of this Act; or
  - (b) the person who was the first owner of the copyright in the work under an enactment repealed by this section or that person's legal representative, in any other case.
- (7) Except as otherwise provided by this Act, where a person is entitled immediately before the coming into force of this Act, to copyright in a work or a right in a copyright or to an interest in that right, that person

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1 Different years.

shall continue to be so entitled to that copyright, right or interest for the period for which that person would have been entitled thereto if this Act had not come into force.

(8) Nothing contained in this Act shall be deemed to constitute an act done before the coming into force of this Act an infringement of copyright if that act would not otherwise have constituted an infringement.

(9) Except as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the [Interpretation Act ...] with respect to the effect of repeals.

- 2 Nothing in this Act shall affect the provisions of an enactment, any usage or custom of trade, an incident of a contract, which is not inconsistent with a provision of this Act, and which is not expressly repealed by this Act.
- 3 Nothing in this Act shall be deemed to affect a law not expressly repealed, or to derogate from
  - (a) a right of the Government to regulate the collection, distribution or retention of the water of rivers and streams flowing in natural channels, and the natural lakes and ponds, or of the water collected, distributed, flowing or retained in or by a channel or other work constructed for the purposes of irrigation, out of moneys provided by Parliament;
  - (b) a customary or other right, not being a licence, in or over immovable property which the Government, the public or a person may possess irrespective of other immovable property; or
  - (c) a right acquired or arising out of a relation created before the coming into force of this Act.
- 4 Nothing in this Act, or in subsidiary legislation, shall affect an enactment providing for the registration of births and deaths within a particular area.
- 5 Nothing in this Act shall be deemed to affect the terms of a licence which was granted to, or of an agreement which was made, by or with the consent of the Minister for the supply or use of electricity before the commencement of this Act.
- 6 A notification under [section ..., ..., ... or ...] shall not affect an act done, an offence committed, or legal proceedings commenced before the date on which the notification takes effect.
- 7 Any appointment, licence, notification, order, pass, permit, power or rule in force before the coming into force of this Act and conferred, issued or made by an authority, for the conferring, issuing or making of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been conferred or issued or made by the new authority, unless cancelled, revoked or withdrawn by the new authority.
- 8 Nothing in this Act
  - (a) shall affect a right which has accrued or a liability which has been incurred before the coming into force of this Act; or

- (b) shall be deemed to confer upon a person a right in respect of a religious or charitable trust which that person would not have had if this Act had not been enacted.
- 9 The mention of a particular matter in a provision of this Act shall not prejudice the application of the [Interpretation Act ...] with respect to repeals.
- 10 Where a licence to act as a [conductor of an omnibus] is issued by the Authority and is effective immediately before the coming into force of this Act, the licence
- (a) shall continue to be effective, notwithstanding the commencement, for the period for which it was issued as if the [Road Traffic (Motor Vehicles) (Amendment) Act ...] had not been enacted;
- (b) shall be deemed to be a licence issued under this Act as if this Act had been in force on the date on which the licence was granted.
- 11 A land acquired, an action taken or anything done under the repealed Act shall be deemed to have been acquired, taken or done under this Act.
- 12 (1) Where at any time after the expiry of six months from the date of the coming into force of this section the President is satisfied that a government outside Draftaria has made satisfactory provision for the protection within its country of trade marks in respect of which an application for registration has been made in this country, the President may, by legislative instrument, make provision with regard to trade marks in respect of which an application for registration has been made within that country.
- (2) A person who has applied under the laws of that country for the registration of a trade mark or the legal assignee or legal representative of that person may obtain registration of that trade mark on an application being made for registration under this Act within the period specified for the registration in the instrument.
- 13 (1) The expiry of the [Timber (Temporary Excise Duty) Act ...] shall not affect the liability to pay the duty levied under that Act or the liability to a penalty or punishment incurred thereunder.
- (2) For the purposes of completing and enforcing the recovery of the duty, the penalty or the punishment the provisions of the Act relating to the duty, penalty or punishment shall continue in force as if they were enacted in this Act.
- 14 All orders made under the [Defence Regulations ..., or a regulation continued in force by the [Emergency Provisions (Continuance) Act ...] and in force immediately before the commencement of this Act, shall, so far as they are not inconsistent with a provision of this Act, continue in force as if they had been made under this Act.

## Reports and returns

- 1 (1) At the end of the financial year or an earlier period as prescribed, the Commission shall submit a report to the Minister containing a detailed account of its activities during the year.

- (2) The Minister may at any time call for such reports, returns or statements from the Commission as the Minister considers necessary.
- 2 The Minister or the competent authority may, with a view to carrying out the purposes of this Act require, by statutory instrument, a person to furnish to an officer specified in the instrument such information in that person's possession as may be specified relating to property which is acquired or requisitioned or intended to be acquired or requisitioned under this Act.
- 3 The owner of a cotton pressing factory shall submit to the prescribed authority, within the time and in the form prescribed, weekly returns showing the total number of bales of cotton pressed during the preceding week and from the commencement of the season to the end of that week, and the approximate average net weight of the bales pressed in that week.

## Restraining orders

- 1 (1) The court may make a restraining order on an application *ex parte*, by the Commissioner, if the court is satisfied that
  - (a) property is due from a third party to a suspected person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act or against whom a prosecution for an offence has been instituted; or
  - (b) a third party is holding property for or on behalf of or to the order of the suspected person.
- (2) In making a restraining order the court may
  - (a) impose such conditions as it thinks fit, or
  - (b) exempt the property from the operation of the restraining order;but the third party on whom a restraining order is served in accordance with subsection (4) shall not dispose of, or otherwise deal with, property specified in the restraining order unless the court otherwise directs.
- (3) A restraining order shall, if so provided in the order, apply to the income from the property specified in the order as it applies to the property itself.
- (4) A restraining order shall be served on the third party to whom it is directed and on the suspected person and may be served by it being delivered to that person personally or in such other manner as the court may consider appropriate having regard to all the circumstances.
- (5) Where immovable property is specified in a restraining order, the order shall be deemed to be an instrument affecting land and shall be registerable in the Land Registry under the [Registration of Titles Act ...] in the manner directed by the Registrar of Titles.
- (6) Subject to subsection (7), a restraining order shall continue in force for a period of six months from the date of the making thereof, but on the application of the Commissioner, the court may extend its operation for further periods of three months at a time.

(7) A restraining order shall continue in force until the determination of the prosecution where

- (a) the restraining order is made with respect to property of a suspected person against whom a prosecution for an offence under this Act has been instituted; or
- (b) the restraining order is in force with respect to property of a suspected person against whom a prosecution for an offence is instituted.

(8) Nothing in subsection (6) or (7) shall prevent the court from making a further restraining order in respect of the same property on an application *ex parte* by the Commissioner.

(9) A third party on whom a restraining order has been served in accordance with subsection (4) commits an offence where, during the continuance in force of the order, that party disposes of or otherwise deals with property specified in the restraining order otherwise than in accordance with the direction of the court.

2 (1) The Commissioner may apply *ex parte* to the court for the revocation of a restraining order.

(2) A person on whom a restraining order has been served in accordance with [section ...] may, on giving notice to the Commissioner, at any time apply to the court for an order revoking or varying the restraining order.

(3) On the hearing of an application under subsection (2), the court may

- (a) revoke the order if the court is satisfied that undue hardship will be caused by the continuance in operation of the order;
- (b) vary the order in such manner as the court thinks fit.

(4) Where a restraining order is revoked or varied under this section, notice of the revocation or variation shall be served on the third party to whom it is directed and on the suspected person.

## Restrictions

1 (1) Where a depositor keeps an account in a bank for moneys belonging to any other person, the bank shall not incur liability, or be under an obligation, to make an inquiry regarding, or be deemed to have knowledge of, the right of a person to moneys paid or credited to the account.

(2) Subsection (1) does not

- (a) apply to the case of an account kept by a depositor as a trustee for a specified beneficiary; or
- (b) relieve a bank from liability or obligation which it would otherwise incur under this Act.

2 (1) Except as provided in subsection (2), a transfer made after the coming into force of this Act of an immovable property by way of exchange, gift, mortgage or sale, or by way of lease for a term exceeding three years is not valid unless made with the previous consent of the High Court.

(2) Where a transfer is made under an express power conferred by deed, the previous consent of the High Court shall not be necessary, but a notice of the proposed transfer shall be sent to the High Court one month before the transfer is made.

(3) The notice shall be in such form and contain such particulars as the High Court shall determine.

## Retroactive operation of Acts

- 1 This Act shall be read and construed as if the amendments made by [sections ..., ... and ...] formed part of the [Forestry Act ...] from the date of the commencement of that Act.
- 2 The amendments made pursuant to [section ...] of this Act shall be deemed to have taken effect from the coming into force of the [Education Act ...].
- 3 This section [and section ...] shall be deemed to have come into force on the date of the commencement of the [Statutory Corporations Act ...], and the other provisions of this Act shall come into force on the date of the publication of this Act in the *Gazette*.
- 4 This section and all other sections except [section ...] shall be deemed to have come into force on the first day of January, 1950, and [section ...] shall come into force on such date as the President may, by legislative instrument, appoint.

## Returns and reports

- 1 (1) The Authority shall furnish to the Minister such accounts, returns, statistics and other information with respect to its activities or property or in respect of a proposed scheme as the Minister may in writing direct.  
(2) Without prejudice to subsection (1), the Authority shall, within three months of the end of the financial year, submit to the Minister a report on the activities, policy and programmes of the Authority.  
(3) The Minister shall lay the reports submitted under subsections (1) and (2) before Parliament within fourteen days of the receipt thereof.
- 2 (1) The Committee may at any time serve, by registered post, a notice on the owner of a factory or an industry, or upon the manager thereof requiring the owner to furnish the Committee, within the period specified in the notice, which shall not be more than fourteen days, such returns relating to the factory or industry as the Committee may direct.  
(2) A member of the Committee or a person authorised by the Committee may at a reasonable time enter upon and inspect the premises of the factory or industry, and may require the owner to produce for inspection any records of the factory or industry in the control or custody of the owner relating to the operations of the factory or the industry.

- (3) Where a return required under subsection (1) is not furnished to the Committee within the period stated in the notice, the Committee may refuse to grant permission under this Act to the owner for the operations of the factory or the industry.
- 3 (1) The Statistics Department may serve on the owner of a commercial or an industrial concern or on any other person a notice requiring any of those persons to furnish such information or returns relating to a matter in respect of which statistics are to be collected as the Department may determine.
- (2) The Department shall prescribe
- (a) the form in which, and the person to whom, or the authorities to which, the information or returns should be furnished;
  - (b) the particulars which the information or returns should contain; and
  - (c) the intervals within which the information or returns should be furnished.
- (3) The notice referred to in subsection (1) may be served by registered post or in any other suitable manner.
- 4 A person commits an offence who
- (a) being required to make a return under this Act fails to make the return or knowingly or recklessly makes an untrue statement in the return;
  - (b) fails to comply with a direction given to that person under this Act;
  - (c) obstructs any other person in the lawful performance of the functions of that other person;
  - (d) contravenes or fails to comply with a provision of this Act or of Regulations made thereunder.

## **Return of travel documents**

- (1) A person who has surrendered a travel document to the Commissioner may make an application in writing for its return.
- (2) The application shall contain a statement of the grounds on which the application is made.
- (3) The Commissioner may
- (a) grant the application with or without conditions as to the further surrender of the travel document and the appearance of the applicant at any time and place as may be specified in writing by the Commissioner and served personally on the applicant;
  - (b) refer the application to a Magistrate; or
  - (c) refuse the application.
- (4) The Commissioner may, before granting an application under subsection (1),



- (a) require that the applicant deposit with the Commissioner a reasonable sum of money as security, or enter into a recognisance, with such sureties as the Commissioner may require, or deposit that sum of money as well as provide the sureties;
  - (b) require that the applicant or a surety or both deposit with the Commissioner or such other person as the Commissioner may specify, any property or document of title thereto, to be retained by the Commissioner until such time as a recognisance entered into under this section is no longer required or is forfeited and enforced.
- (5) A recognisance referred to in subsection (4) shall contain a condition for the further surrender of the travel document and for the appearance of the applicant at such time and place as may be specified by the Commissioner in the written notice under subsection (3) and at such other time and place thereafter as the Commissioner may specify.
- (6) Where under subsection (3) the Commissioner grants an application subject to conditions, or refuses an application, the applicant may, within fourteen days appeal to a Magistrate against the conditions or refusal, but the lodging of the appeal shall not of itself affect the operation of the conditions.
- (7) Where an application under subsection (1) is referred by the Commissioner to a Magistrate, or the application is the subject of an appeal to a Magistrate under subsection (6), the Magistrate may, if satisfied that having regard to all the circumstances the detention of the travel document will cause unreasonable hardship to the applicant, order that the travel document be returned to the applicant with or without conditions as to the further surrender of the travel document and the appearance of the applicant at a specified time and place.
- (8) Subsections (4) and (5) apply to the making of an order under subsection (7) as they apply to the granting of an application under subsection (1), as if a reference in those subsections
- (a) to the Commissioner were a reference to a Magistrate; and
  - (b) to a written notice under subsection (3) were a reference to an order under subsection (7).
- (9) Where a travel document returned to the applicant under this section is subsequently surrendered by the applicant pursuant to a notice under subsection (3) or an order under subsection (7), the provisions of this Act relating to the surrender of a travel document shall continue to apply as if a return had not been made to the applicant under this section.
- (10) Proceedings before a Magistrate under this section shall be conducted in chambers, and shall be deemed to be proceedings by way of a summary jurisdiction.

## Rights of nominees

- (1) The provisions of this section shall apply notwithstanding anything contained in an enactment or in a disposition, whether testamentary or otherwise, by a depositor in, or a subscriber to, a Government provident fund or any other provident fund authorised by the Minister.
- (2) Where a nomination duly made in accordance with the rules of the fund purports to confer on a person the right to receive the whole or a part of the moneys standing to the credit of a depositor or a subscriber, on the death of the depositor or subscriber occurring before the whole or a part of those moneys become payable, the person so nominated shall be entitled, to the exclusion of all other persons, to the whole or part as so conferred.
- (3) Subsection (2) shall not apply where the nomination becomes invalid or is cancelled or is in any other manner withdrawn in accordance with the rules of the fund.
- (4) Where the person on whom a right is conferred under subsection (2) predeceases the depositor or the subscriber the nomination shall, so far as it relates to the right of that person, become void, and the right passes to any other person nominated in stead.

## Rights of survivors

- (1) Notwithstanding anything contained in any other enactment, where a Government security is payable to two or more persons
  - (a) jointly, and either or any of them dies, the security shall be payable to the survivor of that person or the survivors of those persons;
  - (b) severally, and either or any of them dies, the security shall be payable to the survivor or survivors of that person or the survivors of those persons, or to the legal representatives of the deceased or any of them.
- (2) Subsection (1) applies whether the death occurred before or occurs after the coming into force of this Act.
- (3) Nothing in this section shall affect a claim which a representative of a deceased person may have against the survivor or survivors under, or in respect of, a security to which subsection (1) applies.
- (4) For the purposes of this section, the dissolution of a body corporate shall be deemed to be the death of that body.

## Rules of evidence

- 1 (1) Any intimation, notice or statement noted or recorded in the Register of [Businesses] [Companies] [Firms], shall, as against a person by whom or on whose behalf the intimation, notice or statement was signed, be *prima facie* evidence of any fact stated therein.

- (2) A certified copy of an entry relating to a [business] [company] [firm] in the Register may be produced in proof of the registration of the [business] [company] [firm] and of the contents of any intimation, notice or statement noted or recorded.
- 2 (1) Where an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act and that person is, in the opinion of the court apparently under or over that age, the burden of proof whether that person is not under or over that age lies on the prosecution.
- (2) A declaration in writing by a registered medical officer relating to a worker that the medical officer has personally examined the worker and believes the worker to be under or over the age stated in the declaration shall, for the purposes of this Act, be admissible as evidence of the age of the worker.
- 3 An officer or an employee of the Board shall not in any legal proceedings to which the Board is not a party be required to produce a document or register the contents of which can be proved under [section ...] by a certified copy, or to appear as a witness to prove a matter or transaction recorded therein unless the court so orders.
- 4 Where a member of the Armed Forces Reserve Contingent in pursuance of the Regulations made under the [Armed Forces Act ...]
- (a) is required to join a unit or to attend at a place for the purpose of undergoing training, or
- (b) is called into active service in the Armed Forces,
- a certificate purporting to be signed by an officer appointed in that behalf under the Regulations and stating that the member failed to join, or to attend in accordance with the requirement or call shall, without proof of the signature or appointment of the officer, be sufficient evidence of the matter stated therein.
- 5 Where a document is furnished by a person under [subsection (2) of section ...] or is seized under [subsection (3)] of that section from the custody or control of a person, and the document is tendered by the prosecution in evidence against that person, the court shall presume, unless the contrary is proved by that person,
- (a) the truth of the contents of the document;
- (b) that the signature and every part of the document which purports to be in the handwriting of a particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, a particular person, is in that person's handwriting, and in the case of a stamped document executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been executed or attested.
- 6 In any proceedings for an offence under this Act, it shall not be a defence to show that an advantage mentioned in this Act is customary in a calling, profession, trade or vocation.

- 7 In any proceedings against a person for an offence under this Act,
- (a) a statutory declaration or statement furnished by that person in compliance or purported compliance with the terms of a notice served upon that person is admissible in evidence and, if that person appears as a witness, the declaration or statement may be used in cross-examination and for the purpose of impeaching the credibility of that person;
  - (b) the fact of the failure of that person in any respect to comply with the terms of a notice served on that person may be adduced in evidence and made the subject of comment by the court and the prosecution.
- 8 (1) In any proceedings against a person for an offence under this Act, the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which the accused cannot satisfactorily account, of pecuniary resources or property disproportionate to the known resources of income of the accused, or that the accused had obtained, at or about the date of or at any time since the date of the alleged offence, an accretion to those pecuniary resources or property for which the accused cannot satisfactorily account may be proved and may be taken by the court as
- (a) corroborating the testimony of a witness giving evidence in the proceedings that the accused accepted or solicited an advantage; and
  - (b) showing that the advantage was accepted or solicited as an inducement or reward.
- (2) For the purposes of subsection (1), a person accused of an offence under this Act shall be presumed to be, or to have been in possession of pecuniary resources or of property, or to have obtained accretion thereto, where the resources or the property are or were held, or the accretion was obtained, by any other person whom, having regard to that person's relationship to the accused or to any other circumstances, there is reason to believe is or was holding the resources or the property or obtained the accretion in trust or otherwise on behalf of the accused or as gift from the accused.
- 9 (1) In any proceedings against a person for an offence under this Act, a certificate purporting to be signed by the Minister and purporting
- (a) to certify the rate of, or the amount of, emoluments and allowances paid to a public officer other than in respect of the emoluments and allowances paid by virtue of being a public officer,
  - (b) to certify that a person was or was not serving at a specified time or during a specified period as a public officer or has ceased to be a public officer,
  - (c) to certify that a public officer held or did not hold a specified office in the public service,

shall be admitted in evidence in the proceedings on production of the certificate without further proof.

(2) On the production of a certificate under subsection (1) the court shall, until the contrary is proved, presume

(a) that the facts stated in the certificate are true, and

(b) that the certificate was signed by the Minister.

(3) For the purposes of this section “emoluments and allowances” includes a gratuity or pension payable to that person.

10 Notwithstanding any rule of law or practice to the contrary, a witness shall not, in proceedings for an offence under this Act, be regarded as an accomplice by reason only of

(a) a payment or delivery by the witness or on behalf of the witness of an advantage to the person accused, or

(b) a payment or delivery of an advantage by or on behalf of the person accused to the witness.

11 (1) Where a person accused or suspected of having committed, an offence under this Act informs the Attorney General in writing

(a) that a complete and full disclosure of the facts known to that person shall be made, or

(b) that a full and true evidence in any proceedings in relation to that offence shall be given by that person,

the Attorney General shall so inform the court, and on the complete and full disclosure and an affidavit of the full and true statement of the facts being given to the satisfaction of the court, the court shall order that a prosecution shall not be instituted or carried on against that person.

12 Where in any proceedings for an offence under this Act it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as an inducement or a reward as is alleged in the particulars of the offence unless the contrary is established.

13 Notwithstanding any law or practice to the contrary, the court may in proceedings for an offence under this Act comment on the failure of the accused to give evidence.

## Schedule

1 The transitional provisions specified in the First Schedule shall have effect notwithstanding anything to the contrary contained in this Act.

2 A Justice to whom the provisions of clause (9) of this article apply shall, on the coming into force of this Constitution, take and subscribe the oath of allegiance and the judicial oath set out in the Second Schedule.

3 (1) A question whether a provision contained in the National Assembly Act ... is within the competence of that Assembly shall be determined in accordance with the Second Schedule.

- (2) References in this Act to a Bill within the legislative competence of the National Assembly are references to a Bill which, if it became a National Assembly Act, would be within the legislative competence of the National Assembly.
- 4 The enactments specified in the Fifth Schedule shall have effect subject to the amendments specified in that Schedule.
- 5 The enactments specified in the first column of the Schedule are amended to the extent specified in the third column of the Schedule.
- 6 (1) The Minister may, by legislative instrument, amend the Schedule.  
(2) An instrument made under subsection (1) shall be laid before Parliament within seven days of being made and is subject to annulment.
- 7 The Minister may, acting in accordance with the recommendations of the Council and by legislative instrument, direct that an article specified in the Schedule shall cease to be subject to the duty imposed under this Act; and accordingly that article shall be deemed not to have been included in the Schedule for as long as the instrument remains in force.
- 8 The Minister may, by legislative instrument, amend the Schedule so as to include therein goods of other descriptions or exclude therefrom goods of any description or vary, in respect of any description of goods, the conditions set out in the third column of the Schedule.
- 9 The Minister may, by legislative instrument, amend the Schedule and, when the Schedule is so amended, a reference to the Schedule in an enactment shall be construed as a reference to the Schedule as so amended.
- 10 The Governor General may, by statutory instrument subject to a negative resolution of Parliament, amend the Schedule.
- 11 (1) For the rates of customs and excise duty and of drawback set out in
- (a) Table One of the First Schedule to the [Appropriation Act ...] relating to spirits, other than imported perfumed spirits;
  - (b) the Second Schedule to that Act, relating to beer;
  - (c) the Third Schedule to that Act, relating to wine,
- there shall be substituted, respectively, the rates of duty and drawback set out in the First, Second and Third Schedules to this Act.
- 12 In the exercise of the powers conferred under [section ...], the Minister shall not specify scales of tolls exceeding those which would be required to secure that, taking one year with another, the revenue produced by the tolls during the toll period, if applied for the purposes mentioned in the Second Schedule, would be sufficient, but not more than sufficient, for those purposes.
- 13 The provisions of the Fifth Schedule shall have effect with respect to the constitution of the Authority and other matters relating thereto.
- 14 (1) The enactments specified in the First Schedule shall have effect subject to the amendments respectively specified in that Schedule, being amendments consequential on the coming into force of this Act.  
(2) The enactments set out in the Second Schedule are repealed to the extent specified in the third column of that Schedule.

## Searches, arrests and seizures

- 1 An arrest or a search made under this Act or under Regulations made thereunder shall be carried out in accordance with the provisions of the [Criminal Procedure Code ...] relating to arrests and searches.
- 2 The Minister may, by statutory instrument, authorise an officer by name or by virtue of office
  - (a) to enter and search a place where the officer has reasonable cause to believe that petroleum is being blended, imported, produced, refined, stored or transported otherwise than in accordance with this Act and any subsidiary legislation made thereunder; and
  - (b) to detain, remove or seize any or all of the petroleum in respect of which in that officer's opinion an offence under this Act has been committed.
- 3 (1) Where the Commissioner, in consequence of information received, has reasonable cause to believe that
  - (a) a person to whom a notice or summons under this Act is issued to produce, or to cause to be produced, books of account or other documents has omitted or failed to produce or cause to be produced the books of account or other documents as required by the notice or summons,
  - (b) a person to whom a notice or summons under this Act has been or might be issued will not, or would not, produce or cause to be produced books of account or other documents which will be useful for or relevant to, proceedings under the [Income Tax Act ...] or under this Act,
  - (c) a person is in possession of bullion, and the bullion represents either partly or wholly income or property which has not been disclosed for the purposes of the [Income Tax Act ...] or under this Act,

the Commissioner may authorise an officer of the Income Tax Department to

- (d) enter and search a building or place where there is reason to believe that the books of account, other documents or bullion are kept;
- (e) break open the lock of any box, door, locker, safe or other receptacle in order to enter and search a building or place where the keys thereof or thereto are not available;
- (f) seize the books of account, other documents or bullion found as a result of the search;
- (g) place marks of identification on the books of account or other documents or make or cause to be made extracts or copies therefrom;
- (h) make a note or an inventory of the bullion.

- (2) The authorised officer may requisition the services of a police officer or of any other public officer to assist in all or any of the purposes specified in subsection (1) and an officer so requested shall comply with the requisition.
- (3) The authorised officer may, where it is not practicable to seize a book of account, other document or bullion, serve an order on the owner or the person who is in immediate possession or control thereof not to remove, part with or otherwise deal with it except with the prior permission in writing of the authorised officer, and the authorised officer may take such steps as may be necessary for ensuring compliance with this subsection.
- (4) The authorised officer may, during the course of the search or seizure, examine on oath a person who is found to be in possession or control of books of account, bullion or documents, and a statement made by that person during the examination may thereafter be used in evidence in a proceeding under the [Income Tax Act ...] or under this Act.
- (5) The books of account or other documents seized under subsection (1) shall not be retained by the authorised officer for a period exceeding six months from the date of the seizure unless the reasons for retaining them are recorded in writing and the approval of the Commissioner has been obtained.
- (6) The Commissioner shall not authorise a retention under subsection (5) for a period exceeding thirty days after all proceedings under the [Income Tax Act ...] or this Act in respect of the years for which the books of account and other documents are relevant are completed.
- (7) A person from whose custody books of account or other documents are seized under subsection (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer at such place and time as that officer may appoint.
- (8) Where a person legally entitled to the books of account or other documents seized under subsection (1) objects for any reason to the approval given by the Commissioner under subsection (5), that person may make an application to the Board stating therein the reasons for the objection and requesting the return of the books of account or other documents.
- (9) The [Criminal Procedure Code ...], as it relates to searches and seizures, shall apply, so far as may be, to searches and seizures under subsection (1).
- (10) For the purposes of this section, "bullion" includes jewellery, money or other valuable article or thing.
- 4 (1) Where the Commissioner has reasonable cause to believe that in any premises or place, other than an office registry, or other room of or used by a public body, there may be a thing which is or contains evidence of the commission of an offence under this Act, the Commissioner may by warrant directed to an investigating officer or a police officer empower that officer to enter and search those premises or that place and detain, subject to subsection (2), a person found in those premises or that place.



- (2) A person may not be detained under subsection (1) for more than the time it takes to complete the search unless in the meantime the person so detained is arrested.
- (3) Without prejudice to any other enactment relating to entry and search, the chambers of a counsel or the offices of a solicitor are not subject to entry and search under this section or under a search warrant unless in the course of investigating an offence alleged or suspected to have been committed by that counsel or solicitor, or by the clerk of the chambers or office of the solicitor or by a person employed by that counsel or solicitor in those chambers or offices.
- 5 A female shall not be searched pursuant to this section except by a suitable female who is a police officer.

## Secrecy

- 1 (1) A person having control or possession of classified information, an official document or an official secret shall not
- (a) communicate that classified information, official document or official secret to a person, other than a person
    - (i) to whom that person is authorised to communicate with, or
    - (ii) to whom in the interests of the Republic there is an authorised duty to communicate it;
  - (b) use the classified information in that person's possession for the benefit of a foreign body or in any other manner prejudicial to the safety or the interests of the Republic;
  - (c) retain the official document in that person's possession when there is no duty or right to retain it, or when it is contrary to the duty of that person to retain it, or fail to comply with a direction issued by lawful authority with regard to the return or disposal of the document;
  - (d) fail to take reasonable care of, or engage in a conduct or activity, as to endanger the safety of the classified information, official document or official secret.
- (2) For the purposes of subsection (1),  
"classified information" means information
- (a) which relates to or is used in a prohibited place, or anything in a prohibited place, or
  - (b) which has been entrusted in confidence to any other person by a person holding office under the Republic, or
  - (c) which that other person has obtained, or to which that other person has access owing to that other person's position
    - (i) as a person who holds or has held office under the Republic, or

(ii) as a person who holds or has held a contract executed on behalf of the Republic, or a contract the performance of which in whole or in part is carried out or was carried out in a prohibited place, or

(iii) as a person who is or has been employed under a person who holds or has held that office or contract;

“official document” means an official secret article, document, model, note, plan or sketch;

“official secret” means an official secret code word or pass word.

- 2 A person employed in the service of the Republic shall not communicate or allow to be communicated to a person not legally entitled thereto, an information obtained under this Act.
- 3 A public officer shall not, without due authority from the appropriate authority, disclose a confidential information.
- 4 (1) A person shall not obtain, under or by virtue of this Act, information in relation to the business of any other person.  
(2) A person who obtains information in relation to the business of any other person shall not, without the consent of that other person, disclose that information to a person not legally entitled thereto.  
(3) For the purposes of subsection (2) disclosure includes a conduct or an act that leads to the identification of the information with the business.

## Statutory bodies

- 1 In an enactment passed after the commencement of this Act, unless the context otherwise requires, words establishing an association or body of persons, a corporation or a body corporate
  - (a) vest in that body the power to sue and be sued, to execute a contract or to enter into an agreement, to have a common seal, to have perpetual succession, to acquire and hold property, whether movable or immovable, for the purposes for which the body is constituted;
  - (b) vest in a majority of the members of the body the power to bind the other members by the acts of the majority;
  - (c) exempt an individual member of the body from personal liability for the debts or obligations or acts, if they do not violate the provisions of the enactment establishing that body.
- 2 A District Council or a Regional Council established under this Act shall be a body corporate by the name of the District or Region, shall have perpetual succession and a common seal and may sue or be sued in its corporate name.
- 3 (1) Where the Minister has reasonable cause to believe that an act or a resolution of a District or Regional Council is likely to endanger the safety of Draftaria, the Minister may, by legislative instrument, annul or suspend

that act or resolution and take such steps as are necessary to prevent the commission or continuance of the act, or the giving of effect to the resolution.

(2) Steps taken under subsection (1) may include the suspension of the Council and the assumption by the Minister of the functions of the Council.

(3) An instrument made under subsection (1) is subject to a negative resolution of Parliament, but without prejudice to the making of another instrument.

4 (1) The Commission may invite to its meetings a person whose assistance or advice it may desire in the performance of its functions under this Act.

(2) A person invited to a meeting of the Commission may take part in the discussions relevant to the purpose for which the invitation was extended, but shall not vote at that meeting and shall not be a member of the Commission for any other purpose.

5 The Committee under [section ...] may be constituted at any time after the enactment of this Act and before its commencement, but the Committee so constituted shall not begin to perform its functions until the commencement of this Act and upon that commencement the term of office of the members of the Committee then existing shall expire.

6 Where a nominated member dies, resigns, ceases to reside in Draftaria or becomes incapable of acting, the Minister

(a) shall, on the recommendations of the relevant body, nominate a person to fill the vacancy that has occurred, or

(b) may, where the recommendations are not made within the prescribed period, nominate a person to fill the vacancy.

7 (1) The Board may, for such period as it thinks fit, co-opt as a member of the Board a person possessing the technical qualifications prescribed by Regulations made under this Act.

(2) A member co-opted under subsection (1) shall exercise all the powers and discharge all the duties of a member under this Act, except the right to vote on a question before the Board.

8 (1) A Committee appointed to inquire into a reference arising out of an order made under [section ...] shall consist of

(a) the chairman of the Board as chairman of the Committee;

(b) two persons nominated by the Minister;

(c) one person nominated by the Chamber of Mines;

(d) one person nominated by the Chamber of Commerce; and

(e) one member nominated by the Minister to represent the interests of persons employed in the mining industry.

(2) A person shall not be nominated as a member under subsection (1) unless that person possesses the prescribed qualifications.

## **Suspension of an Act**

(1) Where the President has reasonable cause to believe that circumstances have arisen making it necessary that certain of the restrictions imposed by this Act should cease to have effect or considers that it is necessary or expedient so to do in the public interest, the President may, by legislative instrument, suspend indefinitely or for such period as may be specified in the instrument, the operation of all or any of the provisions of this Act.

(2) The President may at any time revoke an instrument made under subsection (1).

## **Temporary association of persons**

(1) The Authority may, with the prior approval in writing of the Minister, deal with a person whose advice, assistance or expertise the Authority desires in the carrying out of the provisions of this Act.

(2) A person identified under subsection (1) may take part in the discussions of the Authority relevant to that purpose, but shall not have a right to vote at a meeting of the Authority, and shall not for that purpose be deemed to be a member of the Authority.

## **Term of office**

(1) A person appointed a member of a Board by virtue of an office shall, unless the Minister otherwise directs, continue to be a member of the Board while that person continues to hold that office.

(2) The term of office of all other elected or appointed members of a Board shall be determined by the Minister, which term shall not exceed three years, under Regulations made under this Act, and may so be determined as to provide for the retirement of members by rotation each year.

(3) A retiring member is, if otherwise qualified, eligible for election or appointment.

(4) Notwithstanding anything contained in subsection (2) or in the Regulations, a retiring member shall, unless the Minister otherwise directs continue in office until the election or appointment of a successor.

## **Transfer of assets and liabilities**

- 1 (1) On the appointed day,
  - (a) all shares in the capital of the Bank shall be transferred to, and shall vest in, the Central Bank free of all encumbrances, liabilities and trusts; and
  - (b) the undertaking of the Bank shall be transferred to, and shall vest in, the Central Bank.

(2) The undertaking of the Bank includes all authorities, powers, privileges and rights, and all property, immovable and movable, including the cash balances, investments, reserve fund and all other interests and rights in, or arising out of, that property as may be in the possession of the Bank immediately before the appointed day, and all accounts, books and documents relating thereto, as well as all debts, liabilities and obligations of whatever kind then existing of the Bank.

(3) Without prejudice to any other provision of this Act, all contracts or other instruments subsisting or having effect immediately before the appointed day and to which the Bank is a party, shall subsist for or against the Central Bank as if the Central Bank were a party thereto.

(4) Where on the appointed day any action, appeal or other legal proceeding is pending by or against the Bank the same shall not be affected by the transfer under this section, and the action, appeal or other legal proceeding may be continued, enforced or prosecuted by or against the Central Bank.

- 2 With effect from the 1st day of January, 1996, all moneys lying to the credit of the Arbitration Fund under the Act repealed by this Act shall be deemed to have been transferred to, and to vest in, the Board and form part of the Arbitration Fund established under this Act.

## **Transfer of licence**

(1) A licensee shall not assign the licence or transfer the undertaking or a part thereof by exchange, lease, mortgage, sale or otherwise without the prior consent in writing of the Minister.

(2) An agreement relating to a transaction of the nature described in subsection (1) unless made with or subject to that consent is void.

## **Transfer of property**

- 1 Upon the nomination of the first members of the Society and the appointment of the governing body of the Society,
  - (a) the Committee shall cease to exist;
  - (b) all property, movable and immovable, or other assets belonging to the Committee and any interest in or right over any property held for or on behalf of the Committee shall vest in the Society and shall be applied by the governing body of the Society to the objects and purposes for which the Society is established;
  - (c) all debts and liabilities of the Committee shall be transferred to the Society, and shall be discharged and satisfied by the Society out of the property of the Society, and each member of the Committee shall be discharged therefrom.
- 2 A judge, legal practitioner or an officer connected with a court of justice shall not buy or deal in, or stipulate for, or agree to receive a share of, or

- interest in, an actionable claim, and a court of justice shall not enforce at the instance of any person claiming by or through any such person an actionable claim so dealt with.
- 3 The Minister may, by legislative instrument, declare that with effect from the date specified in the instrument, the Committee is dissolved and on the publication of the instrument in the *Gazette* the funds and other property vested in the Authority shall vest in the Minister and this Act shall be deemed to have been repealed.
  - 4 The restrictions in [sections ..., ..., and ...] shall not apply in the case of transfer of property for the benefit of the public in the advancement of commerce, health, knowledge, religion, safety or any other object beneficial to mankind.

### **Transfer of service**

- (1) An officer or any other employee of the Bank in the employment of the Bank immediately before the appointed day shall, with effect from the appointed day, become an officer or employee of the Central Bank.
- (2) An officer or any other person to whom subsection (1) applies shall hold office or service by the same tenure, at the same remuneration and upon the same terms and conditions and with the same privileges and rights as to gratuity, pension and other matters as that officer or person would have held on the appointed day if the undertaking of the Bank had not vested in the Central Bank, and shall do so subject to the Regulations of the Central Bank.
- (3) A person who, on the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the Bank, or a pension, provident or other fund or any authority administering the fund shall be entitled to be paid by, and to receive from, the Central Bank or that pension, provident or other fund or that authority administering the fund the same allowance, benefit or pension so long as that person observes the conditions on which the allowance, benefit or pension was granted.
- (4) The question whether a person to whom subsection (3) applies has observed the conditions of the allowance, benefit or pension shall be determined by the Minister.
- (5) Notwithstanding anything contained in any other enactment, the transfer of services by virtue of subsection (1) of an officer or any other person shall not entitle that officer or person to compensation under any other enactment.

### **Transitional provisions**

- 1 Where anything has been commenced or done by or under the authority of the Board established under the repealed Act before the transfer of assets,

duties and powers under this Act, that thing may be continued and completed by or under the authority of the assets, duties and powers so transferred.

2 All legal proceedings commenced by or against the Board before the dissolution of the Board may be continued by or against the successors in office of the Board.

3 (1) Unless otherwise provided by or under this Act, all agreements, contracts or other instruments subsisting or having effect immediately before the coming into force of this Act in respect of which the Board was a party or which enured to the benefit of the Board shall, in so far as they relate to the undertaking of the Board, remain valid in favour or otherwise of the Authority, and may be acted upon by or against the Authority.

(2) Where immediately before the coming into force of this Act any action, appeal or other legal proceeding is pending by or against the Board in respect of the functions of the Board that action, appeal or other legal proceeding may be continued or prosecuted by or against the Authority.

4 An officer or employee of the Board who on the coming into force of this Act is employed by the Board shall be transferred to the Authority and become an officer or employee of the Authority.

5 On the commencement of this Act, the Committee constituted under [subsection (1) of section ...] of the [Forestry Act ...] shall stand dissolved, and a Committee shall be reconstituted in the manner provided by [section ...] of that Act as amended by [section ...] of this Act.

6 (1) Subject to this Constitution and to the powers of the legislature of a State conferred upon the legislature by the Constitution of the State,

(a) the jurisdiction of, and the law administered in, a High Court of a State, and

(b) the powers of the judges of the High Court of a State in relation to the administration of justice in that court, including the power to make Rules of Court,

shall be the same as immediately before the coming into force of this Constitution.

(2) A restriction to which the exercise of original jurisdiction of the High Court with respect to a matter concerning the revenue or concerning an act ordered or done in the collection of revenue was subject immediately before the coming into force of this Constitution shall no longer apply to the exercise of that jurisdiction.

7 (1) All actions, appeals, suits and any other legal proceeding, civil or criminal, pending before the Federal court on the coming into force of this Constitution shall stand removed to the Supreme Court established by [article ...] of this Constitution.

(2) The Supreme Court shall have jurisdiction to hear and determine the causes and matters removed to it under clause (1), and for that purpose it shall have all the authority, jurisdiction and powers vested in the Federal court on the coming into force of this Constitution.

- 8 (1) Subject to this section, legal proceedings pending immediately before the coming into force of this Act before a court, including civil proceedings by or against the Government, shall not be affected by the coming into force of this Act and may be continued in accordance with this Act.  
(2) Where on the coming into force of this Act there is a matter for review before the Court of Appeal, that matter for review shall be deemed to be an appeal pending before the Supreme Court.
- 9 All legal proceedings in causes or matters matrimonial, which when this Act comes into force are pending in the High Court shall be dealt with and decided by the High Court as if those matters or causes had been originally instituted under this Act.
- 10 Until such time as the Board is constituted under [section ...], the Minister may, notwithstanding anything in this Act to the contrary, exercise the powers conferred upon the Board without consulting the Advisory Committee.
- 11 Notwithstanding anything contained in [section ...], the President may, by legislative instrument, direct
  - (a) that during the period, not exceeding twelve months from the appointed day, specified in the instrument a law which immediately before the appointed day was in force in a State shall be deemed to have continued in force in that State or in a specified part of that State;
  - (b) that a law which would have been extended to, or would have come into force in a State on the appointed day, shall not be deemed to have extended thereto or to have come into force in that State or in a specified part of that State.
- 12 The Tribunal shall, in the disposal of cases transferred to it, exercise the same powers as it has in the investigation of cases referred to it under the [Income Tax (Investigations) Act ...].

## Vacancies

- 1 (1) Where the services of [a chairman of a Board or any other member of the Board] or [of a chairman or any other member of the Tribunal] cease to be available at any time, the Minister shall, in the case of a chairman, and may, in the case of any other member, appoint an independent person to fill the vacancy, and the proceedings of the [Board] [Tribunal] shall continue as so reconstituted.  
(2) Where a Tribunal is constituted by one person and that person is unable to perform the functions of that office, the Minister shall, depending upon the nature of the functions of the Tribunal, appoint an independent person qualified in that behalf to continue with the proceedings of the Tribunal.
- 2 An act of the Committee shall not be affected by reason only of a vacancy in the composition of the Committee.
- 3 The Board may act notwithstanding a vacancy in its membership.



- 4 Where a member of the Board becomes disqualified from holding office and is thus absent from a meeting of the Board, the proceedings of that meeting shall not, by reason only of that vacancy, be void.
- 5 A person appointed under this Act to fill a temporary vacancy shall hold office until the date upon which the substantive holder of the office would have retired, and the person so appointed shall retire.
- 6 (1) An election to fill a vacancy in the office of President occurring by reason of the death, resignation or removal from office of the President or otherwise, shall be held not later than three months from the date of occurrence of the vacancy.  
(2) The person elected to fill the vacancy shall, subject to [article ...] be entitled to hold office for the full term of five years from the date on which that person swears the oath of office.
- 7 In the event of the occurrence of a vacancy in the office of President by reason of the death, resignation or removal from office of the President or otherwise, the Vice-President shall act as President until the date on which a President elected in accordance with this Chapter enters upon office as President.
- 8 Where the President is unable to perform the functions of the office of President owing to absence, illness or other sufficient cause, the Vice-President shall perform those functions until the date on which the President resumes office.
- 9 The powers of the Board shall not be affected by a vacancy in its membership.
- 10 Where the office of Chief Justice is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the functions of the office of Chief Justice, those functions shall be performed by a Justice of the Supreme Court appointed by the President to act as Chief Justice.
- 11 Where a vacancy occurs in an office by reason of the incumbent dying, resigning or otherwise ceasing to hold office during the incumbent's term of office, the appointing authority shall appoint a person qualified to hold that office to fill the vacancy for the remainder of the incumbent's term of office.

## Validation

- 1 A thing done in good faith in pursuance of this Act by a member of the Board shall be deemed to have been validly done.
- 2 Any act or proceedings of the Board shall not be questioned on account of a vacancy in the composition of the Board, and a defect in the appointment or qualification of a person appointed as a member of the Board shall not vitiate the proceedings of the Board.
- 3 An officer shall not be liable for a seizure under this Act for which there shall have been reasonable cause, and when a claimant recovers goods seized or the proceeds thereof that recovery or proceeds shall be a bar to all proceedings against the officer.

- 4 An action shall not be brought against a person for anything done in good faith or intended to be done in good faith under this Act or of Regulations made thereunder.
- 5 All decisions made or proceedings held in relation to the verification of a claim or the validation of the claim of a person who has migrated to a place outside of Draftaria purporting to have been made or held pursuant to this Act shall be deemed for all purposes to have been validly made or held.
- 6 An acquisition of land for the purposes of the Republic made by the Minister or purporting to be made under the [Land Acquisition Act ...] at any time before the coming into force of the Constitution shall be deemed to be valid subject to the payment of compensation pursuant to [article ...] of the Constitution.
- 7 (1) All acts of executive authority, decrees, proceedings and sentences which have been done, imposed, issued, passed or taken in or with respect to the area of authority of the Bridgetown City Council since the beginning of March, 1990, and before the commencement of this Act
  - (a) by a public officer,
  - (b) by a person acting under the authority of, or otherwise in pursuance of an order of the Minister, or
  - (c) which have been ratified by the Minister,are hereby declared valid and operative as if they had been lawfully done, imposed, issued, passed or taken.

(2) A suit or other proceeding shall not be maintained or instituted against a person on the ground that the acts, decrees, proceedings or sentences were not done, imposed, issued, passed or taken in accordance with law.
- 8 All rules or orders directing or authorising the destruction or disposal of documents in the possession of a public officer made by a Minister or with the approval of a Minister shall be deemed to have been validly made or given on the date on which they were made or given; and the rules or orders now in force shall continue in force until they are revoked by Rules made under this Act.
- 9 The [Minors Act ...] shall, so far as regards the appellate and supervisory jurisdiction conferred upon the High Court by that Act, be valid as if that Act had been passed by the Parliament established by this Constitution.
- 10 A promissory note payable on demand for an amount exceeding two thousand dollars executed before the thirtieth day of September, 1990, and before the first day of January, 1995, purporting to have been stamped as required by the [Stamps Act ...], shall be deemed, for the purposes of that Act or of Regulations made thereunder, to have been duly stamped.
- 11 Without prejudice to the generality of the provisions contained in [section ...], the Acts or Regulations specified in the Schedule shall be deemed to have been validly enacted or issued; and accordingly those Acts and Regulations shall continue in force, subject to repeal by the appropriate authority.

- 12 All proceedings instituted and the jurisdiction thereby exercised by the High Court from the thirty-first day of October, 1990, to the date of the commencement of this Act, in respect of causes and matters matrimonial, shall be deemed to be as good and as valid as if instituted and exercised by the Family Division of the High Court established by this Act.
- 13 [Section ... of the Vegetable Products Act ...] shall, in so far as it enables the Minister to impose, by Regulations made under that section, a duty on vegetable products manufactured in, or imported into, a part of Draftaria to which this Act applies, be construed as if, for the year beginning on the first day of April, 1990, it imposed the duty at the rate of one dollar per one kilogram of vegetable products manufactured in, or imported by land into that part, and the duty shall, for all purposes of that Act, be deemed to have been imposed by Regulations made under that section.
- 14 A command given after the thirtieth day of September, 1995, and before the commencement of this Act, to a person referred to in [section ...] by a superior officer in relation to employment upon or in connection with a service specified in the legislative instrument made by the Minister shall be deemed a lawful command within the meaning and for the purposes of the Acts referred to in the Schedule, but a person shall not be punished by reason only of that person not having obeyed that command.
- 15 All orders delegating a power or a duty conferred or imposed by a provision continued in force by [section ...] made by the Minister before the commencement of this Act and in force immediately before the commencement shall continue in force and be deemed to have been made by the Minister under [section ...] of this Act.
- 16 (1) An acquisition of land in the public interest purporting to have been made under the [Land Acquisition Act ...] at any time before the coming into force of the Constitution and a proceeding held and an order made in connection with the acquisition of land for that interest shall, for all purposes, be deemed to be, and always to have been, a valid acquisition.  
(2) An acquisition validated by subsection (1) shall not be called in question merely on the ground that the authority which acquired the land did not have the competence at the time of the acquisition to acquire the land.
- 17 Notwithstanding anything contained in [section ... of the Finance Act ...], all proceedings taken, assessments made and other acts and things done by or before any authority, court, officer or tribunal acting or purporting to act under an enactment in connection with the assessment, collection and levy of a tax due under that enactment shall be valid and shall be deemed to have always been valid, and shall not be called in question on the ground only that the proceedings were not taken, the assessments were not made or the acts or things were not done by or before the corresponding authority, court, officer or tribunal referred to in that section.
- 18 The enactments specified in the Schedule shall be, and shall always be deemed, as valid as if those enactments have been duly enacted by Parliament.

- 19 (1) Notwithstanding any decree, judgment or order of a court, a law of a State imposing or authorising the imposition of a tax on the sale or purchase of goods where the sale or purchase took place in the course of inter-State trade or commerce during the period beginning with the first day of April, 1990, and ending on the thirtieth day of September, 1995, shall be deemed valid.
- (2) All taxes so levied or collected or purporting to have been levied or collected during that period shall be deemed to have always been validly levied, collected in accordance with the law.
- 20 (1) In consequence of the provisions of this Act, the following enactments are hereby repealed, that is to say,
- (a) the [Excise (Amendment) Act ...], which shall be deemed not to have amended the [Excise Act ...];
  - (b) the [Excise (Amendment) Act ...],<sup>2</sup> which shall be deemed never to have had any effect at all; and
  - (c) the [Spirits (Distillation and Licensing) Act ...], which was never brought into operation.
- (2) The [Excise (Spirits) Regulation, ...] are hereby repealed and shall be deemed never to have been made.

### **Vexatious search, seizure etc**

- 1 (1) An officer who, in exercising a power under this Act or under Regulations made thereunder,
- (a) without reasonable cause searches any building, enclosed place, house or any aircraft, vehicle or vessel,
  - (b) vexatiously or unreasonably seizes spirituous preparation or a document or other article,
  - (c) vexatiously or unnecessarily arrests, detains or searches a person, or
  - (d) does an act which is not required by this Act but which results in injury to any other person,
- commits an offence, and is liable on conviction on indictment to a fine of not less than five thousand dollars or to a term of imprisonment of not less than five years.
- (2) A person who maliciously or wilfully gives false information and thereby causes the arrest of any other person commits an offence and is liable on conviction on indictment to term of imprisonment of not less than five years.
- 2 (1) An inspector who vexatiously and unnecessarily enters or searches a building, field or any other place, or detains or seizes anything found in

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2 Different years.

that building, field or place commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than five years.

(2) A prosecution under subsection (1) shall not be instituted after the expiration of a period of six months from the date the offence was committed.

## Vesting

- 1 All moneys held by the Committee dissolved under [section ...] shall vest in the Committee established under that section.
- 2 On the dissolution of the Board, its property shall vest in the Registrar without further assurance than this section.

## Voting

- 1 In case of an equality of votes on a question before the Council, the person presiding at that meeting of the Council shall have a casting or second vote.
- 2 (1) All questions for determination by the Council shall be decided by a majority of the members present and voting.  
(2) Subsection (1) does not apply to a question involving the allocation or expenditure of a sum of money in respect of which the votes of not less than three-fourths of all the members of the Council shall be required.
- 3 The number of votes of an elected member of either House of Parliament is the quotient obtained by dividing the total number of votes assigned under [article ...] to the members of the Legislature of the States by the total number of the elected members of both Houses of Parliament, for which purpose a fraction not less than one-half shall be treated as one and a fraction of less than one-half shall be disregarded.
- 4 A Minister as well as the Attorney General may speak in, and otherwise take part in the proceedings of either House of Parliament, a joint sitting of the Houses and a Committee of Parliament of which the Minister or the Attorney General is a member, but shall not, by virtue of this article be entitled to vote on any matter for decision before the House.

## Warrants and inspections

- 1 (1) Where a Magistrate is satisfied upon information on oath of the existence in a place of books of account or other documents the contents of which may tend to show that an offence has been committed under this Act, the Magistrate shall issue a search warrant authorising a person named in the warrant
  - (a) to search any person at that place, and enter and search that place and a person found in that place; and

- (b) to inspect and take copies of the books of account or other documents found in that place or upon any person found in that place.
- (2) Copies taken by virtue of subsection (1) are admissible in evidence in proceedings under this Act.
- 2 Where a Magistrate is satisfied by information on oath that there is a reasonable ground for suspecting that an offence under this Act has been, is being, or is about to be, committed, the Magistrate shall issue a search warrant authorising a police officer
  - (a) to enter at any time the place named in the warrant with force if necessary, and to search the place and a person found in that place;
  - (b) to detain a person found in that place in respect of whom there is reasonable suspicion regarding the commission of an offence under this Act; and
  - (c) to seize anything which may be of evidential value in a prosecution for an offence under this Act or any other enactment.
- 3 (1) Where a judge of the High Court is satisfied by information on oath that there is a reasonable ground for suspecting that an offence under this Act has been committed, and that evidence of the commission of the offence is to be found in a place, the judge shall issue a search warrant authorising the Commissioner of Police or a senior officer acting on behalf of the Commissioner
  - (a) to enter that place at any time within one month from the date of the warrant, if necessary by force and to search that place and a person found at or therein; and
  - (b) seize anything found at or in that place or on a person found at or in that place which the Commissioner or that officer suspects to be evidence of the commission of an offence under this Act or any other enactment.
- (2) For the purposes of subsection (1), a search warrant shall only be issued in respect of an offence suspected to have been committed within the three months previous to the laying of the information.
- (3) Where a search warrant is executed pursuant to subsection (1), the Commissioner of Police shall notify the owner or occupier of that place of the search and supply that person with a list of the documents or other objects which have been seized or removed from that place.
- (4) A woman shall not, in pursuance of a warrant issued under subsection (1), be searched except by a woman.
- (5) Anything seized under this section may be retained for such period as a judge of the High Court may determine.
- 4 (1) Where a Magistrate is satisfied by information on oath that there is reason to believe that there is concealed or deposited in a place anything in

respect of which an offence has been committed, or that a person has committed an offence under this Act, the Magistrate may by warrant directed to the Commissioner of Police empower an officer authorised by the Commissioner, by day or by night,

- (a) to enter that place and there search for and take possession of what is concealed or deposited in that place;
  - (b) to arrest a person in that place in whose possession, custody or control what is concealed or deposited is found, or whom the officer suspects may have concealed or deposited what is found; and
  - (c) to arrest a person named in the warrant.
- (2) The officer may, if necessary,
- (a) break open any outer or inner door and forcibly enter every part of that place;
  - (b) remove by force any obstruction to the entry, search, seizure and removal in order to effect the purpose of the warrant;
  - (c) detain a person found in that place until the search is completed; and
  - (d) seize and detain anything of evidential value found in that place.
- 5 (1) Where a Magistrate is satisfied by information on oath that there is a reasonable ground to believe that any article or merchandise has been unlawfully sold or is unlawfully kept for unlawful sale or unlawfully manufactured, stored, or possessed at a place, the Magistrate shall issue a search warrant authorising a police officer, at any time within one month from the date of the warrant,
- (a) to enter, and if need be by force, every part of the place named in the warrant and examine the article or merchandise;
  - (b) to search for any other thing that may be of evidential value in the prosecution of an offence under this Act or any other enactment;
  - (c) seize and remove and take before a Magistrate any article or merchandise found in that place which may be of evidential value in the prosecution of an offence under this Act or any other enactment.
- (2) Where an owner or occupier of the place named in the warrant is convicted of an offence, the court may order that any of the things seized at that place and the things in which they are contained shall be confiscated and sold by public auction and the proceeds paid into the Consolidated Fund.
- (3) Where any article or merchandise of evidential value is found in the place named in the warrant, a person found at the time of the search in that place
- (a) may be arrested and brought before a Magistrate; and

- (b) shall, whether arrested or not, be deemed, unless the contrary is proved by that person, to have been in that place for the purposes of committing an offence against this Act.
- (4) For the purposes of this section, "article or merchandise" includes anything which is in the process of manufacture and any materials and implements used or intended to be used or which could be used in the manufacture of anything.
- 6 (1) Where a Magistrate is satisfied by information on oath that there is reason to believe that a person has in that person's control, custody or possession property of any description with respect to which an offence has been committed, the Magistrate shall issue a warrant for the search and seizure of that property.
  - (2) The Commissioner of Police may authorise a police officer to enter a house, shop, warehouse, yard or any other premises and search for and seize any property believed to be stolen.
  - (3) Where property is seized under subsection (2), the person on whose premises the property was found or the person from whom the property was taken shall be arrested and brought before a Magistrate to account for the possession of the property.
  - (4) The Magistrate before whom a person is brought pursuant to subsection (3) shall make an order as to the disposal of the property and may award costs.
  - (5) This section shall apply to premises which have been, within the preceding twelve months, in the occupation of
    - (a) a person who has been convicted of receiving stolen property, or
    - (b) a person who has been convicted of an offence involving fraud or dishonesty.
- 7 Where a Magistrate is satisfied by information on oath that there is reasonable cause to suspect that a person has been concerned in acts prejudicial to safety of Draftaria or has possession of any instrument or thing that could be used in pursuance of an objective detrimental to the safety of Draftaria, the Magistrate shall issue a warrant to a police officer
  - (a) for the arrest, detention and search of that person;
  - (b) for the search of any place with which that person is associated; and
  - (c) for the seizure of any thing of evidential value found in any place with which that person is associated, and for the bringing of that thing before a Magistrate.
- 8 Where it appears to the Commissioner of Police that a case is of great urgency and that in the public interest immediate action is necessary, the Commissioner shall exercise the powers of a Magistrate in relation to the issue of a warrant of arrest or search and issue a warrant to a police officer as would be issued by a Magistrate in the circumstances of the case.



## Witnesses

- 1 A witness on behalf of the Attorney General in a prosecution under this Act shall not be compelled to disclose the fact that the witness received information, or the nature of the information, or the name of the person who gave the information.
- 2 An officer appearing as a witness under this Act shall not be compelled to produce a report made or received confidentially by that officer in the course of that officer's duty or official capacity.
- 3 A person complained against or charged with an offence under this Act is a competent witness but not a compellable witness.
- 4 The husband or wife of a person charged with an offence under this Act is not a competent witness in respect of a prosecution under this or any other enactment.

## Winding-up

The provisions of a law relating to the winding-up of a company shall not apply to a corporation established pursuant to this Act, for which winding up the Minister may by legislative instrument make Regulations.

## Women's affairs

- 1 A woman shall not be disqualified by reason of her gender or marriage from being a member of an organisation or other body appointed, constituted, elected or nominated under this Act.
- 2 The President may, by legislative instrument, extend to a female person a provision of an enactment applicable only to male persons.
- 3 A female person shall not be searched under any circumstances except by another female person.

### Tribunal

- 4A** There is hereby established a tribunal to be known as the Equal Opportunities Tribunal.
- B** (1) The Tribunal consists of
- (a) a Justice of the Superior court of Judicature nominated by the Chief Justice who shall be the chairman of the Tribunal,
  - (b) the chairman of the Public Services Commission, and
  - (c) the Director of the Women's Bureau.
- (2) The members of the Tribunal shall be appointed by the President.
- C** (1) The functions of the Tribunal are
- (a) to hear and determine complaints made by a woman against an employer or prospective employer, and complaints referred to it by the Council;
  - (b) to enquire into allegations made by a woman against a man;

- (c) to make an order in respect of a complaint made by a woman.
  - (2) An order made by the Tribunal is enforceable in the same manner and to the same extent as an order of the High Court.
  - (3) A person aggrieved by an order of the Tribunal may appeal as of right to the Court of Appeal.
- D (1) The Tribunal may, in conducting an investigation or inquiring into a complaint made by a woman,
- (a) determine where and when it will sit for the purposes of the investigation or inquiry;
  - (b) receive and consider any document or evidence which is material to a complaint made to the Tribunal, whether or not that document or evidence would be admissible in civil or criminal proceedings;
  - (c) summon a person to attend and give evidence or to produce a document in that person's control, custody or possession;
  - (d) administer an oath or affirmation to a person attending before the Tribunal and may require that person to answer all questions put by or with the consent of the Tribunal;
  - (e) award to a person attending before the Tribunal the reasonable expenses incurred in attending the Tribunal;
  - (f) determine whether to hear evidence *in camera* or in public, or to exclude a person from the whole or a part of the proceedings.
- (2) Except as otherwise provided in subsection (1), the Chief Justice may, in consultation with the chairman of the Tribunal, and by legislative instrument, make Rules governing the practice and procedure of the Tribunal having regard to the objectives of this Act which are, among others, intended to prohibit discriminatory practices against women and to ensure the equality of women before the law.

### **Council**

- E There is hereby established a council to be known as the Council for the Prevention of Discrimination against Women.
- F (1) The Council consists of
- (a) the chairman of the Public Services Commission,
  - (b) the Permanent Secretary of the Ministry of Women's Affairs,
  - (c) the Director of the Department of Women in Development,
  - (d) two retired female civil servants, and
  - (e) two persons nominated by the non-governmental organisations which deal with women's affairs.
- (2) The members of the Council not being *ex officio* shall be appointed by the President.
- G (1) The functions of the Council are
- (a) to formulate policies for the achievement of, and ensuring, equality for women;

- (b) to advise the President on issues affecting women's development and rights;
- (c) to receive and investigate complaints of discrimination against women, and to advise a woman who makes a complaint as to the course of action which should be taken;
- (d) to enter, on a search warrant issued by a Magistrate, a place and search that place in order to obtain evidence, and to seize and detain a matter or thing of evidential value, for the purposes of an investigation being carried on by the Council;
- (e) to recommend to the Attorney General the institution of criminal proceedings against a person who commits an offence against this Act;
- (f) to provide legal aid service for a woman who is charged with an offence, or for a woman who cannot afford the services of a legal practitioner in the institution of legal proceedings;
- (g) to appear before the Tribunal in a case involving a complaint made by a woman or referred to the Tribunal by the Council;
- (h) to establish and co-ordinate legal aid centres for the benefit of women;
- (i) to organise conferences, seminars and symposia and other educational activities on gender equality.

(2) The Council shall, not later than seven months after the end of the financial year, submit an annual report to Parliament on its activities which report shall include the Auditor General's report on the accounts of the Council.

**H** (1) The Council shall keep proper books of account, and shall, not later than three months after the end of the financial year, submit its accounts for audit by the Auditor General.

(2) The Auditor General shall, not later than three months of the submission of the accounts under subsection (1) audit the accounts and submit the report thereon to the Council and publish the report in the *Gazette*.

### **Discrimination**

**I** A person discriminates against a woman, directly or indirectly, where

- (a) on the ground of gender, that person treats a woman less favourably than a man would be treated;
- (b) that person applies to a woman a condition or requirement which applies or would apply equally to a man but
  - (i) which results in the proportion of women who can comply with the condition or requirement being considerably less than the proportion of men who can comply with that condition or requirement;
  - (ii) which that person cannot show to be justified irrespective of the gender of the person to whom the condition or requirement is applied;

- (iii) which is to the detriment of a woman because she cannot comply with the condition or requirement.
- J** A person discriminates against a married woman, directly or indirectly, where that person
  - (a) treats the married woman, on the ground of the marital status, less favourably than an unmarried woman would be treated;
  - (b) applies to a married woman a condition or requirement which applies to or would apply to an unmarried woman but
    - (i) which results in the proportion of married women who can comply with the condition or requirement being less than the proportion of unmarried women who can comply with the condition or requirement;
    - (ii) which that person cannot show to be justified irrespective of the marital status of the woman to whom the condition or requirement is applied;
    - (iii) which is to the detriment of the married woman because she cannot comply with the condition or requirement.
- K** (1) A person shall not, in matters of employment, discriminate against a woman
  - (a) in the arrangements that are made for the purposes of determining who is to be offered employment;
  - (b) in the terms on which employment is offered to that woman;
  - (c) by refusing or deliberately omitting to offer the employment to that woman without sufficiently good reason being shown.(2) A person shall not, in matters of employment, discriminate against a woman
  - (a) in the matter of affording to that woman access to opportunities for promotion, training, transfer or any other benefits, facilities or services;
  - (b) by refusing or deliberately omitting to afford that woman access to the benefits, facilities or services of the employment;
  - (c) by dismissing or subjecting that woman to any other detriment.
- L** (1) An employer shall accord a woman employee the same conditions and terms of service as the employer accords to a man in the same or similar position.  
(2) An employer shall, as the occasion arises, grant to a woman employee
  - (a) sick leave with full pay, or maternity leave for a period of not less than three months with full pay;
  - (b) a further maternity leave on half pay of not more than three months if that woman requires that further period.
- M** A woman who is aggrieved by an act or omission of her employer may lodge a complaint with the Council which shall take the matter before the Tribunal for redress.

**Due process of law**

- N** A woman has the same right of access to the due processes of the law to enforce rights, secure remedies and protect interests as has a man, and accordingly a person whose responsibility it is to facilitate access by persons to the legal system shall not, without just cause, prevent a woman from gaining access to the due processes of the law for the enforcement of her interests, remedies or rights.
- O** In assessing damages to which a woman is entitled for personal injury the court shall
- (a) take into consideration the loss in actual or potential capacity of the woman as a spouse or mother, and
  - (b) consider the circumstances of that woman as an individual and not as the dependant of a husband or any other person.

**Economic life**

- P** (1) A commercial bank, finance or other lending institution shall not discriminate against a woman in the granting of credit or credit facilities.
- (2) A person shall not, solely on the basis of gender, in the granting of credit or the facilities for credit discriminate against a woman who stands as a guarantor or wishes to stand as a guarantor for any other person.

**Family and marriage**

- Q** The mother and father of a child have equal responsibility for the training and development of the child.
- R** Where a man and a woman live together as husband and wife, or hold themselves up as husband and wife, whether or not there is a child of the relationship, they shall be deemed for all purposes of the law to be husband and wife.

**Politics**

- S** (1) A political party shall include in its manifesto a statement of the party's policy on the advancement of women and the party's detailed programme for achieving gender equality.
- (2) A political party shall afford to women equal participation in the membership and activities of the party as are afforded to men in the party.
- (3) A political party shall every twelve months publish in three consecutive issues of all the national newspapers information regarding its potential women candidates.
- (4) A political party contesting a general election for members of Parliament or local government elections shall ensure that not less than one-third of its candidates are women, and that adequate funding is provided for the women candidates as are provided for the men candidates.

**Public service**

- T** (1) The Public Service Commission shall, not later than the thirty-first day of March each year, submit to Parliament a report indicating

- (a) the number of men and women employed in the public service;
  - (b) the number of women and men in the various categories, grades and hierarchies in the public service, and the schedule of work for which each category, grade or hierarchy is responsible; and
  - (c) the scales of salary or wages pertaining to each category, grade and hierarchy and the reasons for any imbalance in the numbers of women and men, and in the emoluments structure in the public service.
- (2) For the purposes of subsection (1), “public service” includes service in or with an organisation which is funded whether wholly or partly out of funds provided by Parliament



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