

SAINT LUCIA

No. 37 of 2006

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No. 37]

Labour Code

[2006.

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE
SIXTH SCHEDULE
SEVENTH SCHEDULE
EIGHTH SCHEDULE
NINTH SCHEDULE
TENTH SCHEDULE

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

16th November, 2006.

SAINT LUCIA

No. 37 of 2006

AN ACT to consolidate and reform legislation applicable to labour and industrial relations in Saint Lucia taking into account existing local standards and international labour law standards and to provide for related matters.

[ON ORDER]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

PART I
PRELIMINARY

Short title and commencement

1.— (1) This Code may be cited as the Labour Code 2006.

(2) This Code shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*, and the Minister may fix different dates for the commencement of different sections or parts of this Code.

Interpretation

2. In this Code —

“Advisory Council” means the Advisory Council on Occupational Safety and Health established pursuant to section 184;

“AIDS” means Acquired Immune Deficiency Syndrome;

“air receiver” includes —

- (a) any vessel, other than a pipe or coil, or an accessory, fitting or part of a compressor, for containing compressed air and connected with an air compressing plant;
- (b) any fixed vessel for containing compressed air or compressed exhaust gases and used for the purpose of starting an internal combustion engine;
- (c) any fixed or portable vessel, not being part of a spraying pistol, used for the purpose of spraying by means of compressed air, any paint, varnish, lacquer or similar material; or
- (d) any vessel in which liquid is stored and from which it is forced by compressed air;

“authorised officer” means —

- (a) in the case of Part IV the Chief Occupational Safety and Health Officer or an occupational safety and health officer;
- (b) in the case of work permits, a labour officer; or
- (c) in any other case, any officer authorised by the Minister under this Code;

“bargaining agent” means a trade union which acts on behalf of employees;

“bargaining unit” means a group or category of employees on whose behalf collective bargaining may take place;

“biological agent” includes bacteria, viruses, fungi, rickettsia, chlamydia and other parasites;

“bodily injury” includes injury to health;

“business” includes any trade, undertaking, establishment or profession, including any activity carried on by a body of persons, whether corporate or unincorporated, involving the employment of workers or employees;

“certified trade union” means a trade union certified as a bargaining agent for a bargaining unit pursuant to Division 2 of Part VII;

“Chairperson” means —

(a) in the case of the Commission, the Chairperson of the Commission appointed pursuant to section 69; or

(b) in the case of the Tribunal, the Chairperson of the Tribunal appointed pursuant to section 425;

“chemical” means a chemical element or compound, or a mixture thereof, whether natural or synthetic;

“Chief Medical Officer” means the person appointed by the Public Service Commission to be the Chief Medical Officer;

“Chief Fire Officer” means the person appointed by the Public Service Commission to be the Chief Fire Officer;

“child” means a person aged fifteen and under;

“collective agreement” means a written agreement between an employer, or an employers’ organization authorized by the employer, and a trade union, concerning terms and conditions of employment, or any other matter of mutual interest;

“Commission” means the Minimum and Equal Wages Commission established pursuant to section 69;

“committee” means a joint workplace safety and health committee established pursuant to section 192;

“common law spouse” means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as a husband or wife of that person, as the case may

be, for a period of at least three years although not legally married to that person;

“competent person” means a person possessing qualifications, skills or experience necessary for some purpose under this Code;

“construction” includes —

- (a) building, structural alteration, renovation, repair, maintenance, including cleaning and painting and demolition of all types of buildings or structures;
- (b) civil engineering, including excavation and the construction, structural alteration, repair, maintenance and demolition of, such structures as airports, docks, harbours, inland waterways, dams, rivers and avalanches and sea defence works, roads and highways, railways, bridges, tunnels, viaducts and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies;
- (c) the erection and dismantling of buildings and structures, as well as the manufacture of prefabricated structures on the construction site;

“construction site” includes any site at which any of the processes or operations relating to “construction” are carried on;

“contract worker” means a person who performs work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

“contract of employment” means a contract of service or apprenticeship whether it is expressed or implied and, if it is expressed, whether it is oral or in writing;

“Correctional Service” means the Correctional Service established pursuant to the Correctional Service Act 2003, No.24;

“critical substance” means a chemical agent, physical agent or biological agent, or combination thereof prescribed as a critical substance to which the exposure of an employee is prohibited, regulated, restricted, limited or controlled;

“Department of Labour” means the Department of Government responsible for labour matters and referred to in section 400;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in a position of economic dependence in relation to that person, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“Deputy Chairperson” means —

- (a) in the case of the Commission, the Deputy Chairperson selected pursuant to section 69; or
- (b) in the case of the Tribunal, the Deputy Chairperson of the Tribunal appointed pursuant to section 425;

“domestic worker” means a person employed for a wage in and about a private dwelling house;

“driving belt” includes any driving strap, rope or chain;

“employee” means a person who offers his or her services under a contract of employment, whether written, oral or implied, including a managerial employee, a dependent contractor, an apprentice, a part-time employee, a casual worker, a homemaker, a temporary worker, a seasonal employee and a person who is remunerated by commission where that person is not an independent contractor and where appropriate, a former employee;

“employer” means any person or undertaking, firm, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and the heirs, successors, agents and assigns of an employer, including any statutory person or body of persons;

“employers’ organization” means any organization established by employers, the principal purposes of which are the representation and promotion of the interests of employers and the regulation of relations between employers and employees;

“employment” includes —

- (a) part time, temporary employment and performance of work under apprenticeship;

- (b) performance of work under a contract of employment;
- (c) engagement as a commission agent;
- (d) engagement as a dependent contractor;

and “employed” shall be construed accordingly;

“employment agent” means any person who, whether for payment or not, assists persons in finding employment or assists employers in finding employees;

“essential service” means any service declared to be an essential service pursuant to section 397 and listed in the Eighth Schedule;

“existing industrial establishment” means any industrial establishment which is in operation on the date on which this Code comes into operation;

“factory” means any premises where or within the close or adjacent areas or precincts of which, steam, electric, water or other mechanical or energy source is used in aid of any industrial or manufacturing process carried on therein;

“family member of an employee” includes the spouse, father, mother, grandfather, grandmother, son, daughter, brother, sister, and any person who is wholly or mainly maintained by the employee;

“family member of an employer” includes the spouse, father, mother, grandfather, grandmother, son, daughter, brother, sister, who resides with the employer, and any person who is wholly or mainly maintained by the employer;

“fire officer” means a member of the Fire Service not below the rank of Station Officer;

“Fire Service” means the Fire Service established under the Fire Service Act, Cap. 14.04;

“fume” includes gas, vapour or smoke;

“functions” includes powers, authorities and duties;

“hazardous biological agent” means any biological agent at an excessive level for which relevant information exists to indicate that the biological agent at this level is hazardous;

“hazardous chemical” means any chemical —

- (a) classified as hazardous by the Bureau of Standards; or
- (b) which has been classified as hazardous in accordance with Article 6 of the International Labour Organization Chemicals Convention, 1990 (No. 170), the text of which is set out in the Ninth Schedule; or
- (c) for which relevant information exists to indicate that the chemical is hazardous;

“hazardous physical agent” means any physical agent at an excessive level for which relevant information exists to indicate that the physical agent at this level is hazardous;

“hazardous substances” includes a substance or group of substances which by virtue of chemical, physical or toxicological properties, either singly or in combination, is hazardous to the safety or health of persons exposed to it;

“HIV” means Human Immune-deficiency Virus;

“homework” means the doing of any work, including the provision of services or the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or any part thereof by an employee for wages in his or her own home or premises of his or her choice, other than the workplace of the employer and “homeworker” shall be construed accordingly;

“independent contractor” means a contractor who is not a dependent contractor;

“industrial action” means any strike and lock-out and any action, including work to rule, picketing, sympathy strike and secondary boycott, whether or not done in contemplation of, or in furtherance of a trade dispute by an employer or a trade union or other organization or by any number of employees or other persons to compel any employee, trade union or other organization, employer or any other person, as the case may be, to agree to terms of employment, or to comply with demands made by the employer or the trade union or other organization or by those employees or other persons and includes action, whether or not in an essential service, commonly known as a “sit-down strike”, “go-slow”, and “sick-out” or other action to prevent, hinder, interfere with or reduce the maintenance of an essential service or production of goods or provision of other services;

“industrial establishment” —

- (a) includes a factory, shop, office, workplace, place of business or undertaking carried on for gain and any building or other structure or premises appertaining thereto;
- (b) does not include premises occupied for residential purposes only;

“Labour Commissioner” means a person appointed to the office of Labour Commissioner by the Public Service Commission;

“lawful trade union activity” means any activity carried out by a trade union which is not expressly or implicitly prohibited under this Code or any other law in force in Saint Lucia;

“lock-out” means the closing of a workplace, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him or her in consequence of a trade dispute, with a view to compelling persons, or to aid another employer in compelling persons employed by him or her, to accept terms or conditions of or affecting employment;

“machinery” includes —

- (a) stationary or portable boilers in an industrial establishment;
- (b) steam or other engines in an industrial establishment;
- (c) all apparatus or appliances for generating, developing, receiving or transforming, or for measuring or leasing the volume, voltage, pressure or frequency of, or for distributing or applying any mechanical, electric or natural power to any industrial or manufacturing process in an industrial establishment;
- (d) furnaces and fuel or storage tanks situate within, opening into or attached to the structure of, or directly connected with, any industrial establishment;
- (e) tractors, road rollers or other type of road locomotive;
- (f) marine boilers, steam receivers and air receivers on any ship or vessel which is not a foreign ship;
- (g) vats, tanks, cooling or drying devices used for the storage of, or otherwise in connection with, the product of any mechanical process, and situated within or attached to the premises within which such process is carried on;

- (h) any plant or apparatus used to generate, purify, mix, heat, or cool any fume, gas or vapour; and
- (i) any driving belt;

“maintained” for the purposes of Part IV means maintained in an efficient state, in efficient working order and in good repair;

“major hazard installation” means an installation which produces, processes, handles, uses, disposes of or stores, either permanently or temporarily, one or more hazardous substances or categories of substances in quantities which exceed the threshold quantity as prescribed;

“managerial employee” means an employee who —

- (a) has authority, in the interest of the employer, to employ, dismiss, suspend, lay-off, recall, transfer, reward or discipline other employees or to deal with their grievances, or effectively to recommend such action when the exercise of such authority is not merely of a routine or clerical nature but requires independent judgement; or
- (b) is involved in management meetings where budget issues, cut-backs including lay-offs, reports, negotiations and management issues are discussed;

“manual labour” includes work ordinarily performed by mechanics, artisans, handicraftsmen, seamen, boatmen, transport workers, domestic workers and all labourers and any other similar work associated with such work, but does not include clerical work;

“marital status” means the status or condition of being —

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) the common law spouse of another person;

“medical committee” means the medical committee established under section 428;

“medical inspector” means any registered medical practitioner who is designated as a medical inspector under section 186;

“medical practitioner” has the meaning assigned to it under the Medical Registration Act, Cap. 11.06;

“mine” means any surface or underground site where any of the following activities, take place —

- (a) exploration of mineral resources that involves the mechanical disturbance of the ground;
- (b) the extraction of mineral resources;
- (c) preparation, including crushing, grinding, concentration or washing of the extracted material;
- (d) any machinery, equipment, appliance, plant, building, or civil engineering structure used in conjunction with any activity referred to in subparagraphs (a), (b) and (c);

“Minimum Wage Order” means a Minimum Wage Order published pursuant to Division 5 of Part III;

“Minister” means the Minister responsible for Labour;

“minor” means a person under the age of eighteen years;

“National Insurance Board” means the National Insurance Board established under section 5 of the National Insurance Corporation Act;

“National Insurance Corporation Act” means the National Insurance Corporation Act, Cap. 16.01;

“national service” means a service performed or to be performed by a person selected by the Governor-General, Prime Minister, any other Government Minister or a Permanent Secretary to represent Saint Lucia in any capacity either locally or abroad;

“new industrial establishment” means an industrial establishment which first begins to operate at some time after the date on which this Code comes into operation;

“night work” means any work, including overtime work, performed between the hours of 11:00 p.m. and 6:00 a.m.;

“non-manual worker” means any person employed under a contract of employment who does not ordinarily perform manual labour;

“occupational disease” means a disease prescribed to be an occupational disease pursuant to the Regulations made under section 251;

“occupier” in relation to an industrial establishment means the person who controls an industrial establishment and the work that is done there;

“organization” means an organization representative of employers or of employees as the case may be;

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

“owner” means the person for the time being receiving the rent of the premises used as an industrial establishment, whether on his or her own account or as agent, trustee, receiver, mortgagee for any other person, or who would so receive the rent if the premises were let at a rent;

“pay day” means the pay day fixed for each employee pursuant to section 44;

“pay periods” means regular intervals for payment of employees referred to in section 43;

“picketing” means acting on a person’s own behalf or on behalf of a trade union or an individual employee in contemplation or in the furtherance of a trade dispute, or to attend at or near a place where a person works or carries on business merely for the purpose of peacefully obtaining or communicating information, related to working conditions or labour relations generally or of peacefully persuading any person to work or abstain from working whether or not signs are carried or posted and whether or not literature is being distributed;

“person employed” includes a person employed by the Government;

“person” includes a body corporate or an unincorporated body;

“physical agent” includes electromagnetic radiation, ionizing radiation, noise, vibration, heat, cold, humidity and pressure;

“police officer” means a member of the Police;

“Police” means the Royal Saint Lucia Police Force established pursuant to the Police Act, Cap. 14.01;

“power” means electrical energy and any other form of energy which is mechanically transmitted and is not generated by human or animal energy;

“prescribed” means prescribed by the Regulations;

“principal” means —

- (a) in relation to a commission agent, a person for whom work is done by that commission agent;
- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“probationary period” means a period that may be designated as such during the twelve weeks following the date on which the employment of an employee by an employer commences, or such shorter or longer period of time following that date as may be agreed upon between that employer and employee;

“protective services” includes the Royal Saint Lucia Police Force, the Port Police, the Fire Service and the Correctional Services;

“public duty” means a duty performed or to be performed by a person appointed by the Governor-General, Prime Minister or any other Government Minister, Official, agent or agency in any capacity for a public purpose;

“recruit” means to procure, engage, hire, supply or undertake or attempt to procure, engage, hire or supply workers for the purpose of being employed by any person, enterprise or organization, so long as the worker does not spontaneously offer his or her services at the workplace;

“redundancy pay” means pay on grounds of a job being redundant;

“Registrar” means the Registrar of Trade Unions and Employers’ Organizations appointed pursuant to section 334;

“Regulations” means Regulations made pursuant to this Code;

“remuneration” includes where applicable —

- (a) wages in respect of labour performed or services rendered on scheduled work days and public holidays;
- (b) cash value of any board or lodging provided by the employer;

- (c) overtime payments;
- (d) commissions;
- (e) service charge;
- (f) bonuses;
- (g) allowances of any kind;
- (h) ex-gratia awards or superannuation;
- (i) retirement benefits;
- (j) termination benefits;
- (k) notice pay;
- (l) severance pay;
- (m) holiday pay;

“renewal” includes extension, and any reference to renewing a contract for a fixed term shall be construed accordingly;

“safety and health representative” means a safety and health representative selected under section 190;

“sanitary conveniences” includes urinals, water closets, or closets, privies and any similar conveniences;

“seasonal employee” means an employee engaged in an occupation or industry in which it is customary to employ some employees only at certain periods of the year or an employee employed in an industry that is designated a seasonal industry by the Minister;

“serious family responsibility” means responsibility in respect of a dependent family member that is urgent and serious and which is unavoidable in the circumstances;

“severance pay” means pay which is attributable to length of service on termination;

“sexual harassment” means any unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee;

“ship”, “vessel” and “harbour” have the same meanings as are respectively assigned to them in any law relating to shipping;

“shop” means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale;

“strike” means the cessation of work by a body of persons employed, acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed, to continue to perform work for an employer in consequence of a dispute, as a means of compelling their employer or any person or body of persons employed or to aid other employees in compelling their employer or any person or body of persons employed to accept or not accept terms or conditions of or affecting employment, but does not include action commonly known as a “sit-down strike” “go-slow”, “work-to-rule” or “sick-out”;

“Statutory Minimum Wage” means the minimum wage set in a Minimum Wage Order;

“supervisor” means a person who has charge of a workplace or section of a workplace or who has authority over an employee;

“technical examiner” means a person who is designated as such under section 189;

“termination benefits” include redundancy pay, severance pay, compensation for unfair dismissal and other payments due to an employee upon termination of his or her employment;

“threshold quantity” means for a given hazardous substance or category of substances that quantity, as prescribed, which if exceeded identifies a major hazard installation;

“ticket” means a ticket served pursuant to section 466;

“ticketable offence” means a summary offence prescribed to be a ticketable offence pursuant to section 466;

“trade dispute” means any dispute between an employer and an employee of that employer or trade union on behalf of such employees, connected with the dismissal, employment, suspension from employment, re-employment or re-engagement of any such employees, including a dispute as to the terms of the employment of or the conditions of labour of any employees;

“trade union” means any combination of persons, whether temporary or permanent, the principal purposes of which are the representation and promotion of workers’ interests and the regulation of relations between employees and

employers, or a federation of trade unions, but does not include an organization or association that is dominated or influenced by an employer or an employers' organization;

“Tribunal” means the Labour Tribunal established under section 424;

“wages” means all payments including allowances payable to an employee in respect of work done or to be done under his or her contract of employment or contract of service, advances or loans but does not include —

- (a) the value of any board or lodging, supply of light, water, medical attention or other amenities supplied at the sole expense of the employer;
- (b) overtime payments;
- (c) commissions;
- (d) service charge;
- (e) bonuses;
- (f) allowances of any kind;
- (g) *ex-gratia* awards or superannuation;
- (h) retirement benefits;
- (i) termination benefits;
- (j) notice pay;
- (k) severance pay;
- (l) holiday pay;
- (m) any contribution paid by the employer on his or her own account to any pension or provident fund or scheme;
- (n) any travelling allowance or the value of any travelling concession;
- (o) any sum paid to the employee to defray special expenses incurred by him or her by the nature of his or her employment; or
- (p) any gratuity payable on discharge or retirement from the service of the employer;

“woman” means a female person who has attained the age of eighteen years or more;

“work related disease” means a condition that results from exposure of an employee in a workplace to a chemical, physical agent, or biological agent to the extent that the normal psychological or physiological mechanisms of such employee is affected and his or her health is impaired thereby;

“work permit” means a permit in writing issued under this Code by the Minister authorising a person to engage in an occupation;

“workplace” means any industrial establishment or place or premises where a worker needs to be or go by reason of his or her work and which is under the direct or indirect control of the employer;

“young person” means a person who is over the age of fifteen years but who has not attained the age of eighteen years.

Application

3.— (1) Subject to subsection (2) and except where otherwise expressly excluded, this Code applies to all employees including domestic workers, homeworkers and people employed at all workplaces.

(2) This Code shall not apply to the Crown or to a public servant except where expressly stated in this section or in any other provision of this Code.

(3) Division 1 of Part V binds the Crown.

(4) The benefits and protections granted under this Code shall not be denied to employees merely because such employees are homeworkers where such employees are employed under contracts of employment.

Non-contracting clause

4. Any provision in any agreement or established custom that seeks to exclude or in any way limit the operation of any provision of this Code shall be void, except where such provision or custom seeks to provide greater or higher benefits than those set out under this Code.

Conflict between this Code and any other enactment

5. Where there is a conflict between any provision of this Code and any provision in any enactment not specifically repealed by this

Code, the applicable provision of this Code, as of its effective date, shall prevail.

PART II

FUNDAMENTAL PRINCIPLES OF EMPLOYMENT

Prohibition against forced labour

6. — (1) A person shall not be required to perform forced labour.

(2) For the purposes of this section, “forced labour” shall have the same meaning assigned to it under section 4 of the Constitution of Saint Lucia, Cap. 1.01.

General prohibition against discrimination

7.— (1) Subject to subsection (2), an employer shall not discriminate against any employee on the grounds of race, colour, sex, religion, national extraction, social origin, ethnic origin, political opinion or affiliation, age, disability, serious family responsibility, pregnancy, marital status or HIV/AIDS, in respect of recruitment, training, work facilities or service, promotion, terms and conditions of employment or benefit arising out of the employment relationship.

(2) Any temporary provision, programme, national policy or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, does not constitute discrimination

—
(a) within the meaning of subsection (1); or

(b) as defined in section 267.

(3) An employer shall make every reasonable effort to accommodate a person with a disability in employment and at the workplace.

(4) A person shall not be discriminated against because of his or her membership in a trade union or participation in trade union activity.

(5) A person who contravenes this section is liable for damages on successful complaint to the Tribunal and the Tribunal may order the person to rectify the offending act.

Protection of freedom of association

8.— (1) Subject to the provisions of the Constitution of Saint Lucia, Cap. 1.01, freedom of association and the right to collective bargaining are fundamental rights guaranteed by this Code and a person shall not interfere with the exercise of these rights.

(2) A person shall not —

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend or threaten to discipline or suspend an employee;
- (c) impose any penalty upon an employee;
- (d) intimidate or coerce an employee or employer; or
- (e) discriminate against an employee in any way;

because the employee or employer, as the case may be, has acted in compliance with this Code or the Regulations, or an order made pursuant to this Code, or has sought the enforcement of this Code or the Regulations, or has observed the procedures established by this Code, or has given evidence in an inquest or in proceedings in respect of the enforcement of this Code or the Regulations.

(3) Where a person complains that another person has contravened subsection (2), the matter shall be determined by complaint to the Tribunal, and in a case of dismissal in contravention of subsection (2)(a), the matter shall be treated as a complaint of unfair dismissal in accordance with section 131.

(4) On an inquiry into a complaint filed under subsection (3), the burden of proving that an employer or person acting on behalf of an employer did not act contrary to subsection (2) lies upon the employer or the person acting on behalf of the employer.

Direct complaint to the Tribunal

9. A person who alleges a contravention of this Part may make a complaint directly to the Tribunal.

PART III
TERMS AND CONDITIONS OF CONTINUED EMPLOYMENT

DIVISION 1
Contracts of Employment

Application

10. Unless otherwise provided, this Division shall apply to all persons engaged under contracts of employment.

Interpretation

11. In this Division “written contract” means a contract of employment made between an employee and his or her employer in writing.

Types of contract

12.— (1) A contract of employment may take one of the following forms —

- (a) a contract without reference to limit of time;
- (b) a contract for a specified period of time; or
- (c) a contract for a specific task.

(2) A contract of employment may be terminated by either party subject to the provisions of this Code concerning unfair dismissal and notice of termination.

(3) A contract of employment for a specified period of time shall be automatically terminated on the date specified for its termination and no notice shall be required for its termination at that time, but termination at any other time shall be subject to the provisions of this Code concerning unfair dismissal and notice of termination.

(4) A contract of employment for a specific task shall terminate on the completion of the task and no notice of termination shall be required by either party.

(5) Where the purpose or effect of a contract of employment that is purportedly for a specified period of time or for a specific task is the filling of a post connected with the normal and permanent activity of the enterprise for a period of over two years of continuous

employment as defined under this Code, it shall be deemed a contract without reference to limit of time.

(6) Where a contract of employment provides for a probationary period, an assessment of the employee shall be undertaken during the probationary period and such assessment shall be communicated to the employee prior to the end of the probationary period.

Particulars of written contract and content of contract

13.— (1) Within fourteen days from the date on which employment commences, an employer may prepare a written contract correctly describing the terms and conditions of employment that have been agreed upon by the employer and employee.

(2) A written contract shall include the particulars specified in the First Schedule as applicable.

(3) Where a contract of employment is not written, the employer shall explain to the employee the contents of the contract of employment and the explanation shall comply with the provisions of the First Schedule.

(4) Any provision in a written contract which contravenes a provision of this Code to the extent that it provides for lower standards than those established under this Code shall be null and void.

Request for written particulars

14.— (1) Upon written request to the employer, an employee who is not employed under a written contract shall be given, within one month of the request, a written contract.

(2) Any written contract made under this section shall be in accordance with section 13.

Delivery of contract

15. Where, pursuant to sections 13 and 14, a written contract has been prepared —

- (a) a copy of the written contract shall be delivered to the employee for his or her inspection;
- (b) the employer and employee shall sign the written contract, including any amendments agreed upon; and

- (c) the employer shall give the employee a signed copy of the written contract.

Fines for false particulars and contraventions

16. Any person who, in a written contract or in any document prepared for the purposes of contracting for employment, includes anything which is false in a material particular commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Amendment of contract

17. Upon agreement between an employer and an employee a contract of employment may be amended in writing.

Capacity to contract

18.— (1) Any person, not being a minor or other person declared incapable of making a contract under the Civil Code or any other enactment, shall have the capacity to enter into a contract of employment.

(2) Subject to Division 9 of Part III, a minor may enter into a contract of employment only with the written consent of his or her parent or guardian.

(3) A person who is a party to a contract of employment may sue or be sued in respect of such contract.

Exemptions

19. This Division shall not apply to an employee who is employed for a specified period of less than six weeks or for a specific task to be performed within six weeks.

Family members

20.— (1) Subject to subsection (2), where a family member of the employer is engaged in the work of an enterprise, he or she may not be treated as being an employee engaged under a contract of employment in accordance with the provisions of this Division unless there is a written contract between that family member and the employer.

(2) Subsection (1) shall apply only where that family member has agreed to such exemption.

Assumption of a contract for an indefinite period

21. Any contract of employment of an employee other than an employee employed for a specified period of time or a specific task, who has been continuously employed for twelve weeks or more shall have effect as if it was a contract of employment without limit of time, and accordingly, the provisions of this Code shall apply to that contract.

Existing contracts to continue in force

22. — (1) Subject to subsection (2), a contract of employment valid and in force on the date of commencement of this Code shall continue to be in force after the date of commencement of this Code.

(2) A contract of employment referred to in subsection (1), shall, to the extent that it is not in conflict with the provisions of this Code, be deemed to be made under this Code and the parties thereto shall be subject to and entitled to the benefit of the provisions of this Code.

DIVISION 2

Continuity of Employment

Duration of continuity of employment

23.— (1) Continuous employment shall commence from and include the first day on which an employee begins to work for an employer, and shall continue up to and include the date of termination of employment where that employment has not been interrupted except for the reasons laid down under subsection (3).

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with an employer is continuous whether or not the employee remains in the same post, position, department or branch.

(3) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work —

(a) because of taking maternity leave, leave for serious family responsibility, sick leave whether certified or uncertified,

any other leave in accordance with any provision of this Code, or any law in force or contract or agreement;

- (b) because of suspension, with or without pay, in accordance with any law in force or any contract or agreement;
- (c) whilst awaiting a determination of a claim of unfair dismissal in accordance with the provisions of this Code, if that claim is successful;
- (d) whilst temporarily laid-off by the employer in accordance with section 148;
- (e) due to a temporary inability to work on account of an occupational disease or accident until such time as employment is terminated for reason of incapacity due to illness or injury in accordance with this Code;
- (f) due to a lock out;
- (g) with the permission of his or her employer or the employer's agent;
- (h) due to a temporary cessation of the work;
- (i) due to circumstances such that, by arrangement, custom or law, the employee is regarded as continuing in the employment of the employer;
- (j) due to any act of God, civil commotion or riot;
- (k) whilst on jury service, public duty or national service; or
- (l) due to absence from work on vacation, paid or unpaid.

(4) Any periods of time elapsing in the circumstances referred to in subsection (3) shall count for the purpose of calculating the continuous period of employment.

(5) Any period of employment elapsing between the end of the probationary period if any, and the commencement of employment with the same employer shall, where that period immediately follows the probationary period, in addition to the probationary period, count for the purpose of calculating the continuous period of employment.

(6) Any period during which an employee is absent from work because of his or her participation in a strike shall not interrupt the continuity of employment.

(7) Periods of short term contracts granted in succession with less than thirty days intervals shall count for the purpose of calculating the continuous period of employment.

(8) Acceptance of severance pay or of pay in lieu of notice by an employee shall terminate the continuous period of employment.

Continuous employment for seasonal employees

24. Where an employee is engaged in an occupation in which it is customary to employ persons only at certain seasons of the year and such an employee is employed for successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he or she has actually performed work for the same employer for continuous seasons.

Successor employer

25. Where a business or part of it is sold, leased, transferred or otherwise disposed of, the periods of employment with the successive employers shall be deemed to constitute a single period of continuous employment with the former and successor employer if the employment was not terminated and redundancy or severance pay was not paid pursuant to this Code.

DIVISION 3
Hours of Work

Interpretation

26. For the purposes of this Division “day off” means a day on which an employee would not ordinarily be scheduled to work.

Duration of working week

27.—(1) Subject to subsections (2) and (3), an employer shall not require any employee to work for more than forty hours during any week, excluding overtime.

(2) Subsection (1) shall not apply to a managerial employee.

(3) Notwithstanding subsection (1), an employee who works in the hospitality industry may be required to work more than forty hours a week provided that the employee shall not work for more than eighty hours during a two week period, excluding overtime.

Weekly rest

28. — (1) An employer shall not require an employee to work for more than six consecutive days without a period of rest comprising at least twenty-four consecutive hours which shall be taken on a day agreed upon between that employee and employer.

(2) The Minister may, by Order published in the *Gazette*, authorize total or partial exceptions, including suspensions or diminutions, from the provisions of subsection (1) after special regard to all appropriate humanitarian, health, safety and economic considerations and after consultation with representative trade union and employers' organizations.

Maximum ordinary work day

29. — (1) Subject to subsection (2), an ordinary work day for all employees shall comprise of no more than eight hours and an employer shall not require any employee to work for more than eight hours on any day, exclusive of the meal interval, as an ordinary work day.

(2) An employer and employee may in a contract of employment agree to flexible hours of work which do not exceed forty hours per week.

Split shifts and occasional shifts

30.— (1) An employer and employee may, in a contract of employment, agree to the working of split shifts by an employee within a twelve hours period.

(2) An employer may require an employee as a shift employee to work occasional shifts of a duration of no more than two consecutive eight hours shifts in an emergency, or in a situation where such work is due to the absence of another employee scheduled to take over the shift.

(3) Where an employee works two consecutive occasional shifts in accordance with subsection (2), he or she shall not be required by the employer to work for another period without a minimum of eight hours rest immediately following the second occasional shift.

Meal intervals

31. — (1) An employer shall not require an employee —

- (a) subject to subsection (2), to work for more than five hours continuously without a meal interval of not less than one hour; or
- (b) to perform any work during the meal interval, without the consent of that employee.

(2) Where an employee works a split shift or an occasional shift in accordance with section 30, the employee shall be entitled to a meal interval of not less than one hour after each five hours of continuous work, but the second meal interval may, on the mutual agreement of the employee and the employer, be shortened to less than an hour.

(3) Notwithstanding subsection (1) or (2) an employer and an employee may mutually agree to vary the meal interval so that a one hour meal interval is divided into shorter breaks including at least one break of half an hour.

Overtime

32.— (1) Work for hours in excess of an ordinary work day or, where applicable, the forty hour work week pursuant to section 29(2) shall be deemed to be overtime and an employer shall not require or authorize an employee to work overtime otherwise than pursuant to an agreement concluded between the employer and the employee.

(2) Subject to subsection (3) and (4), an employer shall pay to an employee who works overtime an amount calculated at a rate of not less than one and one-half times the wage for each hour in respect of the overtime worked, or twice the wage for each hour in respect of the overtime worked on a Sunday, public holiday or, in respect of a shift worker, the worker's day off.

(3) An employer may, in lieu of overtime pay, grant to an employee employed as a shift-worker in a hospitality industry or in such other industry which requires continuous operation and where that employee has worked over his or her normal shift period because of an emergency or because of the absence of another worker scheduled to take over the shift, a period of rest in addition to that provided under section 28.

(4) An employer and an employee may mutually agree to time off in lieu of payment for overtime worked.

Prohibition of work on public holidays

33.— (1) Subject to subsection (2), an employer shall not require any employee to work on a public holiday except with the agreement of the employee and on payment by the employer of overtime pay to the employee at the rate specified in section 32 (2).

(2) The provisions of subsection (1), shall not apply to an employer who —

- (a) carries on the business of a hotel, hostel, or other hospitality service that lawfully operates on a public holiday;
- (b) engages in essential work in agriculture;
- (c) carries on work in which continuous shifts are worked;
- (d) is in an industrial establishment where work is necessary to maintain its operations or to prevent it causing health and safety hazards;
- (e) carries on emergency work; or
- (f) carries on protective services.

(3) The Minister may, by Order published in the *Gazette*, exempt certain industries and enterprises, or certain parts thereof, from the requirements of subsection (1), on such terms and conditions as are appropriate and after consultation with the representative trade union and employers' organizations concerned.

Pay for public holidays for daily paid workers

34. An employee who is paid on a daily basis and who works on the working day before, and the working day after a public holiday, or who would ordinarily have been required to work on a day which is designated a public holiday, shall be paid for that public holiday.

Employees may opt to perform night work

35.— (1) An employee whose contract of employment does not as a condition of employment require night work may only be assigned night work where he or she consents to perform such work.

(2) Subject to section 36, where an employee refuses to perform night work which is not specified in his or her contract of employment, his or her employer shall not reduce the employee's remuneration, dismiss, penalize or discriminate against the employee in any way for refusing such night work.

(3) An employer who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Reasonable alternative for discontinuing night work

36. Where an employee who ordinarily performs night work elects to discontinue the performance of such night work, his or her employer shall attempt to accommodate the employee by reassigning him or her in the same or similar position for work during the day or, where the same or similar position is not available, to an alternative position, but where such accommodation is not possible or will impose undue economic hardship upon the employer, it shall not be unfair to dismiss him or her under this Code.

Power to make Regulations

37. The Minister may, after consultation with representative trade union and employers' organizations, make Regulations for the purpose of split shifts or occasional shifts and for designating maximum working hours and conditions for specific categories of employees or industries.

DIVISION 4

*Wages***Wages to be paid in legal tender**

38. Subject to section 40, all wages due to an employee under his or her contract of employment shall be paid to him or her in legal tender.

Agreements as to place and manner of spending wages

39. An employer shall not include in any contract of employment between himself or herself and an employee a condition, restriction or requirement which imposes any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the employee are to be spent and any such condition, restriction or requirement shall be illegal.

Payment of wages by cheque

40.— (1) Where it is customary or upon collective agreement or agreement with the employee —

- (a) wages may be paid by cheque drawn on a bank or by postal order or money order; or
- (b) wages may be deposited directly into a bank account number designated by that employee for that purpose.

(2) An employer shall pay a cheque referred to in subsection (1) within reasonable time to allow the employee to cash the cheque or to pay it into his or her bank account on the same day.

Wages to be paid directly to employees

41. Except where the employee directs otherwise, wages shall be paid directly to the employee to whom they are due or to a person specified by him or her in writing.

Employee's right to recover

42. Where an employer has paid an employee wages in a manner contrary to the provisions of this Division, the employee shall, even if he or she accepted payment in the manner made, be entitled, on application to the Labour Commissioner, to recover so much of his or her wages, exclusive of the sums lawfully deducted under this Division, as was not actually paid to him or her in legal tender.

Pay periods

43.— (1) An employer shall pay or cause to be paid wages to the employees employed by him or her at regular intervals, on the agreed pay day, which may be daily, weekly, fortnightly or monthly.

(2) Pay periods may be fixed by contracts, collective agreements, arbitration awards, the Minimum and Equal Wage Commission or the Labour Commissioner.

Employer to fix pay days

44.— (1) Every employer shall fix a pay day for each employee and where a pay day falls on a Sunday or holiday, wages shall be paid to the employee on the day preceding the Sunday or holiday or, in the case of employees who do not normally work on a Saturday, the day preceding Saturday.

(2) At the commencement of employment, the employer shall inform every employee of the employee's pay day and it shall not be changed except by mutual agreement or collective agreement or award of the Tribunal.

Wages to be paid on completion of contract

45.— (1) An employer may withhold wages for a definite period if the work for which the employee was contracted has not been completed.

(2) If the employer withholds any wages due to an employee on completion of his or her contract of employment contrary to the provisions of subsection (1), such wages shall immediately become due and shall be paid not later than seven days following the day on which the employee completes the work contracted for in his or her contract of employment.

(3) For the purposes of calculating the seven days period required under subsection (2), the day on which the employee completes his or her contract of employment shall be included in the calculation of each seven days period.

(4) Where an employee is aggrieved by an employer's decision to withhold wages pursuant to subsection (1), he or she may make a complaint to the Labour Commissioner for an appropriate investigation and determination of the matter.

Wages to be paid on termination of contract

46. All wages due to an employee on termination of his or her contract of employment shall be paid to him or her immediately or no later than seven days after his or her contract of employment terminates.

Interest on advances prohibited

47. An employer shall not make any deduction by way of discount, interest or any similar charge on account of any advance of wages made to any employee in anticipation of the regular period of payment of the wages.

Advances by way of loans

48. An employer may advance money by way of loan to an employee, either before the commencement of such employee's employment or in anticipation of the pay period.

Recovery of advances and excess in payment of wages

49.— (1) Any debts due by an employee to his or her employer on account of advances on wages, shall be paid off during the period of the employee's contract of employment with that employer by mutual agreement and all repayments of advances shall commence from the first payment of wages made to the employee in respect of a completed

pay period after such advance was made; but no repayment shall be made for travelling expenses related to the employee's job requirement.

(2) The proportion of wages earned that may be deducted for the repayment of such advances or excess payments of wages in any pay period shall be no greater than the total deductions permitted pursuant to section 53.

Payment of outstanding balance of advances and excess in payment of wages

50. On termination of the contract of employment, the employer shall be entitled to receive the outstanding balance of any advance or excess payment of wages.

Deductions of payment in respect of fines restricted

51. Save with the prior approval of the Labour Commissioner, an employer shall not make any deduction or make any agreement with an employee for any deduction from wages or for any payment to the employer by the employee by way of fine for bad or negligent work, for damage to the materials or other property of the employer.

Deductions for obtaining employment prohibited

52. Deductions in the form of direct or indirect payments for the purpose of obtaining or retaining employment, shall not be made from the wages of an employee by an employer or by any intermediary or labour contractor or recruiting agent.

Deductions authorized in certain cases

53. An employer may deduct from the wages of the employee—

- (a) the actual or estimated cost of any material, tools and implements supplied by the employer to the employee to be owned by the employee and employed by him or her in his or her occupation; or
- (b) any money advanced by way of loan by the employer to the employee,

save that, the total amount which may be deducted from the wages of an employee in any pay period under the provisions of this section shall not exceed one-third of the wages of the employee in that pay period.

Saving as to judgement debts

54. During the period of a contract of employment, an employee who receives an advance of wages shall not by reason only of the advance, be deemed to have or to have had the means and ability to pay any sum due from him or her under any judgement of a court.

Agreements of cooperation

55. Nothing in this Division shall be held to apply to any body or person working under an agreement of cooperation.

Remuneration other than wages

56.— (1) An employer may, pursuant to an agreement, give to an employee as partial payment of remuneration, other than wages, allowances in kind which shall—

- (a) be of personal benefit to the employee and his or her family and be appropriate for the use of the employee and his or her family;
- (b) be of fair and reasonable value appropriate to the monetary value placed on the allowance by the employer;
- (c) not be in the form of intoxicating liquor, tobacco, cigarettes, noxious drug or substance, or weapons and where such partial payment of such allowances in kind is customary or desirable in the particular industry or occupation concerned.

(2) The allowances in kind permitted pursuant to subsection (1), shall not exceed in its cash value one third of the employee's regular wages in respect of a completed pay period.

(3) The question of whether or not the partial payment of remuneration, other than wages, as allowances in kind falls within the meaning of subsection (1), shall be decided by the Labour Commissioner on the application of an employee, and the Labour Commissioner's decision shall be final.

Wages not to be paid on certain premises

57. An employer shall not pay wages to any employee within any place that sells liquor except where the employer is the resident owner or occupier paying wages to an employee *bona fide* employed by him or her.

Sale of goods or services by employer to employees

58.— (1) An employer otherwise lawfully entitled to do so, may sell goods or services to his or her employees, but no contractual provision requiring an employee to buy any goods or services from his or her employer or any other person shall be valid, and no employer shall compel or attempt to compel an employee or any dependant of an employee to buy goods or services from the employer or from any other person.

(2) Where, for any reason, an employer sells goods or services to an employee, the employer shall not sell such goods or services solely to the employee at prices above those at which they are generally available elsewhere in Saint Lucia.

Special provision for service charges, share of profits or commission

59.— (1) In any workplace wherein a percentage is added to the customer's bill, other than a tax, the percentage added shall be in the form of a service charge, and the service charge shall be distributed in a manner to be agreed between the employer and the employees or in accordance with the provisions of a collective agreement.

(2) In any workplace wherein the wages of an employee consist of a share of profits or of commission on payment on sales made or received by the employer, the profits or commission shall be distributed in a manner to be agreed upon between the employer and the employees or in accordance with the provisions of a collective agreement.

(3) An employer shall, as and when required by the Labour Commissioner, certify the total amount of service charge levied during a given period or the amount profit or commission made during any given period and the manner and form in which that amount was distributed.

Employees in the employment of contractors

60.— (1) Where a contractor fails to pay the employee's wages, the employee may apply to the Labour Commissioner and if the Labour Commissioner is satisfied that the employee has not been paid, the Labour Commissioner shall, having regard to the security and protection of persons and the property of persons for whom that contractor works, make arrangements for the payment of the wages due to such employee out of any monies at anytime payable by the person or persons for

whom the contractor works or has worked and the amount of the wages so paid shall be deemed payment to the employee.

(2) Any contractor or any person for whom a contractor works or has worked, who fails to make any payment of wages as required by arrangement of the Labour Commissioner acting pursuant to the provisions of subsection (1), commits an offence and is liable on conviction, to a fine not exceeding ten thousand dollars.

Limitations on attachments or seizure of wages

61.— (1) Notwithstanding any provision in any other enactment, no court shall make an order for the attachment of the wages of an employee without enquiring into his or her family and other financial obligations and such order shall not attach the employee's wages to such an extent as to seriously interfere with the maintenance of the employee and the employee's family.

(2) The maximum attachments or seizure of wages of an employee shall be —

- (a) up to one-half in respect of maintenance payments; and
- (b) up to one-third in respect of all other debts of any kind however contracted;

and these proportions shall not be applicable cumulatively on the grounds that there are several debts or several creditors.

(3) The sums attached or seized shall be divided among the claimants in proportion to their established claims.

Wages to be priority debt

62.— (1) Amounts owed by employers to employees by reason of nonpayment of wages shall constitute priority debts of the first degree and shall have prior claim over all other debts in respect of the property of the employer including, income tax pursuant to the Income Tax Act, Cap. 15.02.

(2) In the event of non-fraudulent bankruptcy, judicial liquidation or voluntary liquidation of the employer, the debts mentioned in subsection (1) shall be entered as a priority debt.

(3) For purposes of this section, wages include remuneration.

Employers to issue details of wage payments

63.— (1) An employer shall, at the time of paying wages to an employee, provide that employee with a wage slip containing the following written details in respect of the wage period to which the wages relate —

- (a) the name of the employee and his or her occupation;
- (b) the wage rate of the employee;
- (c) the period to which the wage relates;
- (d) in the case of daily paid workers, the number of hours paid for at ordinary time;
- (e) the number of hours paid for at overtime rate;
- (f) the nature and amount of any bonuses or allowances paid;
- (g) the gross wages earned by the employee;
- (h) the amounts and reasons for any deductions made from the gross wages; and
- (i) the amount of the net wage paid to the employee.

(2) The acceptance of wages or a wage slip by an employee without protest or reservation shall not prejudice his or her right to recover all or any part of wages due to him or her.

(3) Where pursuant to his or her contract of employment, an employee is entitled to a commission or share of the profits of the undertaking in which he or she is employed, the employee shall, at the time such commission or share is paid to him or her, be provided with full details as to the method of calculation of the commission.

Offences under this Division

64. Any employer or his or her agent who —

- (a) fails to pay wages to an employee when those wages are due or payable;
- (b) pays wages in a form, manner or place contrary to the provisions of this Division;
- (c) makes any deduction from the wages of any employee or receives any payment from any employee contrary to the provisions of this Division;
- (d) fails to provide an employee with the details of wages due to him or her as required under section 63;
- (e) pays an employee wages in whole or in part in the form of intoxicating liquor, tobacco, cigarettes, noxious drugs or substance contrary to section 56;
- (f) fails to distribute a service charge, share of profits or commission as required by section 59; or
- (g) contravenes the provisions of this Division for which no offence has been prescribed;

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Repayment of wages

65.— (1) On conviction of an employer under this Division, the court shall have power to order the employer to pay the employee any part of his or her wages found by the court to have been unlawfully deducted from the employee's wages or to repay the employee any sum received by the employer from the employee contrary to any provisions of this Division.

(2) Payment of any sum ordered by a court to be paid under this section shall not be in derogation of any right of the employee to recover the sum by any other proceedings, save that an employee shall not be entitled in any other proceedings to recover any amount which a court had ordered to be paid under the provisions of this section.

Regulations

66. The Minister may make Regulations for the purpose of carrying out all or any of the provisions of this Division.

Deduction for provident or pension funds

67.— (1) An employer may deduct from an employee's wages any of the following —

- (a) the employee's contribution to any provident or pension fund or schemes operated by the employer, either alone or in conjunction with other employers; or
- (b) where there is a collective agreement to that effect, any dues payable by the employee to a bargaining agent.

(2) An employer shall deduct from an employee's wages the employee's contribution to any provident fund or any other form of social security established under any enactment.

DIVISION 5
Minimum Wages

Fixing of minimum wage

68.— (1) Notwithstanding sections 69 to 81 or any other law in force in Saint Lucia relating to wages or remuneration of workers and subject to subsection (2), the Minister may, by Order published in the *Gazette* fix a minimum wage for —

- (a) workers generally; or
- (b) any class of workers generally or for any class of employees in a particular industry or undertaking, and such minimum wage shall be not less than the minimum wage specified pursuant to paragraph (a).

(2) A Minimum Wage Order may contain such provisions as the Minister thinks fit and without prejudice to the generality of the foregoing may —

- (a) specify hours of work and other terms and conditions of service or employment in relation to any minimum wage;
- (b) fix different minimum wages for employees in different categories of undertakings engaged in the same employment.

Establishment and composition of Minimum and Equal Wages Commission

69.— (1) There is hereby established a Commission to be known as the Minimum and Equal Wages Commission.

(2) The Commission shall comprise the following members appointed by Cabinet—

- (a) a Chairperson who shall be nominated by the Minister; and
- (b) six other members as follows-
 - (i) one member nominated by the association that is most representative of employers;
 - (ii) one member nominated by the association that is most representative of labour;
 - (iii) one representative of the National Insurance Corporation nominated by the Board of the National Insurance Corporation; and
 - (iv) three other members nominated by Cabinet.

(3) The Commission shall select a Deputy Chairperson and a Secretary from amongst its members.

Appointment and resignation

70.— (1) Subject to subsection (2), a member shall serve on the Commission for the period specified in his or her instrument of appointment.

(2) A member, other than the Chairperson, may at any time resign by giving notice of the resignation in writing to the Chairperson who shall forward the notice to the Minister and the Chairperson may resign by giving notice thereof in writing to the Minister.

(3) A resignation made under subsection (2) shall be effective upon receipt of notice by the Minister.

(4) If a vacancy occurs among the members of the Commission, it shall be filled by the appointment of another member and in making the appointment the Minister shall have reference to section 69.

Remuneration of members

71. Members of the Commission shall be paid such remuneration as may be authorized by the Minister.

Assignment of staff

72. The Commission shall be assigned such staff as it requires to perform its functions under this Division.

Functions of Commission

73. The Commission shall advise and make recommendations to the Minister on all matters relating to —

- (a) the fixing of a minimum wage;
- (b) the determination of equal remuneration for work of equal value for purposes of Part V; and
- (c) terms and conditions of employment in relation to any minimum wage.

Procedure

74.— (1) The Commission shall meet at such times as may be necessary or expedient for the discharge of its functions under this Division.

(2) The Chairperson, or in the Chairperson's absence, the Deputy Chairperson and three other members shall constitute a quorum.

(3) In the case of an equality of votes the Chairperson, or in the absence of the Chairperson, the Deputy Chairperson shall, in addition to his or her original vote, have a casting vote.

(4) Subject to this section, the Commission may make rules for the regulation of its own proceedings and procedures.

Power to summon

75.— (1) The Commission shall, for the purpose of the performance of its functions, have power, by summons signed by the Chairperson or by the Secretary of the Commission, to do any of the following —

- (a) summon and enforce the attendance of persons to the Commission;
- (b) examine such persons on oath so as to elicit information relevant to any matter under investigation by the Commission.

(2) A person summoned to attend and give evidence before the Commission shall be —

- (a) bound to obey the summons served upon him or her; and
- (b) entitled in respect of such evidence to the same right or privilege as before a court of law.

- (3) A person shall not —
- (a) without sufficient cause, fail or refuse to attend before the Commission in obedience to a summons;
 - (b) being a witness, leave a meeting of the Commission without the permission of the Commission;
 - (c) being a witness, refuse without sufficient cause to answer any question put to him or her by or with the permission of the Commission; or
 - (d) wilfully obstruct or interrupt the proceedings of the Commission.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and, in default of payment, to imprisonment for a term not exceeding one year.

(5) A person summoned to appear before the Commission may be accompanied by legal counsel at his or her expense.

Minister to refer to Commission

76. Where in the opinion of the Minister or a registered organization representing employees or employers, it is necessary to fix or vary a minimum wage, or terms and conditions of employment for any employees, either because —

- (a) there is no machinery for the effective regulation of the remuneration or terms and conditions of employment for such employees; or
- (b) the existing machinery is not adequate or is likely to cease to be adequate for that purpose;

the Minister or the registered organization may refer the matter to the Commission for their recommendation and advice.

Invitation for comments and objections

77. Where a matter is referred to the Commission pursuant to section 76, the Commission shall, by notice in the *Gazette*, and submitted to such organisation representing employees or employers as the Commission determines, invite comments or objections relating to the making of a Minimum Wage Order within twenty-one days of the publication.

Objection

78. Any person objecting to the making of a Minimum Wage Order shall submit his or her objection to the Minister, stating —

- (a) the grounds of objection;
- (b) the nature of that person's interest in the matter; and
- (c) such additions, modifications or amendments to the draft order as that person may think fit.

Recommendation or advice by Commission

79.— (1) Upon the expiry of the notice received pursuant to section 77, the Commission shall determine whether there exists any adequate machinery for the regulation of the remuneration or terms and conditions of employment of the employees in respect of whom the referral was made.

(2) Where pursuant to subsection (1), it is determined that regulatory machinery does exist, the Commission shall examine the adequacy of that machinery and report thereon to the Minister.

(3) The Commission shall include in a report made under subsection (2) such recommendations as the Commission may think fit for improving the efficiency of the machinery.

(4) Where pursuant to subsection (1), in the opinion of the Commission, there are among the employees in respect of whom the referral was made, any whose case should be dealt with separately, either on the ground that there exists regulatory machinery in respect of some of the employees and not others or that the nature or hours of employment of some employees differs from that of others or for any other reason, the Commission shall so advise the Minister.

(5) Where upon the expiry of the notice period pursuant to subsection 77 and having considered any comments or objections submitted pursuant to sections 77 and 78, the Commission is of the opinion that the Minister should fix a minimum wage or other terms and conditions of service or employment or that equal remuneration is not being granted for work of equal value in respect of the employees in respect of whom the referral was made, the Commission, subject to section 80, shall so recommend and may include in the recommendation —

- (a) a proposed minimum wage; and

- (b) such other basic conditions as the nature of the case may require.

Matters for consideration in proposing a minimum wage

80. In considering a proposed minimum wage or other terms and conditions of employment, the Commission shall have regard to —

- (a) the general level of wages in Saint Lucia;
- (b) the cost of living in Saint Lucia;
- (c) contributions payable and benefits provided under a system of national insurance established under any enactment;
- (d) other economic factors, including the requirements of economic development, levels of productivity, the desirability of attaining and maintaining high levels of employment and the desirability of attracting and maintaining foreign investment; and
- (e) the protection of workers.

Advice of Commission

81.— (1) The Minister may accept the recommendation or advice of the Commission either fully or in part, or may reject the recommendation.

(2) Where the Minister either fully or in part rejects the recommendation of the Commission, the Minister shall provide the Commission with reasons for the rejection and may request that the Commission reconsider the matter.

(3) In making a request under subsection (2), the Minister may provide additional information as he or she considers necessary.

Effect of Minimum Wage Order

82.— (1) An employer to whom a Minimum Wage Order applies shall, as from the making of the Minimum Wage Order, pay to the employees wages which are not less than the minimum wage prescribed in the Minimum Wage Order, and the employee shall enjoy such other terms and conditions of employment no less favourable than the terms and conditions of employment prescribed in the Minimum Wage Order, notwithstanding that the remuneration or terms and conditions of

employment of the employee may be provided for in a collective agreement or in a contract of employment.

(2) Where at the commencement of a Minimum Wage Order under which scope an employee falls, the wages and other terms and conditions of employment of an employee are not subject to a collective agreement, the Minimum Wage Order shall take effect in respect of that employee as soon as it comes into force.

Saving of existing level of wages

83.— (1) An employee to whom a Minimum Wage Order applies and who receives wages more than the statutory minimum wages and enjoys other terms and conditions of employment more favourable than the terms and conditions of employment prescribed in the Minimum Wage Order shall in no way be adversely affected by reason only of the making of the Order.

(2) Where a Minimum Wage Order fixes a minimum wage for employees in a particular class of employees in an industry, an employee in that class shall not be adversely affected or prejudiced by the Minimum Wage Order if it is lower than the wage agreed to by the employer and the employee.

(3) An employer or group of employers shall not, as a result of provisions in this Part, reduce a wage paid to an employee or class of employee in a particular undertaking or industry to the level of a minimum wage set under this Code.

Records

84. An employer to whom a Minimum Wage Order applies shall keep and maintain such records in respect of that employee as may be necessary to show whether or not the provisions of the Minimum Wage Order are being complied with in respect of that employee and unless seized and taken away by an authorized officer under the provisions of section 85(1), such records shall be retained by the employer for a period of six years.

Powers of inspection

85.— (1) A labour officer may exercise any of the powers granted to him or her under section 407 in order to seek compliance with the

provisions of this Division including, but not limited to powers to inspect books, records, pay sheets and other documents and to search for and seize relevant books, records, pay sheets or other documents.

(2) An authorised officer may require an employer or a person authorized by an employer to —

- (a) give the authorised officer information with respect to remuneration paid to and terms and conditions of employment enjoyed by employees in respect of whom a Minimum Wage Order applies, in the service of that employer;
- (b) permit the authorised officer to inspect any books, records, pay sheets or other documents relating to such employees.

Authorization for Commission to obtain information

86.— (1) An authorised officer who, pursuant to section 85(2), has obtained information or books, records, pay sheets or other documents shall make such information available to any member of the Commission or any other authorised officer for the purposes of facilitating the establishment of minimum wages in accordance with this Code.

(2) Where information has been provided by an authorised officer in accordance with subsection (1), this shall not constitute a breach of confidentiality as defined under section 409.

Recovery of wages

87. Where an employer has been convicted of paying less than the statutory minimum wage to any employee, he or she shall be liable to pay to the employee a sum equal in amount to the difference between the amount actually paid as wages and the statutory minimum wage.

Offences in relation to this Division

88.— (1) An employer who contravenes section 83 or 84, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

(2) A person who furnishes any particulars required under this Division which the person knows to be misleading, false or deceptive in any material particular commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) An employer who pays an employee less than the statutory minimum wage prescribed in a Minimum Wage Order which applies to the employee, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) It shall be a defence for an employer to satisfy the Court that the contravention of subsection (3) was not wilful, or due to his or her negligence or that of a person in his or her employment who is authorized to deal with the payment of an employee.

Application

89. This Division binds the Crown.

DIVISION 6 *Sick Leave and Benefits*

Sick pay

90. Subject to sections 91 and 92, after not less than six months continuous service, an employee shall be eligible for paid leave at the normal rate of wages for actual illness or physical incapacitation.

Uncertified sick leave pay

91. — (1) Subject to subsection (2), an employee is entitled to be paid sick leave for actual illness or actual physical incapacitation without requirement of medical certification where —

- (a) each such period of sick leave does not exceed two days; and
- (b) the aggregate of such periods of sick leave does not exceed twelve days per annum.

(2) Where an employer reasonably believes that any purported sick leave, no matter how short, forms part of a course or pattern of absenteeism and is an abuse of sick leave provisions under this Code, he or she may require an employee to furnish him or her with a medical certificate.

Certified sick leave

92. Where a period of sick leave exceeds two days, the employee shall produce a medical certificate certifying the illness or injury and the duration of sick leave from a medical practitioner for the period

commencing on the third day of sick leave in order to be entitled to paid sick leave.

Employer's obligation toward sick pay

93.— (1) During the first two days of leave in any period of sick leave to which the employee is entitled to paid leave, the employer shall pay to the employee the total amount of pay at the normal rate of wages.

(2) Subject to subsection (3), after the first two days of leave in any period of sick leave to which the employee is entitled to paid leave, the employer shall pay to the employee the total amount of pay at the normal rate of wages less any amount to which the employee is entitled as a benefit by virtue of the National Insurance Corporation Act for a period not exceeding three months for any continuous period of incapacity.

(3) In determining any period of incapacity, any period separated by no more than eight weeks shall be treated as one continuous period of incapacity for work, starting on the first day of such period.

Determination of medical matters

94. Where there is an issue relating to —

- (a) incapacity due to a job related illness or injury leave;
- (b) abusive sick leave;
- (c) medical certificates issued for the purpose of sick leave, injury at work, illness connected with pregnancy, illness or injury determined to be sufficient for termination of employment in accordance with this Code; or
- (c) any other medical matter;

the issue shall be determined by the Tribunal having regard to the recommendation of a medical committee established pursuant to section 428.

DIVISION 7
Vacation Leave

Interpretation

95. For the purposes of this Division —

“continuous employment” has the meaning given to it pursuant to section 23;

“working day” means a day on which the employee would normally work if not on vacation;

“year of employment” in relation to any employee means any continuous employment for any period of twelve consecutive months during which the employee has actually performed labour or rendered services for the same employer for —

- (a) at least two hundred days in the case of employees employed on a weekly, fortnightly, monthly or yearly basis; and
- (b) at least one hundred and fifty days in the case of employees employed hourly, daily or part-time.

General entitlement to vacation leave

96.— (1) An employee shall, at the end of his or her first year of employment and at the end of each year of employment thereafter, be entitled to annual vacation leave with pay for a period of working days as laid down under section 97.

(2) Subject to section 100, the vacation leave referred to in subsection (1) shall be computed on working days between Monday and Friday inclusive.

Amount of vacation leave with pay

97.— (1) The amount of vacation leave with pay shall be the amount the employee would have received had the employee not taken the leave calculated at the rate of remuneration immediately preceding the period of vacation leave.

(2) The minimum entitlement of vacation leave with pay referred to in subsection (1) shall be as set out in the Second Schedule.

Existing rights to vacation saved

98.— (1) Nothing in this Division shall affect any right to vacation with pay acquired by any employee under any collective agreement, employment contract or other agreement existing before the commencement of this Code where such right to vacation with pay is equivalent to or more than the amount of leave with pay granted under this Division.

(2) Where an employee or a group of employees at a workplace, before the commencement of this Code, was entitled to a period of vacation leave with pay greater than that prescribed under section 97

whether by collective agreement or custom, his or her employer shall not decrease the period of vacation leave due to that employee or at the workplace.

Periods of vacation leave

99.— (1) The annual vacation leave shall be given by the employer and taken by the employee in one period, or separate periods, as agreed to between the employer and the employee.

(2) If the employer and employee so agree, the vacation leave may be taken wholly or partly in advance before the employee has become entitled to such vacation.

(3) The vacation leave shall be given by the employer and shall be taken by the employee before the expiration of six months after the date upon which the right to such vacation accrues except where, by agreement between the employer and employee, such vacation is postponed.

(4) The employer shall determine the date on which the vacation shall commence and shall give to the employee not less than seven days' notice of such date.

(5) Where the vacation leave or any part thereof has been taken before the right to such vacation has accrued, the right to a further vacation leave shall not begin to accrue until after the expiration of the period of the year of employment in respect of which the vacation leave or part thereof has been so taken.

Public holidays not to be counted

100. Where a public holiday occurs during any period of vacation leave taken by an employee pursuant to section 97, the period of vacation shall be increased by one day in respect of each Saturday, Sunday or public holiday, as the case may be.

Employee not to be terminated during vacation leave

101. Any notice of termination of employment given by an employer to an employee during a vacation leave shall be void and of no effect.

Exclusions from vacation leave

102. A period of vacation leave given to an employee shall not include any period —

- (a) of sick leave to which he or she is entitled under the terms of his or her contract of employment or otherwise;
- (b) of maternity leave to which a female employee is entitled under the terms of her contract of employment or otherwise;
- (c) of disability caused by accident or disease for which compensation is payable under the provisions of this Code or any law in force;
- (d) for which an employee is called to serve on jury duty or national service or public duty;
- (e) of off days specific to the employee; or
- (f) of public holidays.

Employee not to be compelled to forego vacation leave

103. An employer shall not compel an employee to forego the taking of earned vacation leave irrespective of an offer to pay remuneration in lieu of the leave.

Proportionate vacation leave

104. An employer and employee may agree that the entitlement of vacation leave with pay accrue proportionately to the employee during each twelve month period of employment or two hundred days or one hundred and fifty days, as the case may be.

Vacation leave pay upon termination

105.— (1) Where the employment of an employee who has become entitled to vacation leave pay is terminated, and the employee has not taken any or any part of such vacation, the employer shall pay to the employee, in addition to all other amounts due to the employee, vacation leave pay in respect of the period of vacation leave due to him or her at the time of such termination.

(2) Where the employment of an employee who has become entitled to vacation leave is terminated and the employee has taken a period of the vacation leave to which he or she is entitled, the employer shall pay to the employee, in addition to all other amounts due, the

corresponding proportionate part of the vacation leave pay referred to in subsection (1).

(3) Where the vacation leave or any part of it has been taken in advance by an employee, and the sum paid by the employer to the employee in respect of such vacation leave or part of it exceeds the sum which the employer is required to pay to the employee under subsection (1), the employer shall not be liable to make any payment to the employee under that subsection, and shall be entitled to deduct the amount of such excess from any amounts payable to the employee upon the termination of his or her employment.

Vacation leave pay upon termination before qualifying period

106.— (1) Subject to subsection (2), where any employee who has been continuously employed for three months or more is laid off or the employment contract is terminated and the employee has not completed the twelve month period necessary for entitlement to vacation leave with pay in accordance with section 96, such employee shall be entitled to vacation leave with pay calculated on the basis of the formula specified in section 96(2).

(2) If an employee has at any time taken any vacation leave under this Part while in the employ of an employer, the employer shall be deemed to have complied with the provisions of this section if the employee is paid promptly, in addition to all other amounts due, the employee's full pay for the period of employment between the day on which the employee became entitled to his or her last vacation leave and the date of the termination of employment.

Records

107. An employer shall keep records of the remuneration, periods of employment and vacation leave of every employee employed by him or her in such manner as deemed satisfactory by the Labour Commissioner.

Complaints

108.— (1) A complaint alleging a violation by an employer of the provisions of this Division shall be made to the Tribunal.

(2) An employer who contravenes subsection (1) is liable, on successful complaint to the Tribunal, for damages and the Tribunal may order the employer to rectify the offending act.

DIVISION 8
Public Contracts

Interpretation

109. In this Division —

“contract” means a contract for —

- (a) the construction, alteration, repair or demolition of public works;
- (b) the manufacture, assembly, handling or shipment of materials, supplies or equipment;
- (c) the performance or supply of services;

“public authority” means any body —

- (a) established by or under the Constitution;
- (b) established by Statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by the Government or the State; or
- (e) carrying out a statutory or public function to the extent of the statutory or public function;

“public contract” means a contract involving the expenditure of funds by any department of the Government of Saint Lucia or by any local Government or public authority.

Provisions deemed to be included in public contracts

110. A public contract shall be deemed to include and to incorporate the provisions, conditions or stipulations contained in this Division to all intents and purposes as if they were expressly set out as conditions or covenants to be observed and performed on the part of either or both of the parties to the public contract.

Established rates and conditions of employment

111.— (1) The contractor shall pay rates of remuneration and observe hours and conditions of employment no less favourable than those established in the trade or industry in the district where the work is carried out by agreement, negotiation or arbitration by employers and

trade union representatives of substantial proportions of the employers and employees engaged in the trade or industry or district, to be called “established rates and conditions”.

(2) In the absence of any established rates and conditions referred to under subsection (1), the rates and conditions of employment in other districts where the trade or industry is carried on under similar circumstances shall be deemed to be the established rates and conditions.

(3) Established conditions of employment shall be no less favourable than those set out under this Code, and where such conditions are less favourable, the conditions established under this Code shall prevail.

Labour Commissioner to set rates and conditions

112. In the absence of any established rates and conditions as referred to under section 111, the Labour Commissioner shall, after consultation with representatives of employers and employees or their trade union representatives, prepare and furnish a schedule establishing fair and reasonable rates and conditions to be observed in the execution of the public contract, having regard to established rates and conditions in respect of persons employed in a capacity and in general circumstances similar to those of the persons engaged on the public contract, or failing such established rates and conditions, any fair standards of rates and conditions commonly recognized in respect of persons employed in a similar capacity and in similar general circumstances.

Certificate of fair and reasonable conditions

113. Before being placed on any list of Government contractors or being allowed to tender for Government contracts, the contractor shall certify that to the best of his or her knowledge and belief, the remuneration, hours of work and conditions of labour of all employees employed by him or her in the trade or industry in which the person is offering himself or herself as a contractor, are fair and reasonable having regard to the provisions of section 111.

Disputes on remuneration

114.— (1) Where there is any dispute concerning remuneration or other terms and conditions of employment, such dispute shall, if not resolved voluntarily between the parties to the dispute, be referred to the Labour Commissioner, who may, in his or her discretion, determine the matter, or refer it to the Tribunal.

(2) In arriving at a decision for a dispute referred to under subsection (1), the Labour Commissioner, or the Tribunal, as the case may be, in the absence of any established rates and conditions of employment in the trade or industry concerned, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to remuneration, hours or terms and conditions of employment of persons employed in a capacity similar to that of the persons to whom the dispute relates in trade or industry carried on under similar general circumstances.

Accounts

115. The contractor shall keep proper books and accounts demonstrating the remuneration paid to and time worked by the workers, and he or she shall, whenever required, produce such wages, books and accounts for the inspection of any labour officer.

Sub-contractors

116.— (1) A sub-contractor shall be bound to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contractual conditions on the part of the sub-contractor.

(2) The principles of freedom of association and freedom of organization and representation laid down under this Code shall apply to all contractors and to all sub-contractors for public contracts.

Withholding payments

117. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of the public contract in respect of the work performed in the execution of the public contract

unless and until he or she has filed with the other party to the public contract, together with his or her claim for payment, a document stating

- (a) whether any wages or other remuneration in respect of the said work and labour remain in arrears;
- (b) that all the labour conditions of the public contract have been duly complied with; and
- (c) all requirements pursuant to the National Insurance Corporation Act with respect to the payment of contributions have been completed.

Information

118. The contractor shall, from time to time, furnish to the Labour Commissioner such detailed information and evidence as the Labour Commissioner may determine to satisfy himself or herself that the provisions of this Part have been complied with.

Default in payments

119.— (1) Where a contractor fails to pay the employee's wages or other remuneration, the employee may apply to the Labour Commissioner and if the Labour Commissioner is satisfied that the employee has not been paid, he or she shall make arrangements for the payment of the wages or other remuneration due to such employee out of any monies at anytime payable by the person or persons for whom the contractor works or has worked, and the amount of the wages or other remuneration so paid shall be deemed to be payments by the contractor.

(2) Any contractor or any person for whom a contractor works or has worked who fails to make any payment of wages or other remuneration as required by arrangements made by the Labour Commissioner acting pursuant to the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.

Posting of conditions of work

120. The contractor shall post notices in conspicuous places at the workplace concerned, with a view to informing the employees of their conditions of work.

Prohibition on non-compliant contractors

121.— (1) Any contractor or sub-contractor who fails to comply with any of the provisions of this Division shall cease to be an approved contractor or sub-contractor for such period as the Labour Commissioner may determine.

(2) The Minister may make Regulations prescribing the procedure for approval of contractors and sub-contractors.

DIVISION 9*Employment of Children and Young Persons***Prohibition of child labour**

122.— (1) Notwithstanding section 18 (2) and subject to subsection (2), a person shall not employ or allow to be employed any child who is under the minimum school leaving age as declared by any law in force in Saint Lucia except for employment during school holidays in light work.

(2) A person may not employ or allow to be employed a child or young person in employment that is inappropriate for a person of that age, being work which places at risk the child or young person's well-being, education, safety, physical or mental health, or spiritual, moral or social development.

(3) The provisions of subsection (1) do not apply to —

- (a) work done by children or young persons in technical schools as part of their technical program where such work is approved and supervised by the relevant public authority;
- (b) work done under order of detention in a reformatory or industrial school where such work is approved and supervised by the relevant public authority; or
- (c) work done by children on job training or work experience activities where such work is approved and supervised by the relevant public authority;
- (d) non-hazardous work done as a community service or for a charity outside of normal school hours where such work does not prejudice the child's capacity to benefit from the instruction received;

- (e) work done by members of a recognized youth organization which is engaged collectively in such employment for the purposes of fund raising for such organization or charity outside of normal school hours where such work does not prejudice the child's capacity to benefit from the instruction received;
- (f) work done by persons over the age of thirteen years which is characterised as light work which is not harmful, prejudicial or dangerous to the child or young person and does not place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development and such light work may include but is not limited to —
 - (i) newspaper rounds;
 - (ii) car-washing;
 - (iii) cake sales and other sales at school and charity fairs;
 if such light work is approved by the Labour Commissioner by Order published in the *Gazette* after consultation with organizations of employers and employees concerned;
- (g) work done by children or young persons participating in artistic performances based on a permit granted by the Minister in his or her discretion on a case by case basis limiting hours to be worked and indicating conditions of work.

Medical certificate of fitness

123. A young person shall not be employed or allowed to be employed unless he or she has been certified as fit and suitable for the work which he or she is expected to perform by a medical practitioner after a medical examination and thereafter his or her employment shall be subject to annual medical supervision until he or she reaches the age of eighteen years.

Register of children and young persons

124.— (1) An employer shall keep a register of all children and young persons employed by him or her.

(2) Such register shall contain particulars of the names, addresses and dates of birth and national insurance numbers of such persons, and of the dates on which they enter and leave employment and the

employer shall make available to any labour officer or inspector such register for inspection.

False certificates

125. Where a young person is employed in contravention of this Division —

- (a) with the permission or knowledge of his or her parent or guardian; or
- (b) because of the production of a false or forged birth certificate, passport or other document attesting to his or her identity; or
- (c) on the false representation of his or her parent or guardian that such child or young person is of an age at which such employment is not in contravention of this Division;

his or her parent or guardian commits an offence and is liable, on summary conviction, to a fine not exceeding two thousand dollars.

Regulations for the employment of young persons

126. The Minister, may, on the advice of the Labour Commissioner and the Medical Board, make Regulations —

- (a) to prohibit or place conditions on the employment of children and young persons who are no longer subject to compulsory schooling under any enactment;
- (b) to prescribe categories of work in which children and young persons cannot be employed;
- (c) permitting persons over the age of thirteen years to engage in work;
- (d) with respect to the conditions required to protect the health, safety and welfare of any child or young person employed at any work place; or
- (e) after consultation with organizations of employers and workers concerned, setting out the types of employment or work to which section 122(2) applies.

Penalties for child and young person labour

127. Any employer who contravenes sections 122, 123 or 124 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term of two years or both.

DIVISION 10
Termination of Employment

Non-application

128. This Division shall not apply to persons who have been engaged under a contract of employment as apprentices or for purposes of training and who have been so engaged for a period of less than twelve weeks where such a contract of employment fulfills the conditions laid down under this Code.

Valid reason for dismissal

129. The employment of an employee —

- (a) without reference to limit of time;
- (b) for a specific task where that task is not completed; or
- (c) for a time period where that time period is not completed;

shall not be terminated by an employer, unless there is a valid reason for such termination connected to the capacity, performance or conduct of the employee or for reasons of redundancy and, unless in accordance with the principles and procedures under this Division.

Probationary period

130.— (1) Subject to subsection (2), a new employee may be required to serve a probationary period of not more than twelve weeks or a shorter or longer period of time agreed to between the employer and the employee.

(2) Subject to subsection (3), an employee's rights accruing pursuant to section 21 shall not be prejudiced by a probationary period which exceeds twelve weeks.

(3) The employer or employee may terminate employment at any time during the probationary period for any reason and dismissal of a person on probation shall not be construed as being an unfair dismissal for purposes of this Division.

Unfair dismissal

131.— (1) An employer shall not dismiss an employee or institute disciplinary action based on —

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, indigenous origin, social origin, political opinion or affiliation, trade union affiliation or activity, disability, sexual orientation, serious family responsibility or marital status;
- (b) an employee's age, subject to any other enactment in force, or collective bargaining provisions or contractual provisions regarding retirement;
- (c) a female employee's maternity leave or benefits, pregnancy or a reason connected with her pregnancy;
- (d) an employee's exercise of any of his or her organizational or associative rights as specified under this Code;
- (e) an employee's temporary absence from work because of sickness or injury, unless it occurs frequently and is found to be an abuse of sick leave provisions under this Code;
- (f) the perception that the employee has or is carrying the HIV/AIDS unless the employee is engaged in work established as putting other persons at risk of contracting the HIV/AIDS or unless the inherent requirements of the job permit the removal of that employee to other duties;
- (g) an employee's absence from work due to compulsory military service, national service, public duty or other civic obligation in accordance with any enactment or practice in force;
- (h) an employee's exercise or proposed exercise of the right to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life, health or safety;
- (i) an employee's participation, or proposed participation, in industrial action, including strikes;
- (j) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Code;
- (k) an employee's refusal to do work usually performed by another employee or employees currently engaged in industrial action where that work does not form part of his or her contract of employment; or
- (l) a conviction which is spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2.

(2) A dismissal on any grounds specified in subsection (1) constitutes unfair dismissal and entitles the employee to compensation in accordance with this Code.

Constructive dismissal

132.— (1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term on grounds of constructive dismissal where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.

(2) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer and shall be entitled to compensation in accordance with this Code.

Summary dismissal for serious misconduct

133.— (1) An employer is entitled to dismiss, summarily without notice, an employee who is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

(2) Serious misconduct includes but is not limited to —

- (a) wilful disobedience of lawful orders given by the employer;
- (b) repeated substantial neglect of duties;
- (c) repeated absence from work without the permission of the employer or without reasonable excuse;
- (d) refusing to follow health and safety measures instituted at work thereby endangering the health and safety of employees or members of the public;
- (e) theft or wilful damage of property of the employer or another employee at the work place; or
- (f) conduct inconsistent with the fulfillment of the expressed or implied terms of the employee's contract of employment.

(3) The serious misconduct referred to in subsection (1) is restricted to conduct which is directly related to the employment relationship or has a detrimental effect on the business of the employer or the work relationship.

Entitlement to remuneration on summary dismissal

134. Where an employee is dismissed summarily for misconduct or where he or she is dismissed for unsatisfactory performance in accordance with 136(5), that employee is entitled to all remuneration, including accrued leave, up to the date of dismissal.

Warnings and termination for misconduct

135.— (1) Where an employee is found to be in breach of his or her terms and conditions of employment or is guilty of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may give the employee a written warning outlining the particulars of the offence.

(2) If an employee after being warned two more times after the warning referred to in subsection (1), is again found to be in breach of his or her terms and conditions of employment or is guilty of any misconduct in the following twelve months, the employer may dismiss the employee.

(3) An employer shall be deemed to have waived his or her right to dismiss an employee for a particular offence or instance of misconduct if he or she has failed to do so within the twelve months period after having knowledge of the particular offence or misconduct provided that any investigation has been completed.

Unsatisfactory performance

136.—(1) Where the employee is not performing his or her duties in a satisfactory manner, the employer shall give him or her a written warning and appropriate instructions to correct the unsatisfactory performance.

(2) If the employee, after being warned a further two times after the warning in subsection (1), does not at any time during the following one month period demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may dismiss the employee.

Dismissal where unsatisfactory performance is due to the natural aging process

137.— (1) Where an employer alleges that an employee is performing unsatisfactorily or is incompetent and such unsatisfactory performance

or incompetence is due to the reasonable effect of the natural aging process, an employer shall not dismiss that employee for unsatisfactory performance in accordance with section 136(2), but shall offer to that employee the option of early retirement or shall redeploy the employee within the establishment or in any other establishment under the control of the employer, provided that the employee shall not lose any benefits as a result of the redeployment.

(2) Where an employee is offered early retirement, he or she shall be entitled to a payment of termination benefits calculated in accordance with this Part up to the day of termination for early retirement.

Dismissal for lack of qualifications or skills

138. Where an employer terminates the employment of an employee because that employee does not possess the qualifications or skills which he or she purported to hold in order to perform the kind of work which he or she was employed to do, the termination shall not be construed as an unfair dismissal.

Dismissal for fundamental breach of contract

139. Where an employer dismisses an employee because that employee has breached a fundamental term of the contract of employment, this shall not be construed as an unfair dismissal.

Natural justice safeguards

140. Where an employee is accused of misconduct he or she is entitled to have the principles of natural justice applied to his or her case.

Options to suspend or warn in lieu of dismissal

141. An employer may, where he or she is entitled to dismiss an employee fairly, choose the option of —

- (a) warning the employee; or
- (b) suspending that employee without pay for a period not exceeding one month;

in lieu of dismissal.

Suspension with pay

142. — (1) Subject to subsections (2) and (3), where an employee is alleged to have committed an act of serious misconduct or gross incompetence, the employer may suspend that employee with pay for a period not exceeding four weeks in order to investigate the complaint.

(2) The right of an employer to dismiss an employee summarily for serious misconduct or to dismiss the employee for incompetence or unsatisfactory performance in accordance with this Part is not waived by exercising the option of suspension if the allegation of serious misconduct or incompetence is proved to the satisfaction of the employer.

(3) Where an allegation of serious misconduct sufficient to ground a charge of summary dismissal in accordance with section 133 is proved after an investigation pursuant to subsection (1), the employer shall be entitled to claim any amounts of wages paid during the time of suspension referred to in subsection (1).

Dismissal for reason of incapacity or abuse of sick leave

143.— (1) Where an employee has been —

- (a) continuously ill for a period exceeding twenty six weeks such that he or she is no longer capable of adequately performing his or her job; or
- (b) injured in a manner that makes it difficult or impossible for him or her to continue to perform his or her job;

the employer, after a registered medical practitioner has certified such incapacity and it is determined that the employee is incapable of performing his or her job, may dismiss the employee if such incapacity presents an undue hardship to the business or enterprise.

(2) Where an employee has taken sick leave frequently with or without a medical certificate such that the employer reasonably determines that such absences present an undue hardship to the business enterprise or amounts to an abuse of sick leave provisions under this Code, the employer may dismiss the employee.

(3) The burden of proving that the employee's sick leave absences were abusive or that such absences present an undue hardship to the business enterprise shall rest on the employer.

Remuneration due upon dismissal

144. Where an employee is dismissed for misconduct or for unsatisfactory performance or for breach of contract in accordance with this Division, he or she is entitled to remuneration and accrued leave up to and including the date of the dismissal.

Termination due to redundancy

145.— (1) An employer may terminate the employment of the employee because conditions of redundancy exist which make the employee's position redundant pursuant to subsection (2).

(2) For purposes of subsection (1), an employee's position may be made redundant where the termination is because —

- (a) the employer has modernized, automated or mechanized all or part of the business;
- (b) the employer has discontinued to carry on all or part of the business;
- (c) the employer has sold or otherwise disposed of all or part of the business;
- (d) the employer has reorganized all or part of the business;
- (e) it has become impossible or impracticable for the employer to carry on all or part of the business at its usual rate or level or at all, due to —
 - (i) a shortage of materials;
 - (ii) a mechanical breakdown;
 - (iii) an act of God; or
- (f) a reduced operation in all or part of the employer's business has been made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

(3) Prior to terminating the employment of any employee pursuant to this section, the employer shall —

- (a) inform the trade union recognized in accordance with Division 2 of Part VII or, if none exists, the employees' representative and the employee as early as possible, of *inter alia* —
 - (i) the existence of any situation described under subsection (2);
 - (ii) the reasons for the terminations contemplated;
 - (iii) the number and categories of the persons likely to be affected; and
 - (iv) the period over which such terminations are likely to be carried out;
- (b) consult as early as possible with that recognized trade union, or if none exists, the employees' representative, and the employee on —
 - (i) the possible measures that could be taken to avert or minimize the adverse effects of such situations on employment; and
 - (ii) the possible measures that could be taken to mitigate the adverse effects of any terminations on the employees concerned;
- (c) notify the Labour Commissioner as early as possible, giving relevant information, including a written statement of —
 - (i) the reasons for the terminations;
 - (ii) the number and categories of workers likely to be affected; and
 - (iii) the period over which the terminations are likely to be carried out.

Constructive redundancy

146.— (1) An employee shall be deemed to have been made redundant where his or her contract of employment is terminated due to the changing requirements of the business relating to new skills, qualifications or expertise.

(2) Where an employee, without his or her consent, is consistently provided with terms and conditions of work which are not of the kind which he or she is employed to do, that employee shall be deemed to be in a situation of redundancy and is entitled to compensation for redundancy pay in accordance with Division 11.

Effect of sale

147.— (1) Where one of the purposes of a sale or other disposition of a business or part of a business is to enable an employer to avoid any of his or her obligations under this Code or to deprive any employee of any right under this Code, all of the obligations of the person selling or otherwise disposing of the business under this Code shall be binding on the person acquiring the business or part of a business.

(2) Nothing in subsection (1) shall be interpreted as restricting an employer from making a *bona fide* sale of his or her business or part of a business.

Lay-offs and suspensions

148.— (1) Subject to subsection (2), where an employee has been laid-off for a continuous period of at least twelve weeks, such lay-off shall be deemed a termination due to redundancy in accordance with this Division.

(2) The provisions of subsection (1) do not apply to an employee who is employed in the hospitality industry or any other industry designated by the Minister as a seasonal industry and who actually performs work on a seasonal basis, except where work which the employee is habitually employed to do is not offered to that employee for the following season.

(3) If after two consecutive seasons an employee habitually engaged in seasonal work is not offered work, the employer shall be deemed to have terminated the employee's contract of employment.

(4) The Minister may, after consultation with employees and employers representatives, make special Regulations for lay-off and redundancy for certain sectors of industry and for specific categories of workers from time to time as he or she deems necessary.

Option for severance pay from successor employer

149. Where there is a successor employer of an enterprise an employee of the former employer shall have the option to have his or her contract of employment terminated and receive severance pay calculated in accordance with Division 11 or to continue with the successor employer within four weeks of the transfer of the enterprise to the successor employer.

Winding up

150.— (1) The winding up or insolvency of an employer's business shall cause the contract of employment of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless the employment is otherwise terminated before that period.

(2) This section shall not apply where, notwithstanding the winding up or insolvency, the business continues to operate.

(3) On the winding up or appointment of a receiver of an employer's business, the claim of an employee or those legally entitled to make a claim on his or her behalf to wages and other payments to which he or she is entitled under this Code or any contract shall have priority over all other creditors, including the State and the social security system for the following amounts —

- (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed;
- (b) accrued vacation leave benefits as a result of work performed during the two years preceding the date of the opening of winding-up or appointment of the receiver;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of the opening of winding up or appointment of the receiver;
- (d) redundancy pay, severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Death of employer

151. When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless the employment is otherwise terminated.

Priority debts on death of employer

152. On the death of an employer, the claim of an employee or those legally entitled to make a claim on his or her behalf to wages, severance pay, compensation for dismissal and any other employment terminal payments or benefits shall have priority over all other creditors, including the State and the social security system.

Notice periods and exemptions from notice

153.— (1) Where a valid reason for termination exists in accordance with this Code, a contract without reference to limit of time, except during the probationary period, may be terminated by the employer upon giving to the employee the following minimum periods of notice in writing —

- (a) one week's notice if the period of continuous employment is more than twelve weeks but less than two years;
- (b) two weeks' notice if the period of continuous employment is two years or more but less than five years;
- (c) four weeks' notice if the period of continuous employment is five years or more but less than ten years; and
- (d) six weeks' notice if the period of continuous employment is more than ten years.

(2) The notice required to be given by an employee who has been continuously employed for an indefinite period to terminate his or her contract of employment shall not be less than —

- (a) one week's notice if his or her period of continuous employment is more than twelve weeks but less than five years; and
- (b) two weeks' notice if his or her period of continuous employment is five years or more.

(3) Any provision for notice in any contract of employment with an employee shall have effect subject to the foregoing subsections, but nothing in this section shall be taken to prevent either party from waiving his or her right to notice on any occasion or from accepting a payment in lieu of notice.

(4) The periods of notice under subsections (1) and (2) shall not apply where longer periods of notice are regulated by a collective agreement or by mutual agreement.

- (5) The periods of notice under subsection (1) shall not apply —
- (a) where the employer is entitled to summarily dismiss an employee for serious misconduct under this Code;
 - (b) where there is agreement of both parties in writing to terminate the contract of employment; or

(c) where the termination is due to an act of God, civil commotions, riots, destruction of all or part of the plant or business by fire not caused by the wilful act or negligence of the employer.

(6) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave granted under any enactment in force.

(7) For the purpose of subsection (6), leave includes paid annual leave, maternity leave, sick leave, leave for national service, leave for public duty and leave for serious family responsibility.

(8) Where the contract of employment is terminated at the end of a specified period of time or because of the attainment by the employee of the normal age of retirement by virtue of custom, laws, collective agreement, work rules or otherwise, no notice of termination is required.

Notice not relevant to question of unfair dismissal

154. The question of whether an employee has been dismissed by his or her employer with or without notice shall not be relevant to the question of whether the employee was dismissed fairly or unfairly.

Payment in lieu of notice

155.— (1) In lieu of providing notice of termination, the employer may opt to pay the employee a sum equal to the employees' wages and other remuneration and confer on the employee all other benefits up to the expiry of any period of notice.

(2) Where an employee terminates the contract of employment without notice in circumstances in which notice is required and the employer has not waived the right to notice, the employee is entitled to be paid such wages and other remuneration and to receive such other benefits which occurred at the date of termination and the employer is entitled to deduct a sum in lieu of notice.

Certificate of termination

156.— (1) On the termination of a contract of employment, an employer, if so requested by the employee, shall provide the employee with a certificate of termination indicating —

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the capacity in which the employee was employed prior to termination;
- (e) the wages and other remuneration payable at the date of termination of the contract; and
- (f) the reason for the termination of employment unless the employee indicates otherwise.

(2) A certificate provided pursuant to subsection (1) shall not contain any evaluation of the employee's work unless this is requested by the employee.

Fines and discipline

157.— (1) An employer shall not impose a fine or other monetary penalty on an employee, except in cases where a requirement of restitution is appropriate, nor impose any other disciplinary action except in accordance with this Code.

(2) An employee may make a complaint to the Labour Commissioner that disciplinary action is unreasonable.

Burden of proof

158.— (1) In any claim or complaint arising out of the dismissal of an employee at the initiative of the employer, it shall be for the employer to prove the reason for the dismissal and if the employer fails to do so there shall be a conclusive presumption that the dismissal was unfair or wrongful.

(2) In any claim arising out of constructive dismissal, it shall be for the employee to prove the reason which made the continuation of the employment relationship unreasonable.

Age of retirement

159.—(1) The age of retirement for all employees shall be the age deemed to be the pensionable age in accordance with the National Insurance Corporation Act.

(2) The parties to a contract of employment may, by agreement, agree to an age of retirement exceeding the pensionable age in force pursuant to the National Insurance Corporation Act.

DIVISION 11
Termination Benefits

Redundancy pay

160.— (1) On termination of employment due to redundancy an employee who has completed no less than two years of continuous employment with his or her employer is entitled to be paid by the employer redundancy pay equivalent to —

- (a) one week's basic pay for each completed year of service up to the first three years;
- (b) two weeks' basic pay for each completed year of service in excess of three years and up to seven years; or
- (c) three weeks' basic pay for each completed year of service in excess of seven years of service.

(2) For the purposes of subsection (1), the amount of a week's pay shall be the amount the employee would be entitled to in the last week of his or her employment or three hundred and fifty dollars whichever is lower.

(3) The payment of redundancy pay under subsection (1), shall not affect the employee's entitlement, if any, to payment in lieu of notice under section 155 or to compensation or award or to any outstanding wages, benefits, other remuneration for work performed by that employee or any other termination benefits.

Severance pay

161.— (1) The Minister may, after consultation with the trade unions and the employers' organizations, make Regulations relating to severance.

(2) Until such time as the Minister makes Regulations pursuant to subsection (1), the existing collective agreements and practices relating to severance shall continue.

Non-entitlement to redundancy pay

162.— (1) An employee is not entitled to a redundancy payment where the employee —

- (a) is fairly dismissed in accordance with this Code for serious misconduct or misconduct, fundamental breach of the employment contract, or lack of qualification or skill where the employee purported to have such qualification or skill;
- (b) unreasonably refuses to accept an offer in writing of re-employment by the employer at the same place of work, under no less favorable terms and conditions than he or she was employed immediately prior to the termination;
- (c) is employed under a contract of employment for a specified period of time and that period expires on the relevant date without being renewed under the same contract;
- (d) refuses to accept a suitable offer of re-employment made in writing by the employer to the employee before the redundancy, for employment in a different capacity and in a different place or under different terms and conditions of employment which would take effect not later than four weeks after the redundancy.
- (e) is employed by a partnership and his or her employment ceases on the dissolution of the partnership, and he or she either enters into employment with one or more of the partners immediately after such dissolution, or unreasonably refuses to accept an offer of employment by any such partner on no less favorable terms than he or she was employed immediately prior to the dissolution;
- (f) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widow, widower, or any heir of the deceased employer immediately after such death, or he or she unreasonably refuses to accept an offer of employment by any such person on no less favorable terms than those under which he or she was employed immediately prior to the death;
or
- (g) voluntarily terminates the contract of employment except in a situation of constructive dismissal or where he or she, in agreement with his or her employer, or pursuant to the terms of a collective agreement or the contract of employment, chooses to retire from employment.

Payment to beneficiary and complaint against non-payment

163.— (1) Where a contract of employment is terminated by reason of the death of an employee, termination benefit shall be paid to —

- (a) the named beneficiary; or
- (b) in the absence of the named beneficiary, the surviving spouse of the deceased employee; or
- (c) in the absence of a spouse or named beneficiary of the deceased employee, to such other dependant relative of the deceased employee as the court may decide.

(2) A complaint that termination benefits have not been paid within two weeks from the date of termination may be taken to court, and if the complaint is found to be proven to the satisfaction of the court, it shall order payment of the amount due.

Special provisions for hospitality and other seasonal employees

164.— (1) For the purposes of this Division, where a seasonal employee in the hospitality industry or any industry or employment of a seasonal nature or an industry designated as seasonal by the Minister pursuant to section 2 has been engaged in employment by a particular employer for a period in aggregate of twenty-six weeks or more in any one year, that employee shall be treated as being continuously employed for that year by his or her employer.

(2) Where a seasonal employee has been continuously employed in accordance with subsection (1) for a period amounting to twenty-four months, that employee shall be deemed to come under the provisions of this Division for the purposes of severance pay or redundancy pay.

(3) In the case of hospitality employees and other seasonal employees designated by the Minister to come under the provisions of this Division, a week's basic pay for the purposes of computing redundancy pay in relation to a hospitality employee or other seasonal employee designated by the Minister means the average basic pay per week in the two full seasons immediately preceding the date on which he or she ceases to be employed and the number of weeks to be computed in accordance with subsection (1).

Part-time employees

165.— (1) A part-time employee shall qualify for redundancy pay where he or she has been continuously employed for an aggregate of two years and he or she works for not less than three days of each week.

(2) Any week in which the employee is employed for twenty-four hours or more shall count in computing a period of employment for the purposes of severance pay or compensation for unfair dismissal.

Provision for pro rata payment

166.— (1) Where any debt arising out of obligations under this Division is owed by the employer to the employee, the Labour Commissioner may, in his or her discretion, permit the payment of such debt to be made *pro rata*.

(2) An arrangement for payment of a debt to be paid on a *pro rata* basis as referred to in subsection (1) shall be administered by the Labour Commissioner, who shall cause such payment to be lodged and recorded at the Labour Department and shall cause such payment to be issued to the employee named as the beneficiary of the debt payment.

Contesting of redundancy

167.— (1) Where the certified trade union at the workplace is of the opinion that conditions of redundancy as defined under this Code do not exist at the workplace, the trade union may lodge an objection to the redundancy with the Labour Commissioner.

(2) An objection to a redundancy shall be in writing, setting out the reasons for the objection.

(3) Where the Labour Commissioner is of the opinion that an objection to a redundancy is reasonable, the Labour Commissioner shall, in writing, notify the employer of the objection and shall order the employer to make immediately available to the Labour Commissioner the accounts, statements and other relevant documents of the industrial establishment of the employer claimed to be in a condition of redundancy.

(4) Where an employer receives an order from the Labour Commissioner pursuant to subsection (3) and the employer refuses to obey the order, the employer commits an offence and is liable to a fine not exceeding ten thousand dollars.

PART IV

OCCUPATIONAL SAFETY AND HEALTH

DIVISION 1

Registration and Requirements of Industrial Establishments

Interpretation

168.— (1) In this Part —

“article” means an object which is formed to a specific shape or design during its manufacture or which in its natural shape, and which use in that form is dependent in whole or in part on its shape or design;

“employer” includes, as the context requires, the operator, principal contractor, contractor or subcontractor;

“committee” means a joint workplace safety and health committee established pursuant to section 192;

“committee member” means a member of a committee established pursuant to section 192.

(2) A person who is employed in an industrial establishment whether for wages or not, either in a process or in cleaning or oiling any part of the machinery or plant, or in any other kind of work whatsoever incidental to or connected with the process, or connected with the article made or otherwise the subject of the process therein, shall, save as is otherwise provided by this Part, be deemed to be employed therein for the purposes of this Part and any proceedings thereunder.

(3) A young person who works in an industrial establishment, whether for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands shall be deemed to be employed in the industrial establishment for the purposes of this Part or of any proceedings under this Part.

(4) For the purposes of this Part and Regulations made pursuant to this Part, a ship being manufactured or under repair shall be deemed to be a construction site.

(5) An owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a construction site.

General application

169.— (1) Except where otherwise expressly provided, this Part shall apply to every industrial establishment, to all owners and occupiers of industrial establishments, and to all employers and all employees.

(2) Except where otherwise provided, this Part shall apply to industrial establishments belonging to or occupied by the State, but in case of any public emergency, the Minister may, by Order published in the *Gazette*, for the duration of the period specified in the Order, exempt from this part any industrial establishment —

- (a) belonging to or occupied by the State;
- (b) in which work is being carried out on behalf of the State; or
- (c) whose activities are vital to the national interest.

Work in private residences

170.— (1) This Part shall not apply to work performed by the owner or occupier of a private residence in or about a private residence or the lands and appurtenances used in connection therewith.

(2) The provisions of this Part shall apply to homeworkers who employ other employees in the home for the purpose of such homework, and to homeworkers who are employed under contracts of employment.

Appointment of Chief Occupational Safety and Health Officer and other officers

171.— (1) The Public Service Commission shall appoint the Chief Occupational Safety and Health Officer and such other occupational safety and health officers as are necessary to enforce and administer the provisions of this Part.

(2) The authorised officers appointed pursuant to subsection (1) shall be under the control and direction of the Labour Commissioner and shall be supervised by the Chief Occupational Safety and Health Officer.

(3) Subject to subsection (4), all industrial establishments and all machinery and equipment shall be inspected by the authorised officers on behalf of the Department of Labour.

(4) The Minister may make Regulations for the inspection of industrial establishments, machinery and equipment or of some classes of industrial establishments or of certain kinds of machinery, by persons other than the authorised officers as may be designated in the Regulations.

(5) A person who is an employer or person having control of any industrial establishment or is directly or indirectly interested in such establishment or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about such establishment, shall not be appointed as an authorised officer or act as such.

(6) The Chief Occupational Safety and Health Officer shall make reasonable efforts to ensure that persons and organizations concerned with the purposes of this Part are provided with information and advice pertaining to its administration and to the protection and safety of workers generally.

(7) An authorised officer shall be furnished with a prescribed certificate of his or her appointment.

(8) When visiting an industrial establishment or place to which any of the provisions of this Division applies, the authorised officer, if required so to do, produce the certificate referred to in subsection (1) to the employer or person having control of the industrial establishment.

Requirement for registration and pre-existing registration

172.— (1) An employer or other person having control of an industrial establishment shall apply to the Department of Labour in the prescribed form for the registration of the industrial establishment —

- (a) within thirty days after the coming into force of this Part, in the case of an existing industrial establishment not already registered under any other enactment; or
- (b) within thirty days after the industrial establishment commences to operate as such, in the case of a new industrial establishment.

(2) A registration effected pursuant to any other law before the date of commencement of this Part in respect of any existing industrial establishment shall be deemed to have been done under this Division and shall continue in effect under this Division for the purpose of the application of the provisions of this Part to such industrial establishment until registration is effected in accordance with this Division.

(3) An employer or other person having control of an existing industrial establishment referred to in subsection (2) shall, within one year after the coming into force of this Part, make application to the Department of Labour for a certificate of continuation of registration pursuant to this Division.

Application for registration and Register

173. — (1) An application pursuant to subsection 172 shall contain the following particulars —

- (a) the name and address of the employer or other person having control of the industrial establishment to which the application relates;
- (b) the address and location of the industrial establishment and the National Insurance Corporation Employers' Registration Number;
- (c) the nature and the object of the process carried on in the industrial establishment;
- (d) the number of employees employed in the industrial establishment-
 - (i) normally; and
 - (ii) at the date of application;
- (e) the hazardous substances present in the industrial establishment, as listed in the hazardous materials inventory required to be prepared under this Part; and

(f) whether the industrial establishment is a major hazard installation.

(2) Where the Department of Labour receives an application for registration or continued registration from an industrial establishment, the Department of Labour shall, within fourteen days of receipt of the application, register it and issue to the applicant a certificate of registration or continuance of registration in the prescribed form.

(3) Subject to subsection (1), an application for registration or continuation of registration or renewal of registration shall be made on the prescribed form and shall be accompanied by the prescribed fee and any other information requested by the Department of Labour.

(4) A person who intends to erect or cause to be erected a new industrial establishment or any new building appurtenant to any existing industrial establishment shall, before the erection of such industrial establishment or building is commenced, give notice of his or her intention in writing to the Physical Planning and Development Division and shall consult with the Department of Labour and the Fire Service prior to making any determination relating to the erection of the industrial building.

(5) The Chief Occupational Safety and Health Officer shall cause the particulars of any industrial establishment registered under this section to be entered in a register to be kept and maintained for such purpose.

Application for registration of change of particulars

174. Where any significant change takes place in any of the particulars registered under section 173(5), the employer or other person having control of the industrial establishment shall, within thirty days after the date upon which the change takes place, apply to the Department of Labour for the registration of the change, and the Chief Occupational Safety and Health Officer shall amend the register of the industrial establishment accordingly and issue to the applicant a verification of registration of the change in the prescribed form within fourteen days of the change being made.

Chief Occupational Safety and Health Officer to monitor registered industrial establishment

175.— (1) The Chief Occupational Safety and Health Officer may take such steps as considered necessary to ascertain whether —

- (a) any industrial establishment registered under this Part is being operated as an industrial establishment; or
- (b) any change has taken place in the particulars registered under section 173(5) in respect of any industrial establishment.

(2) Where the Chief Occupational Safety and Health Officer ascertains that any registered industrial establishment is not being operated as an industrial establishment, or that a change has taken place in the particulars as registered in respect of any industrial establishment, the Chief Occupational Safety and Health Officer shall remove the name of the industrial establishment from the register kept and maintained pursuant to section 173(5) or shall make such amendment to the register as the circumstances may require.

General powers of authorised officers

176.— (1) An authorised officer shall, for the purposes of this Part, have power—

- (a) where he or she has reasonable cause to believe that any place is an industrial establishment or that any person is employed in an industrial establishment, to enter, inspect and examine the industrial establishment or part of an industrial establishment as he or she deems fit;
- (b) where he or she has reasonable cause to believe that explosives or highly flammable materials or toxic substances are stored or used in any building of which an industrial establishment or workplace forms part, to enter, inspect and examine any part of that building as he or she deems fit;
- (c) to require the production of any registers, certificates, licences, records, reports, notices and documents kept pursuant to this Part and to inspect, examine and copy the same;
- (d) upon giving a receipt, to remove any register, certificate, licence, record, report, notice and document kept pursuant to this Part for the purpose of making copies of or extracts from them, and upon making copies or extracts thereof, to promptly return the same to the person who produced or furnished them within seven days of the removal;

- (e) to make such examination, inquiry or test as may be necessary to ascertain whether, in respect of any industrial establishment or its employees, or in respect of any prescribed occupation, the provisions of this Part and of the enactments for the time being in force relating to public health are being complied with;
- (f) to conduct tests, without unduly disturbing the workplace, of any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a work place and for such purposes and, upon notifying the employer, or person having control of an industrial establishment to take and carry away samples as may be necessary;
- (g) to require in writing an employer or person having control of the industrial establishment to cause any tests described in paragraph (f) to be conducted, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as specified by the authorised officer and to provide, at the expense of the employer, a report or assessment by that person;
- (h) to require any person who the authorised officer finds in an industrial establishment to give such information as it is in that person's power to give as to who is the employer or person having control of the industrial establishment;
- (i) to examine any person who the authorised officer finds in an industrial establishment or whom the authorised officer has reason to believe to be an employee in that industrial establishment or to have been employed within the preceding two months in that industrial establishment or in respect of any prescribed occupation, and to require every such person to sign a declaration of the truth of the matters about which he or she is so examined;
- (j) to require, upon at least twenty four hours notice to an employee that any equipment, machine, device, article or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;

- (k) to require, in writing, an employer or person having control of the industrial establishment to have equipment, machinery or device tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and the signature of the professional engineer stating that the equipment, machinery or device is not likely to endanger a worker;
- (l) to require in writing that any equipment or device not be used pending testing described in paragraph (k);
- (m) to require in writing that an employer or person having control of the industrial establishment to provide a report stating —
 - (i) the load limits of a floor, roof, part of a building, structure or temporary structure;
 - (ii) that a floor, roof, part of a building, structure or temporary structure is capable of supporting or withstanding the loads being applied to it or likely to be applied to it; or
 - (iii) that a floor, roof, part of a building, structure or temporary structure is capable of supporting or withstanding all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under any building code or law;and where the authorised officer has reason to believe that this report is inadequate may cause an independent report to be prepared;
- (n) to require, in writing, an employer or person having control of a mine or part thereof to provide, at the expense of the employer or person having control of the industrial establishment or part thereof, a report in writing bearing the seal and the signature of a professional engineer stating that the ground stability of the mine, the mining methods and the support or rock reinforcement used in the mine or part thereof, is such that an employee is not likely to be endangered;

- (o) to require in writing, within such time as is specified, that a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information or to provide, at the expense of such person a report or evaluation made by a person or organization having special, expert or professional knowledge or qualifications as are specified by the authorised officer, of any process, chemical, physical agent or biological agent or a combination thereof, used or intended for use in a workplace and the manner of use, including —
- (i) the ingredients thereof and their common or generic name or names;
 - (ii) the composition and property thereof;
 - (iii) the toxicological effect thereof;
 - (iv) the effect of exposure thereto, whether by contact, inhalation or ingestion;
 - (v) the protective measures used or to be used in respect thereof;
 - (vi) the emergency measures used or to be used to deal with exposure in respect thereof; and
 - (vii) the effect of the use, transport and disposal thereof;
- (p) to require the production of any material concerning the content, frequency and manner of instruction of any training programme and inspect, examine and copy the material and attend any such programme;
- (q) where the authorised officer is a registered medical practitioner, to carry out such medical examinations as may be necessary for the purposes of his or her duties under this Part;
- (r) whenever he or she has reasonable cause to believe that there may be any serious obstruction in the execution of the powers, duties and functions given to him or her under this Part, to take a police officer with him or her into the industrial establishment, building, ship or vessel, as the case may be;

- (s) in the presence of the employer or a representative of the employer, to seize and remove any article or document as evidence of a violation of this Part where he or she reasonably believes that a violation of this Part or the Regulations has been committed;
- (t) to halt the operations of an industrial establishment where he or she reasonably believes that there is a serious and imminent threat to life or of grave physical injury to the workers of that industrial establishment or to the public;
- (u) without prejudice to the powers and duties granted to a medical inspector, investigate and inquire into the causes and circumstances of any accident or other dangerous occurrence occurring at an industrial establishment and make a report thereof;
- (v) to exercise such other powers, duties and functions as may be necessary to give full effect of the provisions of this Part.

(2) An authorised officer may, in any inspection, examination, inquiry or test —

- (a) be accompanied and assisted by a police officer or any person having special, expert or professional knowledge of any relevant matter; or
- (b) take photographs and use any equipment or material required for such purpose.

(3) Where an article or document has been seized by an authorised officer in the exercise of his or her duties, that authorised officer —

- (a) shall undertake the seizure in the presence of an employer or a representative of the employer;
- (b) may remove the article or document seized or may detain it in the place in which it is seized; and

- (c) shall inform the person from whom the article or document is seized as to the reason for the seizure and shall give the person a receipt for it;

and the person from whom the article or document is seized, shall immediately bring the fact of the seizure to the attention of management.

(4) An authorised officer shall take all necessary steps to preserve the integrity of an article or a document seized pursuant to this section.

(5) The employer or person having control of an industrial establishment and his or her agents and servants shall furnish the means required by an authorised officer as necessary for the entry, inspection, examination, inquiry, the taking of samples or otherwise for the exercise of his or her powers, duties and functions in relation to that industrial establishment.

(6) The Department of Labour shall ensure that persons and organizations concerned with issues at the workplace are provided with information and advice pertaining to its administration, and to the protection of the occupational safety and health of employees generally.

Notice of discontinuance for work for young person

177.— (1) Where an authorised officer is of the opinion that the employment of any young person in an industrial establishment or in any particular process or kind of work in an industrial establishment is prejudicial to the health of the young person or to the health of other persons, he or she may serve notice in writing on the employer or person in control of the industrial establishment requiring that the employment of that young person in the industrial establishment or in the process or kind of work, as the case may be, be discontinued.

(2) The notice shall specify the time by which such employment has to be discontinued and such time shall not be more than seven days from the date of the notice.

Non-compliance with notice

178.— (1) An employer or person in control of an industrial establishment shall not, after the period named in the notice under section 177, employ the young person to whom the notice relates contrary to requirements set out in the notice, unless a medical inspector has, after the service of the notice, personally examined the young

person and certified that he or she is fit for employment in the industrial establishment or in the process or kind of work, as the case may be.

(2) An employer or person in control of an industrial establishment who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment to a term not exceeding one year or both.

Orders

179.— (1) Where an authorised officer finds that a provision of this Part or Regulations made thereunder is being contravened, that authorised officer may order, orally or in writing, the owner, employer, or person in charge of a workplace to comply with the provision and may require the order to be carried out promptly or within such period of time as the authorised officer specifies.

(2) Where an authorised officer makes an oral order under subsection (1), he or she shall confirm the order in writing before leaving the workplace.

(3) An order made under subsection (1) shall indicate generally the nature of the contravention and, where appropriate, the location of the contravention.

(4) An order made under subsection (1) may require an employer or person in control to submit to the Department of Labour a compliance plan prepared in the manner as directed by the Chief Occupational Safety and Health Officer and including such items as required by the order.

(5) The compliance plan shall specify what the employer or person in control has to do to comply with the order and when the employer intends to achieve compliance.

(6) Where an authorised officer makes an order under subsection (1) and finds that the contravention of this Part or the Regulations is a danger or hazard to the safety and health of employees, he or she may —

- (a) order that any place, equipment, machine, device, article or any process or chemical shall not be used until the order is complied with;

- (b) order that the work at the workplace or in the affected area as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by the Department of Labour after an inspection; or
- (c) order that the workplace or the affected area where the contravention exists be cleared of employees and isolated by barricades, fencing or any other means suitable to prevent access thereto by any employee until the danger or hazard to the safety or health of employees is removed.

(7) Notwithstanding subsection (6)(b), an employer or person in control who gives notice to the authorised officer of compliance with an order made under subsection (6), may resume work pending an inspection and decision by the Department of Labour respecting compliance with the order and the employer shall bear all liability arising out of the decision to resume.

(8) Where an authorised officer makes an order under subsection (1), or where the Department of Labour has been advised of an employer's inability to obtain an unexpired chemical safety data sheet, an authorised officer may order that the hazardous chemical shall not be used or that the article that causes, emits or produces the hazardous physical agent shall not to be used or operated until the order is withdrawn or cancelled.

(9) Where an authorised officer makes an order under this section, he or she may affix to the workplace, or to any equipment, machine, device or article a copy thereof or a notice in the prescribed form and no person, except an authorised officer, shall remove such copy or notice unless authorized to do so by an authorised officer.

(10) Where an authorised officer makes an order in writing or issues a report of his or her inspection to an employer or person in charge of the workplace, the employer or person in charge of the workplace shall promptly cause a copy or copies of the order to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the employees and shall furnish a copy of such order or report to the safety and health representative or the committee, and the recognized trade union, if any.

(11) An authorised officer shall hold or afford to an employer or a person in charge of a workplace, an opportunity for a hearing before making an order.

(12) Where an order is made pursuant to this section, the Chief Occupational Safety and Health Officer shall notify the National Insurance Corporation in writing and the relevant recognised trade union, if any.

Appeals from Orders

180.— (1) Any employer or person in control of a workplace, employee or trade union aggrieved by any order made by the Chief Occupational Safety and Health Officer may, within seven days of the making of the order, appeal to the Tribunal.

(2) On an appeal under this section, the Tribunal may rescind or affirm the order or substitute a new order.

(3) On an appeal under this section, the Tribunal may suspend the operation of the order appealed against, pending the disposition of the appeal.

Prohibition on entering workplace after order

181. Where an order is made under section 179(6)(c), an employer or person in control shall not require or permit any employees to enter the workplace or affected area except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the employees are protected from the danger or hazard.

Notice of compliance

182.— (1) Where an employer or person in control of a workplace complies with an order issued pursuant to section 179, he or she shall submit to the Department of Labour a notice of compliance.

(2) The notice shall be signed by the employer or person in control and shall be accompanied by —

- (a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing employees or by a safety and health representative, as the case may be; or
- (b) a statement that the member or representative has declined to sign the statement referred to in paragraph (a).

(3) The employer shall post the notice of compliance for a period of fourteen days following its submission to the Department of Labour

in a place or places in the workplace where it is most likely to come to the attention of employees.

Injunction

183. The Department of Labour may apply to the High Court for a restraining order where a contravention of section 179(6) has occurred.

Establishment of Advisory Council

184.— (1) The Minister shall establish an advisory council to be known as the Advisory Council on Occupational Safety and Health consisting of seven members appointed by the Minister from among persons nominated for such appointment by bodies or persons representative of the concerns referred to in subsection (2), one of whom shall be the Chief Occupational Safety and Health Officer.

(2) The members of the Advisory Council shall be appointed for a term as the Minister determines and shall be as follows —

- (a) the Chief Occupational Safety and Health Officer;
- (b) two persons nominated by bodies representing employers' organisations;
- (c) two persons nominated by trade unions;
- (d) one person concerned with and knowledgeable in matters relevant to occupational safety, welfare and health; and
- (e) one person nominated by the National Insurance Corporation.

(3) The Minister shall designate a chairperson and a vice chairperson of the Advisory Council from among the members appointed.

(4) The Minister may fill any vacancy that occurs in the membership of the Advisory Council in accordance with subsection (2).

(5) Any remuneration and expenses of the members of the Advisory Council shall be determined by the Minister and shall be paid out of monies approved by Parliament for that purpose.

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including

the calling of meetings, the establishment of a quorum and the conduct of meetings.

(7) The functions of the Advisory Council are —

- (a) to hear and receive proposals from interested persons and the public at large on a national policy on occupational safety and health and ways to improve occupational safety and health in Saint Lucia;
- (b) to advise the Minister on general matters relating to occupational safety and health, or arising out of the operation of this Part which may be brought to its attention or be referred to it, and to formulate a national policy on occupational safety and health;
- (c) to make recommendations to the Minister relating to programmes of the Department of Labour in occupational safety and health, including enforcement, and the implementation of a national policy on occupational safety and health;
- (d) to promote public awareness of occupational safety and health; and
- (e) any other function assigned to the Advisory Council by the Minister.

(8) The Advisory Council shall file with the Minister, not later than the first day of June in each year, an annual report on the affairs of the Advisory Council for the previous year.

(9) The Minister shall lay the report of the Advisory Council before Parliament.

Establishment of technical committees

185.— (1) The Advisory Council may establish technical committees to assist it in the performance of its functions and may appoint persons from outside of the membership of the Advisory Council as it may deem fit to be members of any such committees.

(2) A person appointed under subsection (1) who is not a member of the Advisory Council or a public officer may be paid such remuneration and expenses as may be determined by the Minister.

Appointment of medical inspectors

186.— (1) The Minister may, by notice published in the *Gazette*, designate a sufficient number of registered medical practitioners to be medical inspectors for any of the purposes of this Part.

(2) A medical practitioner who is an employer or person in control of an industrial establishment, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not act as medical inspector for that industrial establishment.

Duties and powers of medical inspectors

187.— (1) A medical inspector appointed pursuant to section 186 shall have power at all reasonable times to inspect the general register referred to in section 209.

(2) It shall be the duty of a medical inspector to investigate and report on —

- (a) any case of death or injury caused by exposure to fumes or other noxious substances in an industrial establishment, or due to any other special cause specified in instructions of the Minister as requiring investigation;
- (b) any case of death or injury which the Department of Labour, in pursuance of any general or special instructions of the Minister, may refer to the medical inspector for that purpose; and
- (c) any case of disease of which he or she receives notice under this Part.

(3) A medical inspector, for the purpose of any investigation under this section, shall have all the powers of an authorised officer under this Part.

(4) The Minister may make Regulations to regulate —

- (a) the duties of medical inspectors; and
- (b) any special inquiry, examination or investigation held or performed by medical inspectors pursuant to instructions or directions of the Minister.

Periodic report of medical inspectors

188. A medical inspector shall in each year make at the prescribed time a report in the prescribed form to the Department of Labour as to the examinations made or duties performed by him or her in pursuance of this Division.

Appointment of technical examiners

189.— (1) The Minister responsible for Planning may, by notice published in the *Gazette*, designate persons who, by virtue of training and experience, are qualified to examine equipment, drawings, plans or specifications of any workplace to be technical examiners for the purposes of carrying out such examination or other duty under this Part.

(2) The Minister responsible for Planning may prescribe the fees to be paid to technical examiners for any examination or duty carried out by them under this Part.

Selection of safety and health representatives

190.— (1) At a workplace to which the provisions of section 192 do not apply and where the number of employees exceeds ten, the employer or person having control shall cause the employees to select at least one safety and health representative who is competent to perform such functions from among the employees at the workplace.

(2) If a safety and health representative is not required under subsection (1) and a committee is not required pursuant to section 192, the Labour Commissioner may, by order, require an employer to cause the employees to select one or more safety and health representative from among the employees at the workplace and may provide in the order for the qualifications of such representatives.

(3) Every order made under subsection (2) may contain directions as the Labour Commissioner considers advisable concerning the carrying out of the functions of a safety and health representative.

(4) In exercising the power conferred under subsection (2), the Labour Commissioner shall consider the matters set out in subsection (5).

(5) The selection of a safety and health representative shall be made by those employees who will be represented by the safety and health representative in the workplace, or the part or parts thereof, as the case may be.

(6) Where there is a trade union or trade unions representing the employees referred to in subsection (5), the selection of a safety and health representative may be delegated by a majority of such employees to the trade union or trade unions.

Functions and powers of safety and health representatives

191.— (1) Unless otherwise required under the Regulations or by an order of an authorised officer, a safety and health representative shall inspect the physical conditions of the workplace at least once a month.

(2) If it is not practical to inspect the workplace at least once a month, the safety and health representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

(3) The inspection required by subsection (2) shall be undertaken in accordance with a schedule agreed upon by the employer and the safety and health representative.

(4) The employer and workers shall provide a safety and health representative with such information and assistance as such representative may require for the purpose of carrying out an inspection of the workplace.

(5) A safety and health representative who identifies situations that may be a source of danger or hazard to employees shall make recommendations or report his or her findings thereon to the Department of Labour, the employer, the employees and the trade union or trade unions representing the employees.

(6) A safety and health representative has the power—

- (a) to obtain information from an employer concerning the conducting of tests on any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of ensuring or safeguarding occupational safety and health;
- (b) to be consulted about and be present at the beginning of testing referred to in paragraph (a), if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and

- (c) to obtain information from an employer respecting
 - (i) the identification of potential or existing hazards of materials, processes or equipment; and
 - (ii) safety and health, experience and work practices and standards in similar or other industries of which the employer has knowledge.

(7) An employer who receives recommendations from a safety and health representative pursuant to subsection (5), shall respond in writing within twenty one days and a response of an employer under this subsection shall contain a timetable for implementing the recommendations the employer agrees with and where he or she does not agree with any of the recommendations shall give reasons why he or she disagrees with the recommendations.

(8) Where a person is killed or critically injured at a workplace, the safety and health representative shall notify the Department of Labour, the employer and the Police immediately.

(9) A safety and health representative or a representative of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the employer and the employees has, in addition to his or her functions and the powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon safety and health representatives by this section.

(10) A safety and health representative shall maintain and keep a record of the exercise of his or her functions and powers conferred upon him or her by this section and shall make the same available for examination by an authorised officer.

Establishment of joint workplace safety and health committees

192.— (1) A joint workplace safety and health committee representing both employers and employees is required to be established —

- (a) at a workplace at which twenty or more employees are regularly employed;
- (b) at a workplace with respect to which an order to an employer is in effect under section 236; or

(c) at a workplace where fewer than twenty employees are regularly employed, with respect to a prescribed critical substance.

(2) This section does not apply to an employer at a construction site at which work is expected to last less than three months.

(3) The Minister may make Regulations exempting an employer or workplace or class of employers or workplaces from the provisions of this section.

(4) The employers of a workplace referred to in the Tenth Schedule are exempt from the requirements of this section.

(5) Notwithstanding subsections (1), (2) and (3), the Labour Commissioner may, by order, require an employer to establish and maintain one or more joint workplace safety and health committees for a workplace or a part thereof and may, in such order, provide for the composition, practice and procedure of any committee so established.

(6) The employer shall cause a joint workplace safety and health committee to be established and maintained at the workplace unless the Labour Commissioner is satisfied that a committee of like nature or an arrangement, programme or system in which the workers participate was, on the date of commencement of this Code, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, programme or system provides benefits for the safety and health of the employees equal to or greater than the benefits to be derived under a committee established under this section.

(7) In exercising the power conferred under subsection (5), the Labour Commissioner shall consider —

- (a) the nature of the work being done;
- (b) the request of an employer, a group of the employees or the trade union or trade unions representing the employees in a workplace;
- (c) the frequency and severity of occupational disease, occupational illness, or injury in the workplace or in the industry of which the employer is a part;

- (d) the existence of safety and health programmes and procedures in the workplace and the effectiveness thereof; and
 - (e) such other matters as the Labour Commissioner considers advisable.
- (8) A committee shall, pursuant to subsection (6), consist of —
- (a) at least four persons, for a workplace where fewer than fifty employees are regularly employed; or
 - (b) at least six persons or such greater number of persons as may be prescribed, for a workplace where fifty or more employees are regularly employed.

(9) Where an employer establishes a committee pursuant to this section the employer shall in writing notify the Labour Commissioner of the same within fourteen days after the establishment of the committee.

Composition and selection of committee

193. — (1) At least half the members of a committee shall be employees employed at the workplace who do not exercise managerial functions.

(2) The members of a committee who represent employees shall be selected by those employees who do not exercise managerial functions and who will be represented by those members of the committee in the workplace or the part or parts thereof, as the case may be.

(3) Where there is a trade union or trade unions representing the employees referred to in subsection (2), the selection of the members of a committee referred to in subsection (2) may be delegated by a majority of such employees to the trade union or trade unions.

(4) The employer shall select the remaining members of a committee from amongst persons who exercise managerial functions for the employer.

(5) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee.

(6) The members of a committee shall, on a rotating basis, select a chairperson from among its members.

Functions and powers of committee

194. — (1) A committee shall —

- (a) identify situations that may be a source of danger or hazard to employees;
- (b) make recommendations to the employer and the employees for the improvement of the health and welfare of employees;
- (c) recommend to the employer and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees.

(2) In carrying out its functions pursuant to subsection (1) a committee may —

- (a) obtain information from the employer respecting —
 - (i) the identification of potential or existing hazards of materials, processes or equipment;
 - (ii) safety and health experiences and work practices and standards in similar or other industries of which the employer has knowledge; and
 - (iii) maintenance of safety and health and preventative safety and health measures;
- (b) obtain information on chemical and safety data sheets;
- (c) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health;
- (d) be consulted about and have a designated member representing employees present at the beginning of testing referred to in clause (c) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used, or to ensure that the test results are valid; and

- (e) obtain information on any routine maintenance of equipment or other safety and health measures of a preventive nature.

Entitlement to be present

195. The members of the committee who represent workers shall designate one of them who is entitled to be present at the beginning of testing described in subsection (194)(2)(c).

Response by employers

196. — (1) An employer who receives written recommendations from a committee shall respond in writing within twenty one days.

(2) A response of an employer under subsection (1) shall contain a time table for implementing the recommendations the employer agrees with and give reasons why the employer disagrees with any recommendations that the employer does not accept.

Minutes of proceedings

197. A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an authorised officer or any other competent authority.

Inspection of workplace

198.— (1) The members of a committee who represent employees shall designate a member to inspect the physical condition of the workplace.

(2) Unless otherwise required by the Regulations or by an order of the Department of Labour, a member designated under subsection (1) shall inspect the physical condition of the entire workplace at least once every three months.

(3) If it is not practical to inspect the entire workplace in any one day in a month, in accordance with subsection (2), the member designated under subsection (1), shall continue on any remaining day of the said month to inspect at least a part of the workplace until the entire workplace is inspected in that month.

(4) The inspection required by subsection (3) shall be undertaken in accordance with a schedule established by the committee.

(5) The employer and the employees shall provide a member designated under subsection (1) with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace.

(6) The member designated under subsection (1) shall inform the committee of situations that may be a source of danger or hazard to employees and the committee shall consider such information within a reasonable period of time.

(7) The Labour Commissioner shall after investigation by a coroner, if required, and the Police cause a review to be done where an employee is killed or injured at a workplace from any cause.

Names of members of a committee to be posted

199. An employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the employees.

Meetings of committees

200.— (1) A committee shall meet at least once every three months at the workplace and may be required to meet by order of the Labour Commissioner.

(2) A member of a committee is entitled to —

- (a) one hour or such longer period of time off from work duties as the committee determines is necessary to prepare for each committee meeting; and
- (b) such time as is necessary to carry out the member's duties under this Part.

(3) A member of a committee shall be deemed to be at work during the times mentioned in subsection (3) and the member's employer shall pay the member for those times at the members' regular rate as may be appropriate.

Committees of a like nature

201.— (1) Any other committee of a like nature to a committee established under this section in existence in a workplace under the

provisions of a collective agreement or other agreement or arrangement between an employer and the employees has, in addition to its functions and powers under the provisions of the collective agreement or arrangement, the functions and powers conferred on a committee under this Division.

(2) Where a dispute arises as to the application of subsection (1), or the compliance or purported compliance therewith by an employer, the dispute shall be decided by the Labour Commissioner after consulting the employer and the employers' trade union or trade unions representing the employers.

Consultation with committees on hygiene

202.— (1) The employer shall provide information to a safety and health representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.

(2) Subject to subsection (3), a safety and health representative or a designated member of a committee representing employees at a workplace, is entitled to be present at the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or the member of the committee believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

(3) The members of the committee representing employees shall designate one of their members for the purpose of subsection (2).

Request for National Insurance data

203.— (1) A committee established or a safety and health representative selected under this Division may request the Department of Labour to obtain from the National Insurance Board, an annual summary of data relating to such employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non fatal cases that required medical attention without lost workdays, the incidence of occupational diseases, the number of work related injuries and such other data as the committee or safety and health representative may request.

(2) Upon receipt of such annual summary of data, the Department of Labour shall send copies thereof to the committee, safety and health representative and the employers and the employer shall cause a copy

thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the employees.

Representation during inspections

204.— (1) Where an authorised officer makes an inspection of a workplace, the employer shall afford a committee member representing employees or a safety and health representative, if any, or an employee selected by a trade union or trade unions, if any, to represent it and where there is no trade union, an employee selected by the employees to represent them, the opportunity to accompany the authorised officer during the physical inspection of a workplace, or any part thereof.

(2) Where there is no member of a committee representing employees, or safety and health representative, or employee selected in accordance with this Division, the authorised officer shall consult during the physical inspection with a reasonable number of the employees concerning matters of safety and health at their workplace.

(3) The time spent by a member of a committee representing employees, a safety and health representative or an employee selected in accordance with this Division in accompanying an authorised officer during an inspection, shall be deemed to be work time of which he or she shall be paid by the employer at his or her regular rate.

Obstruction of authorised officers and safety and health representatives

205.— (1) A person shall not hinder, obstruct or in any way interfere with or attempt to hinder obstruct or interfere with any authorised officer in the exercise of a power or the performance of a duty under this Division or the Regulations made pursuant to this Part.

(2) An employer or person in control of a workplace, shall furnish all necessary means in his or her power to facilitate any entry, inspection, examination, testing or inquiry by an authorised officer in the exercise of his or her powers or duties under this Part or the Regulations made pursuant to this Part.

(3) A person shall not knowingly furnish an authorised officer with false information or neglect or refuse to furnish information required by an authorised officer in the exercise of his or her duties under this Division or the Regulations made pursuant to this Part.

(4) A person shall not interfere with any monitoring equipment or device in a workplace so as to obstruct an authorised officer in the performance of his or her duty or exercise of his or her power pursuant to this Division.

(5) A person shall not knowingly —

- (a) hinder or interfere with a committee, a committee member or a safety and health representative in the exercise of a power or performance of a duty under this Part;
- (b) furnish a committee, a committee member or a safety and health representative with false information in the exercise of a power or performance of a duty pursuant to this Part; or
- (c) hinder or interfere with an employee selected by the workers to represent them in the exercise of a power or performance of a duty pursuant to this Part.

(6) A person who contravenes a provision of this section commits an offence and on summary conviction is liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Confidential information

206.— (1) Except for the purposes of this Part and the Regulations made pursuant to this Part or as required under any other law in force in Saint Lucia —

- (a) an authorised officer, a person authorised in writing by the Labour Commissioner accompanying him or her or a person who, at the request of an authorised officer makes an examination, test or inquiry, shall not publish, disclose or communicate to any other person any information, material statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received in the exercise of his or her powers and duties under this Part or Regulations made pursuant to this Part;
- (b) a person shall not publish, disclose or communicate to any other person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received in the exercise of his or her powers or duties under the provisions of this Part or the Regulations made pursuant to this Part;
- (c) a person to whom information is communicated under this Part and Regulations made pursuant to this Part, shall not divulge the name of the informant to any other person;

(d) a person shall not disclose any information obtained in any medical examination, of an employee pursuant to this Part, made or taken under this Part except in a form calculated to prevent the information from being identified with a particular person or case.

(2) An employer shall not seek to gain access, except by an order of the Tribunal or in order to comply with this Code, or in order to employ or continue to employ an employee in an establishment, to a health record concerning an employee without the employee's written consent.

(3) An authorised officer or a person authorised in writing by the Labour Commissioner who at the request of an inspector accompanies that member, or a person who makes an examination, test, inquiry or takes samples at the request of the Department of Labour, is not a compellable witness in a civil suit or any proceeding, except an inquest in accordance with this Part, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Part or the Regulations made pursuant to this Part.

(4) Subsection (1) shall not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.

Copies and reports

207. The Department of Labour may, upon receipt of a request in writing from the owner of an industrial establishment who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by the owner copies of reports or orders of an authorised officer with respect to that industrial establishment.

Immunity

208. An action or other proceeding for damages or prohibition shall not be instituted with respect to any act done in good faith in the execution of a person's duties under this Part or in the exercise of a

person's powers under this Part or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is —

- (a) an authorised officer, a medical inspector, a technical examiner;
- (b) an advisor for the Department of Labour;
- (c) a safety and health representative or a committee member;
- (d) an employee selected by a trade union or trade unions or by other employees to represent them.

General register

209.— (1) There shall be kept in every industrial establishment, or such place outside the industrial establishment as may be approved by the Department of Labour, a register, in the prescribed form, called the general register and there shall be entered in or attached to that general register—

- (a) the prescribed particulars relating to the persons employed in the industrial establishment who have not attained the age of eighteen;
- (b) the prescribed particulars as to the washing, white-washing or colour washing, painting or varnishing, of the industrial establishment;
- (c) the prescribed particulars relating to every accident and case of industrial disease occurring in the industrial establishment of which notice is required to be sent to an authorised officer;
- (d) all reports and particulars required by any other provision of this Part to be entered in or attached to the general register; and
- (e) such other matters as may be prescribed.

(2) The employer or person in control of an industrial establishment shall send to an inspector such extracts from the general register as the inspector may from time to time require for the purpose of the execution of his or her duties under this Part.

Guarding of machinery

210.— (1) Subject to subsection (3), all parts of machinery liable to cause injury shall be effectively guarded with guards of sound

construction, properly maintained and kept in position whenever the parts required to be guarded are in motion or in use at any speed and for any purpose.

(2) Subject to subsection (3), whenever practicable, guards on power driven machines shall be interlocked with machine controls so as to prevent operation of the machines unless the guards are properly in position.

(3) The provisions of subsections (1) and (2) shall not apply where a part of machinery covered therein is necessarily exposed for examination or for any testing, lubrication or adjustment shown by the examination to be necessary and the examination, testing, lubrication or adjustment can only be carried out while the part is in motion.

Cleaning and repair of machinery

211.— (1) Where any cleaning or repair work has to be undertaken on a power driven machine, the machine shall be stopped before the work is begun and adequate measures taken to ensure that the machine cannot be restarted until the work has been completed except that the machine may be restarted under the immediate control of the person responsible for the repair work where such is necessary for testing, lubrication or adjustment purposes.

(2) If any cleaning or repair work has to be carried out on a machine, any part of which may move without the power being applied, that part shall be effectively blocked before the work is begun.

Marking of safe working load

212. The safe working load or loads shall be clearly marked upon every lifting appliance and shall not be exceeded.

Notice of assessment of risk

213. — (1) Where, during an inspection, it appears to the Department of Labour that any building or part of a building, or any part of the ways, machinery or plant, in an industrial establishment is in such a condition as to be likely to cause risk of bodily injury to, or to endanger the safety of persons employed in connection with the industrial establishment or any class of such persons, the Department of Labour may serve on the employer or person in control of the establishment a notice in writing—

- (a) requiring the occupier, before a date to be specified in the notice
 - (i) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building or part of the building, or such part of the ways, machinery or plant can be used without risk of bodily injury or danger to safety;
 - (ii) to carry out such tests as may be necessary to determine the strength or quality of any specified parts of a building, ways, machinery or plant and to inform the Department of Labour of the results of such tests; or
- (b) specifying the measures which should be adopted to remove the risk of bodily injury, or the danger to safety as aforesaid, and requiring such measures to be carried out before a date to be specified in the notice.

(2) Where, during an inspection, it appears to the Department of Labour that the use of any building or part of a building, or any part of the ways, machinery or plant, in an industrial establishment involves imminent risk of bodily injury, or imminent danger to the safety of persons employed in connection with the industrial establishment or any class of such persons, or to the public, the Department of Labour may serve on the employer or person in control of the industrial establishment, a notice in writing prohibiting such use until the building or part of the building, or part of the ways, machinery or plant, has been repaired or altered in such a manner as to remove such imminent risk or danger.

Prohibition of children in an industrial establishment

214. Where it appears to the Department of Labour that it may be dangerous or injurious to have children present in any industrial establishment or part of the industrial establishment during an inspection, the Department of Labour may serve on the employer or person in control of the industrial establishment a notice in writing requiring him or her to prohibit and to prevent the admission of such children to the industrial establishment, or part of the industrial establishment as, the case may be.

Construction and sale of new machinery

215.— (1) In the construction of any machine in an industrial establishment being a machine intended to be driven by mechanical power —

- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded by situation and design as to prevent danger; and
- (b) all spur and other toothed or friction gearing, which does not require adjustment while in motion, shall be completely encased unless it is so situated, or is of such a design, as to be as safe as it would be if completely encased.

(2) Any person who sells, or lets on hire, or as agent of the seller or hirer causes or procures to be sold or let on hire for use in an industrial establishment, any machine intended to be driven by mechanical power which does not comply with the requirements of this section, commits an offence.

(3) The Minister may make Regulations extending subsection (2) to machinery or plant which does not comply with such requirements of this Division as may be specified in the Regulations and any Regulations made under this subsection may relate to machinery or plant in a specified process.

Instructions on use of machines

216. In every industrial establishment, an employee shall not work at a machine, unless he or she has been fully instructed as to the dangers arising in connection with its operation, and the precautions to be observed, and —

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by an employee who has special knowledge and experience in the operation of the machine.

Protective clothing and devices

217. — (1) All persons entering an area in an industrial establishment where they are likely to be exposed to the risk of head or bodily injury, injury from air contamination or any other bodily injury, shall be provided with suitable standard protective clothing and devices, and

adequate instructions in the use of such protective clothing and devices, and a person shall not be permitted to be in any such area unless he or she is wearing such protective clothing or device.

(2) In every area where protective clothing or devices are required to be worn, a notice to that effect shall be conspicuously displayed.

Contravention of safety

218.— (1) If it appears to the Department of Labour that there has been, in the case of any industrial establishment, a contravention of any of the provisions of section 210 or 211, the Department of Labour shall, by notice served on the occupier of the industrial establishment, require him or her to take, within such time as may be specified in the notice, such action as may be specified in the notice for the purpose of securing compliance with the said provisions.

(2) The Department of Labour may extend the time for compliance with the notice pursuant to subsection (1) if satisfied that the industrial establishment has made or is making reasonable efforts to comply with the notice.

(3) A person who, within the time specified in subsection (1) or the extension of time specified in subsection (2), fails to comply with a notice issued under subsection (1) commits an offence and is liable for a first offence on summary conviction to a fine of ten thousand dollars or on summary conviction for a second or subsequent offence to a fine not exceeding five hundred dollars for each day on which the offence continues after conviction for the prior offence.

Drinking water

219. In an industrial establishment there shall be provided and maintained at suitable points conveniently accessible to all employees, an adequate supply of wholesome potable water.

Meals and lunchrooms

220. — (1) Subject to subsection (2), where employees take any meals in the industrial establishment, there shall be provided and maintained suitable and sufficient facilities for the taking of those meals.

(2) Where twenty five or more persons are employed in an industrial establishment, the employer or person in control of the

industrial establishment shall provide and maintain for persons employed in the industrial establishment, adequate and suitable lunchrooms, and such lunchrooms shall be convenient for the eating of meals and shall be provided with adequate lighting, ventilation and drinking water.

Changing facilities

221. In an industrial establishment, there shall be provided and maintained for the use of the industrial establishment, suitable and sufficient accommodation for change of clothing not worn during working hours.

Dangerous fumes, dust or other impurities

222.— (1) Where, in connection with the carrying on of a process, there is given off dust, fumes or other impurities of such a character and to such an extent as to be likely to be injurious or offensive to employees in an industrial establishment, all practicable measures shall be taken by an employer or person in control to protect the employees against inhalation of the dust or other impurity and to prevent its accumulation in any workroom, and where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained as near as possible to the point of origin of the dust or fumes or other impurity, so as to prevent contamination of the air in the workroom.

(2) Where steam is discharged into a room where persons are normally required to work, effective steps shall be taken to dissipate the steam from that room.

(3) In any industrial establishment, a person shall not enter or be permitted to enter a chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risks of persons being overcome thereby, unless there is a manhole of adequate size or other effective means of egress.

(4) In every industrial establishment, a person shall not enter or be permitted to enter any confined space such as is referred to in subsection (3) until all practical measures have been taken to remove the fumes which may be present and to prevent the ingress of fumes and unless —

- (a) the sludge or other deposit likely to give off dangerous fumes has been removed and the space contains no other material likely to give off dangerous fumes;
- (b) the space has been adequately ventilated and tested for dangerous fumes and has a supply of air adequate for respiration; and
- (c) a certificate in writing has been given by a competent person, for a period of validity which shall not exceed eight hours, based on a test carried out by that person, that the space is free from dangerous concentrations of dangerous fumes and fit for persons to enter; and

the person is wearing suitable breathing apparatus and a belt securely attached to a lifeline, the end of which is safely secured by another person standing outside the confined space.

(5) In every industrial establishment in which work is to be done in a confined space and in which dangerous fumes are likely to be present, there shall be provided and kept readily available for instant use —

- (a) a sufficient supply of breathing apparatus of a type approved by the Department of Labour; and
- (b) belts, ropes or other appropriate life lines and suitable reviving apparatus and oxygen;

and the apparatus, ropes or other appropriate life lines shall be maintained and shall be thoroughly examined by a competent person and a report on every such examination, signed by the person making the examination and containing the required particulars, shall be kept available for inspection.

(6) A sufficient number of employees shall be trained and practiced in the use of the apparatus mentioned in subsection (5) and in a method of restoring respiration and at least one such person shall be available at any time when work is being carried on in any confined space referred to in subsection (3).

(7) A person shall not enter or remain in any confined space in which the proportion of oxygen in the air is or is likely to be substantially reduced unless either —

- (a) he or she is wearing suitable breathing apparatus; or

- (b) the space has been and remains adequately ventilated and a competent person has tested and certified it as safe for entry without breathing apparatus.

(8) A person shall not be permitted to enter a furnace, boiler, chamber, kiln, tank, vat, pipe, flue or other confined space for the purpose of working or making an examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

(9) A portable electric light of voltage exceeding twenty-four volts shall not be permitted for use inside any confined space referred to in subsection (3) and where the fumes present are likely to be flammable, no lamp or light, other than one with a flame-proof enclosure or one that is intrinsically safe, shall be permitted to be used in such confined space, except that where the conditions are arduous, a centre-taped transformer shall be used so that the potential differences between the live conductors and earth will not exceed twelve volts.

(10) It shall be the duty of an employer or a person in control of an industrial establishment to ensure that as far as is reasonably possible the requirements of this section are complied with to the satisfaction of the Department of Labour.

(11) For the purposes of this section “competent person” means a person whether employed by an employer or person in control or not, who has adequate knowledge of and experience in dealing with dangerous fumes, and who is certified by the Department of Labour, to perform examinations and issue certificates under this section.

Cleanliness

223.— (1) Every industrial establishment shall be kept clean and free from effluvia arising from any drain, sanitary convenience or other source, and without prejudice to the generality of the forgoing provision —

- (a) accumulations of dirt and refuse shall be removed daily, where practicable, by suitable methods from the floors, benches, furniture, furnishings and fittings of workrooms, and from the staircases and passages;

- (b) the floors of every workroom shall be cleaned at least once every week by washing or, if it is effective and suitable, by sweeping or other method;
- (c) all dirt and refuse and all waste matter, whether resulting from a process carried on in the industrial establishment or from other cause, shall be removed daily or at reasonable intervals and be suitably disposed of;
- (d) effective means shall be provided, maintained and used to prevent the breeding of insects, rats, mice or other vermin;
- (e) effective means shall be provided and maintained for the draining of wet floors, where necessary; and
- (f) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides and tops of passages and staircases shall be suitably washed or cleaned.

(2) Where, during an inspection, it appears to the Department of Labour that in any industrial establishment any of the provisions of this section are not required for the purpose of keeping the industrial establishment clean or are by reason of special circumstances inappropriate or inadequate for that purpose, the Department of Labour may direct that the employer or person in control of that industrial establishment be exempt from compliance with those provisions or that those provisions shall apply as varied by that directive.

Disposal of wastes

224. Every employer or person in control shall, before the expiration of one year from the date on which this Division comes into force or of such longer period as the Minister may, upon application in writing by an employer approve, make arrangements for the safe and efficient disposal of wastes and effluents resulting from any processes carried on in the industrial establishment and such arrangements shall be designed so as to ensure that the disposal does not result in any danger to persons, property or to the environment.

Sufficient lighting

225.— (1) Every part of an industrial establishment where employees work or pass shall be provided with sufficient and suitable lighting natural or artificial or both, in accordance with approved standards.

(2) In every industrial establishment, effective provision shall, so far as is practicable and in accordance with prescribed standards, be made for the prevention of —

- (a) glare, either directly from a source of light or reflection from a smooth or polished surface; and
- (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any person.

Noise

226. Every employer shall take adequate steps to prevent hearing impairment caused by noise and diseases caused by vibration, from occurring to persons in, or in the vicinity of the industrial establishment and shall comply with such directives as —

- (a) the Department of Labour may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and
- (b) the Chief Medical Officer or other competent person may issue, in order to protect persons employed or in the vicinity of the industrial establishment from hearing impairment caused by noise or from diseases caused by vibration.

Overcrowding

227. — (1) Subject to subsection (2), an industrial establishment shall not be so overcrowded as to cause risk of injury or to the health of the persons employed therein.

(2) The minimum floor space required for the purpose of compliance with subsection (1) shall be as prescribed.

Ventilation

228. In every part of an industrial establishment in which employees are employed, adequate and suitable ventilation by the circulation of fresh air shall be provided and maintained.

Sanitary and washing facilities

229.—(1) Subject to subsection (2), the occupier of every industrial establishment shall provide and maintain for men and women employees separately, adequate, clean and easily accessible sanitation and washing facilities and such other provisions as are prescribed.

(2) Where there are twenty or more persons employed in an industrial establishment, the employer or other person in control of the industrial establishment shall provide and maintain separate sanitation and washing facilities for men and women in accordance with subsection (1).

First Aid

230.— (1) Every employer shall keep, maintain and make available to employees in the workplace, in a location that is readily accessible, a medicine chest or first aid kit with suitable contents and provide other first aid devices as appropriate.

(2) Each first-aid kit or cupboard shall be under the control of responsible persons who are trained in first aid treatment and tested every three years and one of whom shall always be readily available during the working hours of the industrial establishment.

Medical examinations

231.— (1) A person who seeks employment in an industrial establishment, shall be required by the employer to undergo medical examination as a pre-condition for employment, in places of work as the Minister may, by Order published in the *Gazette*, declare.

(2) The cost of a medical examination shall be borne by the employer if a medical examination is required for the purpose of the employer after the expiration of the probationary period.

(3) Where a medical inspector is of the opinion that the health of a person employed in an industrial establishment has been injured by reason of the nature of work he or she is called upon to do, the medical inspector —

- (a) shall inform the Chief Medical Officer; and
- (b) may, with the written consent of the employee, serve on the employer a written notice requiring the employer to facilitate the medical examination of the person.

(4) The notice under subsection (3), shall name the place where the medical examination is to be conducted and the date and time when

it will begin and, if the examination is to be conducted at the industrial establishment, the occupier shall provide suitable accommodation for the conduct of the examination.

(5) In this section, “medical examination” includes pathological, chemical, physiological, radiological and audiometric tests and relevant investigations.

Minister to make Regulations for medical supervision

232. Where the Minister is of the opinion —

- (a) that in any industrial establishment-
 - (i) a case of illness has occurred which he or she has reason to believe may be due to the nature of a process or other condition of work; or
 - (ii) by reason of changes in any process or in the substances used, or of the introduction of a new process, there may be risk of injury to the health of employees in that process; or
- (b) that there may be risk of injury to the health of employees in an industrial establishment —
 - (i) from any substance or material brought to the industrial establishment to be used or handled therein; or
 - (ii) from any change of conditions of work or other conditions in the industrial establishment;

he or she may make Regulations specifying the arrangements to be made for the medical supervision of those employees or any class of those employees.

Certification for fire safety

233. — (1) An employer or a person in control of an industrial establishment shall ensure that his or her industrial establishment is certified every twenty-four months by the Chief Fire Officer as having means of escape, in the case of fire, by the persons employed therein as may reasonably be required in the circumstances of each case.

(2) Subject to subsection (3), where a certificate is not in force in respect of premises used as an industrial establishment, the employer or person in control commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or on second or

subsequent conviction for this offence to a fine not exceeding five hundred dollars for each day on which the offence continues after conviction for the prior offence.

(3) Subject to subsection (4), an employer or a person in control of an industrial establishment that was occupied before the date of commencement of this Code, shall be deemed to have complied with this section if, within three months of the coming into operation of this Division, he or she applies in writing to the Chief Fire Officer for a certificate under this Division; and the employer or person in control may continue to operate the place of employment until the Chief Fire Officer has determined the application.

(4) The Chief Fire Officer may, after consultation with the Department of Labour, extend the time period referred to in subsection (3) having regard to all the circumstances.

(5) It shall be the duty of the Chief Fire Officer to examine the industrial establishment and on being satisfied that subsection (3) is complied with, issue a certificate to that effect, and where that subsection is not complied with, the Chief Fire Officer may, by notice in writing, require the employer or person in control to make such alteration, within such period as may be specified in the notice.

(6) The Chief Fire Officer may extend the period specified in the notice if satisfied that the employer is taking or has taken reasonable steps to make the alternations.

(7) An employer who fails to comply with a notice pursuant to subsection (5), within the period specified in the notice or the extended period pursuant to subsection (6), commits an offence and is liable to a fine not exceeding five thousand dollars.

(8) The certificate issued pursuant to subsection (5), which shall be kept on the premises by an employer or person in control and made available for inspection by the Chief Fire Officer or the Department of Labour, shall specify precisely and in details the means of escape provided and shall contain particulars as to —

- (a) the maximum number of persons employed or proposed to be employed in the industrial establishment as a whole and, where appropriate, the maximum number in any specified part thereof;

- (b) explosive or highly flammable materials stored or used;
- (c) the nature and frequency of the periodic fire fighting drills;
- (d) the purposes for which the premises are used;
- (e) the means for giving warning in the event of a fire;
- (f) the means available to persons on the premises for fighting fire;
- (g) the measures for securing the means of escape; and
- (h) any other matters taken into account in granting the certificate;

and the Chief Fire Officer shall send a copy of the certificate to both the Physical Planning and Development Division who shall consult with the Department of Labour.

(9) The means of escape specified in the certificate shall be properly maintained and kept free from obstruction at all times.

Alternations after certification for fire safety

234.— (1) Where, after the grant of a certificate, it is proposed to make any extension or structural alteration of the premises or to increase the number of persons employed in the industrial establishment, or to store or use explosive or highly flammable material in the industrial establishment or to increase the extent of such storage or use, the employer or person in control shall give notice in writing of the proposal to the Chief Fire Officer and to the Department of Labour.

(2) Where the Chief Fire Officer on receipt of the notice referred to in subsection (1) is of the opinion that the means of escape will be adversely affected by the proposed changes, or that such means have by reasons of changed conditions become insufficient, he or she may, by notice in writing, require the employer or person in control to comply with such directives, within such period of time, as it may specify.

(3) The Chief Fire Officer may, by notice in writing, prohibit or restrict the use of an industrial establishment or require an employer or person in control to make, within the period specified in the notice, alterations for the purposes of providing a safe means of escape in case of fire if it appears to the Chief Fire Officer that dangerous conditions with regard to escape in case of fire exist in the industrial establishment.

(4) An employer or person in control shall, within the period specified in the notice issued by the Chief Fire Officer under this section, carry out the alteration required by the notice, and on completion, shall notify the Chief Fire Officer in writing.

(5) Where an employer or person in control fails to notify the Chief Fire Officer in respect of the matters referred to in subsection (1), or where he or she fails to comply with such directives as the Chief Fire Officer may give under subsection (2) or (3), he or she commits an offence and is liable for a first offence on summary conviction to a fine of ten thousand dollars or on summary conviction for a second or subsequent offence to a fine not exceeding five hundred dollars for each day on which the offence continues after conviction for the prior offence.

(6) Where the Chief Fire Officer, issues a notice pursuant to subsection (3), he or she shall inform the Department of Labour.

(7) The Chief Fire Officer may, for the purposes of exercising his or her powers under subsection (6), enter an industrial establishment at any time, on the condition that the officer produces documentary evidence of his or her authority if required to do so.

(8) A person who wilfully obstructs the Chief Fire Officer in the exercise of his or her duty under this Part commits an offence and is liable, on summary conviction, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months.

(9) For purposes of this section Chief Fire Officer includes a fire officer authorised in writing by the Chief Fire Officer.

Safety provisions in case of fire

235.— (1) In every industrial establishment, the doors that are provided for use as fire exits shall, while work is in progress at that industrial establishment, be either left unlocked, or secured in such a way as to be capable of being readily and quickly opened from the inside.

(2) Every door opening onto a stair-case or corridor from a room and all other doors affording a means of exit from an industrial establishment for persons employed therein, shall be constructed to open outwards and a sliding door shall not be the exit of an industrial

establishment unless the employer or person in control obtains the written permission of the Chief Fire Officer to have such a door as the exit door.

(3) Every liftway inside a building shall be completely enclosed with fire-resisting material, and all means of access to the lift shall be fitted with doors of fire-resisting materials, except that the top of such liftway shall be enclosed by some material easily broken in case of fire, or shall be provided with a vent.

(4) Every door or other exit or exit route affording means of escape in case of fire or giving access thereto, other than the means of exit in ordinary use, shall be distinctly and conspicuously marked by a notice printed in green letters on a white background and the letters shall be of such size as the fire authority may specify.

(5) The doors, exit or exit routes mentioned in subsection (4) shall be fitted with emergency lighting and well maintained luminous or illuminated exit signs if the industrial establishment is used at night or where insufficient lighting is likely to occur during an electrical power failure.

(6) In every industrial establishment the employer, or person in control, shall make such effective provisions as the fire authority thinks fit, for giving warning in case of fire, and such warning shall be clearly audible throughout the building and distinct from any other signal in use on the premises.

(7) Effective steps shall be taken to ensure that all employees are familiar with the means of escape in case of fire, the routine to be followed in case of fire and the use of fire extinguishers.

(8) Such warning signs as the fire authority may specify shall be prominently displayed in any industrial establishment in which explosives or highly flammable materials are stored or used.

(9) The contents of every room in which employees work shall be so arranged that there is for all employees in the room a free passageway leading to a means of escape in case of fire.

(10) Where ten or more persons are employed in an industrial establishment in the same building above the ground floor, or where explosive or highly flammable materials are stocked or used in a

building where persons are employed, effective steps shall be taken to ensure that all employed persons are familiar with the means of escape, their use and the routine to be followed in case of fire, and a record of the number and frequency of evacuation drills shall be kept and presented on demand, for inspection by the fire authority.

(11) In every industrial establishment there shall be provided, maintained and kept readily available for use, appropriate fire equipment approved by the Chief Fire Officer for fighting fire and an employer or person in control shall ensure that a sufficient number of employees are trained in the use of such equipment and are available during working hours.

DIVISION 2

Hazardous Chemicals, Physical Agents and Biological Agents

Prohibition of certain chemicals and appeals against prohibition orders

236.— (1) Where a chemical, physical agent or biological agent or a combination of such chemical, physical and biological agents is used or is intended to be used in the workplace and its presence in the workplace or the manner of its use is, following an inspection, in the Chief Occupational Safety and Health Officer's opinion, likely to endanger the health of an employee, the Chief Occupational Safety and Health Officer shall by notice in writing to the employer order that the use, intended use, presence or manner of use be —

- (a) prohibited;
- (b) limited or restricted in such manner as the Chief Occupational Safety and Health Officer specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Chief Occupational Safety and Health Officer specifies.

(2) Where the Chief Occupational Safety and Health Officer makes an order under subsection (1), the order shall —

- (a) identify the chemical, physical agent or biological agent, or a combination of such a chemical and agents, and the manner of use that is the subject matter of the order; and
- (b) state the opinion of the Chief Occupational Safety and Health Officer as to the likelihood of the danger to the health of

employees, and the Chief Occupational Safety and Health Officer reasons in respect thereof, including the matters or causes which give rise to the Chief Occupational Safety and Health Officer's opinion.

(3) The employer shall provide a copy of an order made under subsection (1), to the committee, safety and health representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the workplace where it is most likely to come to the attention of the employees who may be affected by the use, presence or intended use of the chemical, physical agent or biological agent or a combination of such a chemical and agent.

(4) Where an employer, considers that he or she is aggrieved by an order made under subsection (1), the employer may, by notice in writing, within seven days of the making of the order, appeal to the Tribunal.

(5) On receipt of a notice of appeal under subsection (4), the Tribunal may suspend the operation of the order appealed from pending the disposition of the appeal.

(6) The Tribunal may, having regard to the circumstances, determine the appeal within thirty days of notice of such appeal.

(7) On an appeal, the Tribunal, may substitute its findings for those of the Chief Occupational Safety and Health Officer and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect as the order of the Chief Occupational Safety and Health Officer.

(8) The Chief Occupational Safety and Health Officer, in making a decision or order under subsection (1), or the Tribunal under subsection (8), shall consider as relevant factors —

- (a) the relation to the chemical or agent, combination of chemicals and agents or by product to a chemical or a biological agent that is known to be a danger to health;
- (b) the quantities of the chemical or agent, combination of chemicals and agents or by product used or intended to be used or present;

- (c) the extent of exposure;
- (d) the availability of other processes, chemicals and agents or equipment for use or intended use;
- (e) data regarding the effect of the process or chemical or agent on health; and
- (f) any criteria or guide with respect to the exposure of employees to a chemical, physical agent or biological agent or a combination of such a chemical and agents that are adopted by the Regulations.

(10) This section does not apply to critical substances.

Notice for new chemicals or biological agents

237.— (1) Except for purposes of research and development, a person shall not —

- (a) manufacture;
- (b) distribute; or
- (c) supply;

for commercial or industrial use in a workplace any new chemical or new biological agent unless the person first submits to the Department of Labour notice in writing of the person's intention to manufacture, distribute or supply such new chemical or agent and the notice shall include the ingredients of such a new chemical or agent and their common or generic names, the composition and properties thereof and relevant safety data sheets.

(2) Where, in the opinion of the Chief Occupational Safety and Health Officer, which opinion shall be made within twenty-four hours, the introduction of the new chemical or new biological agent referred to in subsection (1) may endanger the safety or health of the employees in a workplace, the Chief Occupational Safety and Health Officer shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Chief Occupational Safety and Health Officer, of the new chemical or agent intended to be manufactured, distributed or supplied and the manner of use.

(3) For the purpose of this section, a chemical or biological agent is not considered to be new if, before a person manufactures, distributes or supplies the chemical or agent in Saint Lucia, it was used in a workplace other than the person's workplace in Saint Lucia, or it is included in an inventory compiled or adopted by the Department of Labour.

Inventory of chemicals and physical agents

238.— (1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous chemicals and all hazardous physical agents that are present in the workplace.

(2) The inventory required under subsection (1) —

(a) shall contain such information as may be prescribed, and in addition shall include —

(i) toxic properties, including both acute and chronic health effects to any part of the body;

(ii) chemical or physical characteristics, including flammable, explosive, oxidising and dangerously reactive properties;

(iii) corrosive and irritant properties;

(iv) allergenic and sensitising effects;

(v) carcinogenic effects;

(vi) teratogenic and mutagenic effects;

(vii) effects on the reproductive system;

(b) shall be prepared in consultation with the committee or safety and health representative, if any, for the workplace or with an employee selected by the employees to represent them, if there is no committee or safety and health representative.

(3) Where an inventory required by subsection (1), is amended during a year, the employer, not later than the 1st day of February in the following year, shall prepare a revised version of the inventory incorporating all changes made during the preceding year.

(4) Where an employer is required to identify or obtain the identity of the ingredients of a hazardous chemical, the employer shall not be in contravention of this Code if the employer has made every effort

reasonable in the circumstances to identify or obtain the identity of the ingredients, but has been unable to do so due to circumstances beyond the employer's control.

(5) An employer shall advise the Department of Labour in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of a hazardous chemical as required under this Code.

(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a construction site in respect of chemicals to be used on the site.

(7) The employer shall keep readily accessible at the workplace a floor plan showing the names of all hazardous chemicals and their locations and shall post a notice stating where the floor plan is kept in a place or places where it is most likely to come to the attention of employees.

Labelling of chemicals

239.— (1) An employer —

- (a) shall ensure that all hazardous chemicals present in the workplace are labelled in a way easily understandable to the employees, or are identified in the prescribed manner;
- (b) shall obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
- (c) shall ensure that —
 - (i) the identification required under paragraph (a); and
 - (ii) the chemical safety data sheets required by paragraph (b);

are available in English and such other languages as may be prescribed;

- (d) shall ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees their identity, any hazards associated with their use, and any safety precautions to be observed; and

(e) shall ensure that information is provided on the handling and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the environment is eliminated or minimized.

(2) A person shall not remove or deface the label or identification referred to in subsection (1)(a).

(3) An employer shall ensure that a hazardous chemical is not used, handled or stored at a workplace, unless the prescribed requirements concerning identification, chemical safety data sheets and employee instruction and training are met.

(4) An employer shall advise the Department of Labour in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required under subsection (1).

(5) A chemical safety data sheet expires three years from the date it was prepared.

Copy of inventory to be made available

240.— (1) A copy of the most recent version of the inventory and of a chemical safety data sheet in respect of hazardous chemicals in a workplace shall be —

- (a) made available by the employer in the workplace in such a manner as to be accessible and to allow examination by the employees;
- (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or to an employee selected by the employees to represent them if there is no committee or safety and health representative;
- (c) furnished by the employer on request, to the medical inspector of the district in which the workplace is located;
- (d) furnished by the employer on request, to the Chief Fire Officer; and
- (e) filed by the employer with the Department of Labour on request.

(2) The Department of Labour, at the request of any person with a relevant interest, shall request an employer to furnish a copy of the most recent version of the inventory or of an unexpired chemical safety data sheet, as the case may be.

(3) At the request of any person with a relevant interest, the Department of Labour shall make available to the person, for inspection, a copy of any inventory or chemical safety data sheet requested by the person and in the possession of the Department of Labour.

(4) The Department of Labour shall not disclose the name of any person who makes a request under subsection (2) or (3).

(5) An employer who makes a chemical safety data sheet readily accessible on a computer terminal at a workplace —

- (a) shall take all reasonable steps necessary to keep the terminal in working order;
- (b) shall give an employee upon request a copy of the chemical safety data sheet; and
- (c) shall teach all employees who work with or in proximity to hazardous chemicals, the safety and health representative, if any, at the workplace and the members of the committee, how to retrieve the chemical safety data sheet on the computer terminal.

Assessment of chemicals

241.— (1) An employer shall assess all chemicals and biological agents produced in the workplace for use therein to determine if they are hazardous.

(2) The assessment required under subsection (1) shall be in writing and a copy of it shall be —

- (a) made available by the employer in the workplace in such a manner as to allow examination by the employees;
- (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or to an employee selected by the employees to represent them, if there is no committee or safety and health representative.

Information from manufacturers

242.— (1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs an article for use in a workplace that causes, emits or produces a hazardous physical agent when the article is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the article.

(2) Where an employer has an article described in subsection (1), in the workplace, the employer shall ensure that the information referred to in that subsection has been obtained and is —

- (a) made available in the workplace for employees who use or operate the article or who are likely to be exposed to the hazardous physical agent; and
- (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or an employee selected by the employees to represent them, if there is no committee or safety and health representative.

(3) An employer to whom subsection (2) applies, shall make available to employees or post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the article is used or operated or is to be used or operated.

(4) Notices required under subsection (3), shall contain such information as may be prescribed and shall be in English and such other language as may be prescribed.

Participation in training

243.— (1) In addition to providing information and instruction to an employee as required by section 242(2)(a), an employer shall ensure that an employee exposed or likely to be exposed to a hazardous chemical or to a hazardous physical agent receives, and participates in, such instruction and training as may be prescribed.

(2) The instruction and training to be given under subsection (1), shall be developed and implemented by the employer in consultation with the committee or safety and health representative, if any, for the workplace.

(3) An employer shall review, in consultation with the committee or safety and health representative, if any, for the workplace, the

training and instruction provided to an employee and his or her familiarity therewith at least annually.

(4) The review referred to in subsection (3), shall be held more frequently than annually, if —

- (a) the employer, on the advice of the committee or safety and health representative if any, for the workplace, determines that such reviews are necessary; or
- (b) there is a change in circumstances that may affect the safety or health of employees.

Exemptions from disclosure

244.— (1) An employer may file a claim with the Minister for an exemption from disclosing —

- (a) information required under this Division in relation to an inventory, label or chemical safety data sheet; or
- (b) the name of a toxicological study used by the employer to prepare a chemical safety data sheet;

on the grounds that it is confidential business information and that disclosure of such information to a competitor would be liable to cause harm to an employer's business, so long as the safety and health of employees are not compromised thereby.

(2) An application under subsection (1), shall be made only in respect of such types of confidential business information as may be prescribed.

(3) Any employee or any trade union representing the employees of the employer may file with the Minister, an objection to the request made by the employer under subsection (1) specifying the reasons for the objection.

(4) The Minister shall make a determination or direct the Labour Commissioner to make a determination on his or her behalf, on any request made under subsection (1) and on any objection made under subsection (3).

(5) Information that an employer considers to be confidential business information is exempt from disclosure from the time a request for exemption is sent to the Minister under subsection (1) until the

request is finally determined and for three years thereafter, if the request is found to be valid.

DIVISION 3

Notification of Accidents and Occupational Diseases

Meaning of employer

245. — (1) In this Division —

employer includes —

- (a) any body of persons corporate or incorporate and the legal personal representative of a deceased employer;
- (b) a person who operates from his or her home, whether or not self-employed.

(2) Where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Division be deemed to continue to be the employer of the worker whilst he or she is working for that other person.

(3) In relation to a person plying for hire with any vehicle or vessel the use of which is obtained by that person under a contract of bailment, other than hire purchase agreement, the person from whom the use of the vessel or vehicle is so obtained shall, for the purposes of this Division, be deemed to be the employer.

(4) In relation to a person employed for the purpose of —

- (a) any gain and engaged through a club; or
- (b) recreation and paid through a club;

the manager or members of the managing committee of the club shall, for the purposes of this Division, be deemed the employer.

Requirement to give notice of accidents

246.— (1) Subject to subsection (2), where any accident arising out of, and in the course of the employment of an employee occurs and —

- (a) causes loss of life to such employee; or
- (b) disables such employee, for more than one day, from earning full wages at the work at which the employee was employed at the time of such accident;

written notice of the accident in the form and accompanied by the particulars prescribed, shall promptly in the case of paragraph (a) and within four days in the case of paragraph (b), be sent by the employer to the Department of Labour and the committee, safety and health representative or trade union, if any, and the National Insurance Corporation.

(2) In the case of a self-employed person, notification of death pursuant to subsection (1), shall be made by the deceased's next of kin, or in the case of a partnership, by the partner in the industrial establishment.

(3) Where any accident causing disablement has been notified under this section, and after such notification the accident results in the death of the person disabled, notice in writing of the death shall promptly be sent by the employer to the Department of Labour and the committee, safety and health representative or trade union, if any, as soon as the fact of the death comes to the knowledge of the employer.

(4) Where an accident causing disablement has been notified under this section and the said disablement has ceased, notice in writing of the date when the disablement ceased shall be sent by the employer to the Department of Labour and the committee, safety and health representative or trade union, if any, within two weeks from that date, in the form and accompanied by the particulars set out in the Third Schedule.

(5) Any employer who fails to comply with the requirements of subsection (1), (2) or (4) shall be liable on summary conviction to a fine not exceeding ten thousand dollars.

(6) Where any accident to which this section applies occurs to a worker whose services are for the time being temporarily lent or let on hire to another person by the employer, such other person, if he or she fails to report the accident to the employer immediately, commits an offence, and the employer shall not be liable under the provisions of subsection (5) unless it is established that he or she knew of the accident.

(7) Where a person loses his or her life or is disabled under subsection (1), a person shall not, except for the purpose of —

(a) saving life or relieving human suffering;

- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property;

interfere with, disturb, destroy, alter or carry away any wreckage or article at the scene or connected with the occurrence which gave rise to loss of life or disablement until permission so to do has been given by the Police and the coroner.

(8) A register of all accidents to which this section applies shall be kept and maintained by the employer in the prescribed form.

Notification of occupational diseases and other diseases

247.— (1) A registered medical practitioner attending to or called in to visit a patient whom he or she believes to be suffering from an occupational disease or other disease contracted in the course of his or her employment shall, unless such a notice has been previously sent, promptly send, addressed to the Department of Labour and the Chief Medical Officer, a notice stating the name and full postal address of the patient and the disease from which, in the opinion of such medical practitioner, the patient is suffering and the name and address of the place at which, and of the employer by whom, he or she is or was last employed.

(2) If a registered medical practitioner fails to send any notice in accordance with the requirements of this section, he or she shall be liable on summary conviction to a fine not exceeding two thousand dollars.

(3) Any employer who believes or suspects, or has reason to believe or suspect that a case of an occupational disease has occurred among the employees, shall promptly send written notice of such case in the form, and accompanied by the particulars, set out in the Fourth Schedule to —

- (a) the Department of Labour;
- (b) the committee;
- (c) the safety and health representative or trade union, if any;
- (d) the relevant local sanitary authority of the area within the work place of such employees is scheduled; and

- (e) in the case of employees employed in industrial establishments, the medical inspector for the area within which the workplace of such employees is situated;

and the provisions of this Code with respect to the notification of accidents shall apply with the necessary modification to any such case.

(4) If an employer is advised by or on behalf of an employee that a claim in respect of a “prescribed disease” as defined in the National Insurance Corporation Act has been filed with the National Insurance Board by or on behalf of the employee, the employer shall give notice in writing within four days of being so advised, to the Department of Labour and to the committee, safety and health representative or trade union, if any, containing such information and particulars as are prescribed.

(5) The Minister may, in relation to any class or description or place where employees are employed, by Regulations, apply this section to any disease, other than an occupational disease.

Inquest in case of death

248. — (1) Where a coroner holds an inquest into the death of a person whose death may have been caused by an accident or a disease of which notice is required under this Code, the coroner shall, at least four days before holding the inquest, submit to the Department of Labour notice in writing of the time and place of holding the inquest and an authorised officer shall be authorised to be present at and to watch the inquest on behalf of the Department of Labour.

(2) The following provisions shall have effect with respect to an inquest held pursuant to this section —

- (a) a person having a personal interest in or employed in or about or in the management of the place of employment in or about which the accident or disease occurred or was contracted, shall not be qualified to serve on the jury empanelled on the inquest;
- (b) it shall be the duty of the coroner or other officer not to summon any person disqualified under paragraph (a), and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury;
- (c) the following persons shall, subject to the power of the coroner to disallow any question which in his or her opinion is not

relevant or is otherwise not a proper question, be entitled to examine any witness either in person or by counsel, solicitor or agent that is to say-

- (i) any authorised officer;
- (ii) any relation of the person in respect of whose death the inquest is being held;
- (iii) the occupier of the workplace in which the accident or disease occurred or was contracted;
- (iv) the employer of the deceased;
- (v) any person appointed in writing by the majority of the persons employed in the workplace in which the accident or disease occurred or was contracted;
- (vi) any person appointed in writing by any trade union, friendly society or other association of persons to which the deceased at the time of his or her death belonged or to which any person employed in the workplace in which the accident occurred or the disease was contracted, belongs;
- (vii) any association of employers of which the said employer is a member.

(3) Where at such inquest the Department of Labour is not present and there is evidence of any neglect as having caused or contributed to the accident or disease, or of any defect in or about the place of employment appearing to the coroner to require a remedy, the coroner shall send to the Department of Labour notice in writing of the neglect or defect.

Application to the State

249. This Division shall apply in the case of accidents, occupational disease, or disease occurring to persons employed by or under —

- (a) any Department of Government other than members of the Police Force;
- (b) such persons or class of persons, not being members of the Police Force, employed by or under any department of Government as may be specified by Order of the Minister published in the *Gazette*;

and in such cases notice to be given under this Division by the employer shall be given by such person as the head of the department of Government shall by written instructions direct.

Notification of other accidents

250. Where, at an industrial establishment an accident, unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article, cave-in, subsidence, rockburst, or other incident occurs, not being an accident for which notice is required to be given under sections 247 and 248, notice in writing of the occurrence shall be given to the Department of Labour and to the committee, safety and health representative or trade union, if any, by the employer at such industrial establishment within two days of the occurrence giving such information and particulars as are necessary.

Power of Minister to make Regulations

251. The Minister may make Regulations for any of the purposes listed in the Fifth Schedule.

Presumption of employment

252. — (1) Subject to subsection (2), any person who is found in an industrial establishment at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, shall, until the contrary is proved, be deemed for the purposes of this Part to have been then employed in the industrial establishment.

(2) Subsection (1) shall not apply to an industrial establishment in which the only persons employed are members of the same family who are dwelling there.

Offences

253— (1) A person who —

- (a) being the owner or occupier, or manager of an industrial establishment fails within the time specified under section 172 to make application to the Department of Labour for registration of an industrial establishment; or
- (b) fails to give notice to the Department of Labour as required by section 172(1); or

- (c) fails to furnish the Department of Labour within a reasonable time with the information required by him or her under section 172; or
- (d) being the owner, occupier or the manager of an industrial establishment contravenes or fails to comply with section 173;

commits an offence and is liable to a fine not exceeding three thousand dollars.

(2) A person who —

- (a) wilfully delays any authorised officer in the exercise of any power under section 176;
- (b) fails to comply with any requirement of an authorised officer or an inspector in pursuance of section 176;
- (c) fails to produce any register, certificate, notice or document which he or she is required by or in pursuance of this Part to produce;
- (d) wilfully withholds any information as to who is an employer or person in control of an industrial establishment, or as to who is an employer in the case of a prescribed occupation;
- (e) conceals or prevents, or attempts to conceal or prevent a person from appearing before or being examined by an authorised officer; or
- (f) in any way obstructs an authorised officer in the execution of his or her duties;

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

(3) A person who —

- (a) obstructs a medical inspector in the exercise of his or her powers under section 187;
- (b) being an employer or person in control of an industrial establishment, contravenes or fails to comply with any requirement of a notice under section 177;

- (c) being an employer or person in control of an industrial establishment, contravenes or fails to comply with any requirement of a notice under this Division; or
- (d) being an employer or person in control of an industrial establishment, contravenes or fails to comply with any of the duties placed on occupiers under this Division;

commits an offence and is liable for a first offence on summary conviction to a fine of ten thousand dollars or on summary conviction for a second or subsequent offence to a fine not exceeding five hundred dollars for each day on which the offence continues after conviction for the prior offence.

Special rules for making complaints

254.— (1) The Labour Commissioner may institute proceedings for the purpose of enforcing any of the provisions of this Part or the Regulations and any authorised officer may appear for and on behalf of the Labour Commissioner.

(2) All complaints under this Division may be heard and determined and all offences and penalties may be prosecuted and enforced under summary jurisdiction proceedings.

(3) Prosecution under this Division shall not be instituted except by or with the previous sanction of the Labour Commissioner.

(4) Subject to section 265, prosecution under this Division shall not be instituted more than one year after the last occurrence, act or default upon which the prosecution is based.

Power of the Department of Labour to require returns

255. The Department of Labour may require occupiers or managers of industrial establishments to submit such returns, occasional or periodical, as may, in its opinion, be required for the purpose of this Division.

DIVISION 4

DUTIES OF EMPLOYERS, EMPLOYEES AND OTHER PERSONS

Duties of employers at construction sites

256.— (1) An employer at a construction site shall ensure that —

- (a) the measures and procedures prescribed by this Code and the Regulations are carried out on the construction site;
- (b) he or she and every employee performing work on the construction site complies with this Code and the Regulations;
- (c) the safety and health of employees on the construction site are protected.

(2) Where so prescribed, an employer at a construction site shall, before commencing any work on the construction site, give to the Department of Labour notice in writing of the construction work to be carried out, containing such information as may be prescribed.

General duties of employers

257.— (1) An employer shall ensure that —

- (a) a safe, sound, healthy and secure working environment is provided and maintained as far as is reasonably practicable;
- (b) the equipment, materials and protective devices and clothing as prescribed are provided;
- (c) the equipment, material and protective devices and clothing provided by the employer are suitable and adequate and maintained in good condition;
- (d) the measures and procedures prescribed are carried out in the workplace;
- (e) the equipment, materials and protective devices and clothing provided by the employer are used as prescribed;
- (f) a floor, roof, wall, pillar, support or outer part of a workplace is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under any Act, regulations made under this Part, or work practice;
- (g) without prejudice to the provisions of any other enactment governing environmental protection and pollution control in Saint Lucia, work in a workplace is carried out without causing a discharge of noxious, hazardous or polluting matter into air, water or soil so far as is reasonably practicable or except under and in accordance with any licence for the purpose granted under the authority of any other enactment governing such matters.

(2) In addition to the duties imposed by subsection (1), an employer shall —

- (a) provide information, instruction and supervision to employees to protect the safety and health of those employees;
- (b) in a medical emergency, for the purpose of diagnosis or treatment upon request, provide information in the possession of the employer, including confidential business information to a registered medical practitioner and to such other persons as may be prescribed;
- (c) afford assistance and co operation to a committee, if any, and to a safety and health representative, in the carrying out by the committee and the safety and health representative of any of their functions;
- (d) post, in the workplace or make available to the employee, a copy of this Part and any explanatory material prepared by the Department of Labour outlining the rights, responsibilities and duties of employees;
- (e) prepare and review at least annually, a written occupational safety and health policy in consultation with the committee or safety and health representative, if any, or an employee selected by the employees to represent them, and develop and maintain a programme to implement that policy;
- (f) post or make available to the employee at a conspicuous location in the workplace a copy of the occupational safety and health policy;
- (g) provide to the committee or to a safety and health representative or an employee selected by the employees to represent them, information concerning a copy of any report on occupational safety and health in the employer's possession;
- (h) take reasonable precaution for the protection of the general public who comes into contact with the workplace or emissions from the workplace.

Duty to pregnant workers

258. Subject to subsection (2), an employer shall, after being notified by a female employee that she is pregnant, adapt the working conditions of that employee, or ensure that she is not involved in the

use of or exposure to chemicals or substances or conditions of work which are hazardous to her health and the health of the unborn child.

(2) Where alternative work not involving the use or exposure or conditions referred to in subsection (1) is available, such work shall be assigned to the employee during pregnancy with the right of such employee to return to her previous work after the birth of her child.

Reports and records

259.— (1) In addition to the duties imposed by section 257, an employer shall —

- (a) establish an occupational health programme for employees and maintain the same according to the standards prescribed;
- (b) keep and maintain accurate records of the handling, storage, use and disposal of chemicals, physical agents or biological agents as prescribed;
- (c) accurately keep, maintain and make available to an employee affected such records of the exposure of the employee to chemicals, physical agents or biological agents as may be prescribed;
- (d) notify the Department of Labour of the use or introduction into a workplace of such chemicals, physical agents or biological agents as may be prescribed;
- (e) monitor at such times or at such intervals the levels of chemicals, physical agents or biological agents in a workplace and keep and post accurate records thereof as prescribed;
- (f) comply with any standards limiting the exposure of employees to chemicals, physical agents or biological agents as prescribed;
- (g) establish a medical surveillance program for the benefit of workers as prescribed;
- (h) provide for medical examinations and tests for employees as prescribed;
- (i) only permit an employee to work in a workplace who has undergone such medical examinations, tests or X rays and who is found to be physically fit to work in the workplace;

- (j) where so prescribed, provide an employee with written instructions as to the measures and procedures to be taken for the protection of the employee;
 - (k) adopt measures to protect the privacy of employees and ensure that medical information is not used for discriminatory purposes or in any manner prejudicial to their interests; and
 - (l) adopt measures to ensure the welfare, safety and health of physically challenged employees.
- (2) Where an employee undergoes prescribed medical examinations or tests, his or her employer shall pay —
- (a) the employee's costs for medical examinations or tests required by the medical surveillance programme or required pursuant to the Regulations;
 - (b) the reasonable travel costs, examinations or tests of the employee; and
 - (c) for the time the employee spends to undergo the examinations or tests, including travel time, which shall be deemed to be work time for which the employee shall be paid at his or her regular rate.
- (3) In addition to providing information and instruction to an employee as required under this Part, an employer shall provide —
- (a) to every employee, training on the safe and healthy manner of carrying out his or her work; and
 - (b) subject to subsection (5), to every committee member who represents employees, if any, or a safety and health representative, if any, training pursuant to this Code and the Regulations that apply to the workplace.
- (4) In relation to the training that an employee, a committee member who represents employees, if any, or a safety and health representative, if any, receives under subsection (3), his or her employer shall pay for the employee's, committee member's, or representative's —
- (a) costs for the training;
 - (b) reasonable travel to the location where the training is provided; and

- (c) time spent to undergo the training which shall be deemed to be work time which the worker, committee member or representative shall be paid at his or her regular rate.

(5) If a trade union exists at the workplace, the employer shall involve the trade union in the provision of any occupational safety and health training required under this Code.

Duties of employees

260.— (1) An employee shall —

- (a) work in compliance with the provisions of this Code and the Regulations made thereunder;
- (b) use or wear protective devices or clothing that the employer requires to be used or worn at the workplace;
- (c) report to his or her employer the absence of or defect in any equipment or protective clothing or device of which the worker is aware and which may endanger himself or herself or another employee;
- (d) report to his or her employer any contravention of this Code or the Regulations or the presence of any hazard of which he or she is aware;
- (e) take care of the protective, clothing or devices issued by the employer to that employee; and
- (f) exercise reasonable care in his or her work and at the workplace so as not to cause injury to self and others.

(2) An employee shall not —

- (a) remove or make ineffective any protective device required by his or her employer;
- (b) use or operate any equipment, machine, device or article in a manner that may endanger himself or herself or any other worker; or
- (c) at the workplace, engage in any conduct which may cause harm to the safety and health of any person.

(3) Where an employee is required to make use of a temporary protective device, the employee shall notify the employer who shall provide the temporary protective device.

(4) An employee shall not be required to operate equipment or machinery without the use of any protective device required by his or her employer.

Duties of owners at construction sites

261.— (1) Before beginning construction work, the owner shall determine whether any critical substances are present at the construction site and shall prepare a list of all critical substances that are present at the site.

(2) If any work on a construction site is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1).

(3) An owner shall ensure that a prospective employer at a construction site on the owner's property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the employer.

(4) The employer at a construction site shall ensure that each prospective contractor and subcontractor for the construction work has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the construction site.

(5) An owner who fails to comply with this section is liable to the employer at a construction site and every contractor and subcontractor who suffers any loss or damages as a result of the subsequent discovery on the construction site of a critical substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

(6) An employer at a construction site who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damage as a result of the subsequent discovery on the construction site of a critical substance that was not on the list prepared under subsection (1).

Duties of suppliers

262. Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a workplace shall ensure —

- (a) that the machine, device, tool or equipment is in good condition;
- (b) that the machine, device, tool or equipment complies with the requirements of this Code and the Regulations made hereunder; and
- (c) if it is the supplier's responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition.

Refusal to work on safety and health grounds

263.— (1) An employee may refuse to work or do particular work where the employee has reason to believe that —

- (a) any equipment, machine, device, substance or article the employee is to use or operate presents an imminent and serious danger to the life or health of himself or herself or another worker; or
- (b) the physical condition of the workplace or the part thereof in which the employee works or is to work presents an imminent and serious danger to his or her life, safety or health;

until such time as the employee believes that measures have been undertaken by the employer to address the employees concerns.

(2) The provisions in this section shall not apply to an employee who belongs to any of the categories of persons specified for such purpose in an Order of the Minister published in the *Gazette*.

(3) The categories of persons to which subsection (2) refer may be —

- (a) persons employed in or members of the Police Force or the Fire Service;
- (b) persons employed in or members of the Correctional Service the operation of a correctional institution or facility;
- (c) persons employed in the operation of
 - (i) a hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health centre or a rehabilitation facility;
 - (ii) an ambulance service or a first aid clinic or station;

- (iii) a power plant or technical service or facility used in conjunction with an institution, facility or service described in paragraph (c) (i) and (ii);
 - (d) persons who are employed by the State to carry out public health or public utility duties such as quarantine, emergency health containment or other emergency or public health services; or
 - (e) persons employed in waste disposal or sanitation; or
 - (f) persons employed in any essential service.
- (4) Upon refusing to work or do particular work, the employee shall promptly report the circumstances of his or her refusal to the employer who shall promptly investigate the report in the presence of the employee and, if there is such, in the presence of one of the following —
- (a) a committee member who represents employees;
 - (b) a safety and health representative; or
 - (c) an employee who because of knowledge, experience and training is selected by a trade union that represents the employee, or if there is no trade union, is selected by the employees to represent them, and who shall attend without delay.
- (5) Until the investigation is completed, the employee shall remain in a safe place near his or her work station.
- (6) An employee who refuses to work under subsection (1), shall be deemed to be at work and his or her employer shall pay him or her at the regular or premium rate, for the time extending from the time when the employee started to refuse to work under subsection (1) to the time when the investigation mentioned in subsection (4) is completed.
- (7) An employer shall report the employees concerns to the Department of Labour which shall investigate the refusal to work in the presence of the employer or a person representing the employer, the employee, and the person mentioned in subsection (4), if any.
- (8) The Department of Labour shall, following the investigation referred to in subsection (7), decide whether the machine, device, article or the workplace or part thereof presents an imminent and

serious danger to the life, safety or health of the employee or another person.

(9) The Department of Labour shall, within five working days of a report to it under subsection (7), give its decision in writing to the employer, the employee, and the person mentioned in subsection (4), if any.

(10) Pending an investigation and decision of the Department of Labour, an employer, subject to the provisions of a collective agreement, if any, shall —

- (a) assign the employee reasonable alternative work during such hours; or
- (b) where an assignment of reasonable alternative work is not practicable, give other directions to the employee.

(11) Pending an investigation and decision of the Department of Labour, no employee shall be assigned to use or operate the equipment, machine, device or article or to work in the workplace or in the part of the workplace being investigated as long as there is continuing imminent and serious danger to the life, safety or health of any employee or person and until after the employer has taken remedial action, if necessary, to deal with the circumstances that caused the employee to refuse to do particular work.

(12) A person mentioned in subsection (4), shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate for the time spent by the person carrying out the duties under this section.

Complaint for reckless or frivolous refusal to work

264.— (1) An employer may file a complaint with the Department of Labour if he or she has reason to believe that the employee acted frivolously, recklessly or in bad faith with respect to the refusal to work under section 263.

(2) A complaint shall be filed not later than seven days after the event to which the complaint relates.

(3) The Department of Labour shall, within two working days of any reference to it, make a decision respecting the complaint.

(4) Where, following an investigation, the Department of Labour decides that the refusal to work by the employee was frivolous, reckless, or in bad faith, the Department of Labour shall refer the matter to the Labour Commissioner who shall make such order as he or she deems appropriate in the circumstances.

Threats and discrimination for compliance

265. — (1) An employer shall not —

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend or threaten to discipline or suspend an employee,
- (c) impose any penalty upon an employee;
- (d) intimidate or coerce an employee; or
- (e) discriminate against an employee in any way;

because that employee has acted in compliance with this Code or the Regulations or an order made thereunder, or has sought the enforcement of this Code or the Regulations or has observed the procedures established by the employer or has given evidence in a proceeding in respect of the enforcement of this Code or the Regulations.

(2) Where a person complains that another person has contravened subsection (1) the matter shall be determined by complaint to the Tribunal, and in a case of dismissal in contravention of subsection (1), the matter shall be treated as a complaint of unfair dismissal in accordance with this Code.

(3) On an inquiry into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

PART V

EQUALITY OF OPPORTUNITY AND TREATMENT IN EMPLOYMENT

DIVISION 1

Discrimination

Interpretation

266. For the purposes of this Division, “occupation and employment” include access to vocational training, access to

employment and particular occupations, and terms and conditions of employment.

Definition and prohibited grounds of discrimination

267.— (1) For the purposes of this Division, a person discriminates against another person if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are —

- (a) race, sex, religion, colour, ethnic origin, social origin, political opinion or affiliation, disability, serious family responsibility, pregnancy, marital status, HIV/AIDS, trade union affiliation or activity, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of children and young persons;
- (b) any characteristic which appertains generally or is generally imputed to persons on the basis of race, sex, religion, colour, ethnic origin, social origin, political opinion or affiliation, disability, serious family responsibility, pregnancy, marital status, HIV/AIDS, trade union affiliation, or age except for purposes of retirement, and restrictions on work and employment of children and young persons or for the protection of children and young persons; or
- (c) a conviction which is spent pursuant to the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2) is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Prohibition on discrimination against applicant and employees

268.— (1) Any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment shall not discriminate against that other person on the grounds specified under section 267(2) —

- (a) in the advertisement of the job;
- (b) in the arrangements made for the purpose of determining who should be offered that employment;
- (c) in determining who should be offered employment;
- (d) in the terms or conditions on which employment is offered;
or
- (e) in the creation, classification or abolition of jobs.

(2) An employer shall not discriminate against an employee on the grounds specified under section 267 —

- (a) in terms or conditions of employment afforded to that employee by the employer;
- (b) in conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by making the employee redundant or dismissing the employee except as provided for under this Code; or
- (f) by subjecting the employee to any other disadvantage.

(3) A person who contravenes subsection (1) or (2) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the person to rectify the offending act in addition to the award of damages.

(4) The burden of proving that subsection (1) or (2) was not contravened shall be on the person against whom the complaint is made.

Exceptions in respect of *bona fide* occupational qualifications

269.— (1) Nothing in section 268 shall apply to any distinction, exclusion or preference based on the grounds specified under section 267(2) where a genuine occupational qualification exists.

(2) For the purposes of this Division, a genuine occupational qualification for a job exists where —

- (a) the essential nature of the job calls for a particular sex, ethnic origin, race, non-disability, for reasons of physiology excluding physical strength or stamina;
- (b) in dramatic performances or other entertainment, for reasons of authenticity, the essential nature of the job would be materially different if carried out by a person of the opposite sex or different race, ethnic or social origin or religion to the person chosen to do the job;
- (c) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief and the essential nature of the said job would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief;
- (d) the job needs to be held by a man or a woman to preserve decency or privacy because-
 - (i) it is likely to involve physical contact with other persons in circumstances where those persons might reasonably object to its being carried out by persons of the opposite sex or conversely, by persons of the same sex;
 - (ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex because they are in a state of undress or are using sanitary facilities;
- (e) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and —
 - (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
 - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution of usage of such facilities for members of both sexes;
- (f) the job requires a married couple;

- (g) the nature of the establishment, or the part of it where the work is carried out, requires the job to be held by a person of a particular sex because —
 - (i) it is or is part of a hospital, correctional facility, or other establishment for persons requiring special care, supervision or attention;
 - (ii) those persons are all of the same sex, disregarding any person of the opposite sex whose presence is exceptional; and
 - (iii) it is reasonable, having regard to the essential character of the establishment or of the part of the establishment, that the job should not be held by a person of the opposite sex;
- (h) the holder of the job provides individuals with personal services promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex; or
- (i) on the grounds of disability it is shown that —
 - (i) the disability in question was or will be a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job cannot be carried out as a result of the disability; or
 - (ii) special facilities or modifications, whether physical, administrative, or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot be expected to make except with undue financial hardship.

Equal remuneration

270.— (1) Employers and persons acting on behalf of employers shall pay equal remuneration to men and women performing work of equal value.

(2) For purposes of subsection (1) —

“equal remuneration” means rates of remuneration established without differentiation based on the grounds of gender;

“work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

Temporary measures to promote equality

271.— (1) Subject to subsection (3), special measures of a temporary nature taken by employers to promote equality of opportunity in employment based on the grounds set out in section 267(2), shall not be considered to be unlawful discrimination within the meaning of this Part.

(2) An employer shall not continue a special measure undertaken under subsection (1), for a period of more than two years.

(3) The employer shall advise the Labour Commissioner of the measures the employer proposes to undertake and the Labour Commissioner shall monitor the implementation of those measures.

Sexual harassment

272. Notwithstanding the provisions of the Criminal Code 2004, No.10, creating the offence of sexual harassment, any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex within the meaning of section 267 and the employee shall be entitled to compensation in accordance with this Code.

Particular profession or trade

273. — (1) An organization of employers, a trade union organization of employees or any other organization whose members carry on a particular profession or trade for the purpose of which the organization exists, shall not discriminate against any person on the grounds set out in section 267(2) —

- (a) by refusing or failing to accept a person’s application for membership;
- (b) in the terms on which it is prepared to admit a person to membership; or

- (c) in the case of a person who is a member of the organization-
 - (i) by denying, limiting or deliberately omitting to afford access to any benefits, facilities or services provided by the organization;
 - (ii) by depriving that person of membership or varying the terms of membership;
 - (iii) by limiting or depriving that person access or acquisition to a leadership position within the organization; or
 - (iv) by subjecting that person to any other detriment.

(2) An organization of employers, a trade union, an organization of employees or any other organization that contravenes subsection (1) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the person to rectify the offending act in addition to the award for damages.

Burden of proof for section 273

274. The burden of proving that section 273 was not contravened lies on the organization of employers, trade union, organization of employees or other organization, as the case may be.

Qualifying bodies

275.— (1) An authority or a body responsible for the conferring, renewing, extending, revoking or withdrawing of an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation shall not discriminate against a person on the grounds set out under section 267(2) —

- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
- (b) in the terms and conditions on which it is prepared to confer the authorization or qualification or to renew or extend it; or
- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.

(2) An authority or a body to which subsection (1) applies that contravenes subsection (1) is liable on successful complaint to the Tribunal for damages and the Tribunal may order the authority or body to rectify the offending act in addition to the award for damages.

(3) The burden of proving that subsection (1) was not contravened lies on the authority or body as the case may be.

(4) In this section “authorization or qualification” includes recognition, registration, enrolment, approval and certification.

Vocational training bodies

276.— (1) Subject to subsection (2), an organization of employers which comprises employers and has as its principal objective or one of its principal objectives, affording its employees access to training facilities or for any other person recognized as providing facilities for training for employment or occupation shall not discriminate on the grounds set out in section 267(2) against a person who is seeking or undergoing technical vocational training which would help to make that person fit for any kind of employment or occupation —

- (a) in the arrangements made for the purpose of determining who should be offered training;
- (b) in the terms and conditions on which that person is afforded access to training courses or other facilities and services including vocational counselling and guidance;
- (c) by refusing or deliberately omitting to afford access as in paragraph (b) to that person; or
- (d) by terminating that person’s training.

(2) It is not unlawful under subsection (1) to give preference to nationals above non-nationals.

(3) An organization of employers that contravenes subsection (1) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the person to rectify the offending act in addition to the award for damages.

(4) The burden of proving that subsection (1) was not contravened lies on the organization of employers.

Employment agencies

277.— (1) It is unlawful for an employment agency to discriminate against a person on the grounds set out in section 267(2) —

- (a) by refusing to provide that person with any of its services; or

- (b) in the terms on which it offers to provide that person with any of its services; or
- (c) in the manner in which it provides that person with any of its services; or
- (d) in any other manner in which it facilitates the hire or employment of that person.

(2) This section does not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.

(3) An employment agency shall not be liable under this section if it proves —

- (a) that it acted in reliance on a statement made to it by an employer to the effect that, by reason of the operation of subsection (2), its actions would not be lawful; and
- (b) that it was reasonable for it to rely on the statement.

(4) An employer, who makes a statement referred to in subsection (3)(a) which is false or misleading in a material respect, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Discrimination by subterfuge

278. Where a requirement or condition which is not apparently in contravention of this Division has the effect of giving preference to a person on the grounds set out in section 267(2) in a situation where such preference would be unlawful under this Division, the imposition of that condition or requirement shall be unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Division.

Advertisement

279.— (1) A person shall not publish or display or cause or allow to be published or displayed, any advertisement or notice which indicates or could reasonably be understood as indicating, an intention to commit a breach of any provision under this Division.

(2) A publisher or person displaying an advertisement made unlawful by subsection (1), shall not be subject to any liability under that subsection if the publisher or person proves —

- (a) that the advertisement was published or displayed in reliance on a statement made by the person who caused it to be published or displayed to the effect that the publication would not be unlawful; and
- (b) that it was reasonable for the publisher or person displaying to rely on that statement.

(3) A person who contravenes subsection (1) or who makes a statement referred to in subsection (2) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Application forms

280. Where, by virtue of this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person on the grounds set out in section 267(2), it is unlawful for that person to request or require that other person to provide information whether by way of completing a form which would not, in the same or substantially similar circumstances, be required or requested of that person of the opposite sex, or of a different race, religion, colour, political opinion, ethnic origin, indigenous population, social origin, pregnancy, trade union affiliation or marital status.

Mechanism to determine work of equal value

281. The Minister —

- (a) shall consider the advise or recommendation of the Commissioner pursuant to section 73; and
- (b) may carry out or cause to be carried out an inquiry into different types of work, whether within the same industries or between different industries;

in order to determine which work is work of equal value for purposes of making a determination in relation to equal remuneration for work of equal value.

Exception for charities

282.— (1) Nothing in this Division affects —

- (a) a provision in a deed, will or other document, whether made before or after the coming into operation of this Part, that confers charitable benefits or enables charitable benefits to

be conferred on persons on the basis of the grounds set out in section 267(2); or

(b) an act that is done in order to give effect to such a provision.

(2) In this section “charitable benefits” means benefits for purposes that are exclusively charitable according to existing laws.

Exception for religious bodies

283. Nothing in this Division affects —

- (a) the ordination of a priest, a minister of religion or members of that body;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purpose of, or in connection with, or otherwise to participate in any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, if it is an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities or adherents to that religion.

DIVISION 2

Pregnancy and Maternity Benefits and Protection

Interpretation

284. In this Division “confinement” means labour resulting in the issue of a living child, or labour after twenty-eight weeks of pregnancy resulting in the issue of a child whether alive or dead, and “confined” shall be construed accordingly.

Prohibition against discrimination on grounds of pregnancy

285.—(1) Without prejudice to the provisions under this Division, an employer shall not refuse to employ a person, demote or dismiss a female employee, alter the terms and conditions of her contract of employment, refuse her promotion or training or in other way discriminate against her because she is or was pregnant or for any reason connected with pregnancy.

(2) An employer who contravenes subsection (1) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the employer to rectify the offending act.

(3) A complaint to the Tribunal shall be referred by the employee in accordance with Part VIII.

Marital status

286. An employer may not deny a female employee maternity leave or entitlements, or any of the protections afforded under this Division by reason that she is not married to the father of the child carried during a pregnancy term or relevant to the period to which she is entitled to maternity or pregnancy benefits.

Rights of pregnant employees

287.— (1) Subject to subsection (2), an employee who is pregnant shall be entitled as of right to take maternity leave in accordance with this Code and shall be entitled to return to the same job which she held before commencement of maternity leave or an equivalent position.

(2) An employee shall only be entitled to return to the same job under subsection (1), if—

- (a) at the date of her expected confinement she would have been continuously employed by that employer or a successor to that employer for a period of eighteen months or more or in the case of a daily paid, part-time, or seasonal worker, one hundred and fifty days in a period of eighteen months;
- (b) subject to subsection (3), she informs her employer either orally or upon request by the employer, in writing, at least three weeks before the commencement of the maternity leave required -
 - (i) that she will be requiring maternity leave because of pregnancy; and
 - (ii) that she intends to return to work for the employer; and
- (c) she provides a certificate from a registered medical practitioner confirming her pregnancy.

(3) Where an employee requires maternity leave immediately in the case of a premature delivery of her baby, the requirement pursuant to subsection (2) (b) shall be waived and the employee will be required

to provide to her employer a certificate from a registered medical practitioner confirming her premature delivery.

Duration of maternity leave

288.— (1) Subject to subsection (2), an employee shall be entitled under this Division to maternity leave for a period deemed to be the period of entitlement to maternity leave and benefits under the National Insurance Corporation Act, provided that such period of entitlement shall not be less than thirteen weeks and such leave shall, except in the case of premature delivery, be comprised of —

- (a) at least six weeks before confinement; and
- (b) at least six weeks after confinement unless the employee chooses to return to work before that time.

(2) An employee and an employer may agree that the employee commences maternity leave on a date later than six weeks before confinement.

(3) An employee shall not be obliged to return to work before the expiration of the period of her maternity leave but she may choose to return to work with full pay at anytime before the expiration of three months.

Maternity leave without pay

289. An employee whose pregnancy commences before she has worked for her employer for a period of eighteen months or in the case of a daily paid, part-time or seasonal worker, one hundred and fifty days in a period of eighteen months, shall be entitled to take maternity leave without pay for a period of six weeks, and that employee has the right to return to her job after such maternity leave and shall not be prejudiced in any way by the exercise of such a right to maternity leave, on condition that she gives to the employer a certificate from a medical practitioner confirming her pregnancy.

Exercise of right of return

290. An employee shall exercise her right to return to work after maternity leave by notifying her employer at least two weeks before the day on which she proposes to return, of her intention to return.

Postponement of return

291.— (1) An employee may postpone her return to work for a total period of not more than sixty days without pay if, before the notified day of return, she gives her employer a certificate from a medical practitioner stating that, by reason of disease or physical or mental disablement arising out of, or connected with her pregnancy or of her newborn child, she will be unable to return to work on the notified day of return.

(2) Where an employee exercises her right to postpone her return to work under subsection (2), she shall suffer no prejudice and no discrimination.

(3) If an employee has notified a day of return and an intervening interruption of work whether due to industrial action or some other reason outside of the control of the employee renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes.

(4) For the purposes of this section “notified day of return” means the day on which the employee intends to return as notified to her employer pursuant to subsection (1).

Higher maternity benefits

292. Where higher maternity benefits including maternity pay than that granted under this Division exist in an establishment whether through agreement or custom, the employer shall not deny female employees, whether existing or future, such benefits because of the enactment of this Code.

Record of female employees

293. Every employer shall keep, in relation to each female employed by him or her, a record showing —

- (a) the date of commencement of her employment;
- (b) her normal pay and normal working week;
- (c) the date and duration of any previous periods of maternity leave granted pursuant to this Division to the employee; and
- (d) all maternity pay which has been paid to the employee on any and every previous occasion.

Maternity leave in addition to vacation leave and sick leave

294. For the avoidance of doubt it is declared that maternity leave granted under this Division shall be in addition to any vacation leave or sick leave to which an employee may be entitled under this Code.

Remedies in relation to maternity leave entitlement

295.— (1) An employer shall not refuse or wrongfully fail to accord to an employee her entitlements due under this Division.

(2) Subject to section 296, an employer who contravenes subsection (1) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the employer to reinstate or promote the employee or rectify the offending act as the case may be, in addition to the award of damages.

(3) A complaint to the Tribunal shall be referred by the employee in accordance with Part VIII.

Burden of proof

296. The burden of proving that section 295 (1) was not contravened shall lie on the employer.

Inducements and threats

297.— (1) It is unlawful to induce or attempt to induce, a person to do any act which contravenes this Division by —

- (a) providing or offering to provide the person with any benefit;
or
- (b) subjecting or threatening to subject the person to any detriment.

(2) An offer or threat may fall under subsection (1) whether it is made directly or indirectly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Victimization

298.—(1) A person shall not subject or threaten to subject another person to any detriment —

- (a) on the ground that the other person-
 - (i) has made, or proposes to make, a complaint under this Division;
 - (ii) has brought, or proposes to bring proceedings under this Division against any person;
 - (iii) has furnished or proposes to furnish any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Division;
 - (iv) has attended or proposes to attend an inquiry under this Division or to provide evidence or testimony as a witness;
or
 - (v) has made in good faith, an allegation that a person has committed an act of discrimination in contravention of this Division; or
- (b) on the ground that the first mentioned person believes that the other has done, or proposes to do any of the things referred to in paragraph (a)(i) to (v).

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Burden of proof in respect of discrimination cases

299.— (1) Except where otherwise provided in this Division, a person alleging a violation of this Division shall bear the burden of presenting a *prima facie* case of discrimination or an offence related to discrimination.

(2) Upon a *prima facie* showing of discrimination, the burden of proof shall shift to the respondent to disprove the allegations.

Burden of proof exceptions

300. In any proceedings under this Division the burden of proof of any conduct that is claimed to be an exception to conduct that is unlawful under this Division, lies on the party claiming the exception.

Remedies

301. Notwithstanding any other remedy that may be available in any court of competent jurisdiction or tribunal, any person who is aggrieved by any act or omission of an employer in contravention of this Division, is entitled to claim or apply for all or any of the following remedies —

- (a) damages from the employer for any loss caused directly or indirectly as a result of the contravention;
- (b) an order directing the employer to redress the contravention, including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;
- (c) an order making voidable any decision found to have been based on unlawful discrimination;
- (d) any other order the Tribunal may deem fair and just to remedy the cause and effect of the discrimination.

Direct complaint to the Tribunal

302. Without prejudice to any other remedy available under this Division, a person who alleges that he or she has been discriminated against may make a complaint to the Tribunal in accordance with the provisions of this Code.

PART VI**RECRUITMENT OF EMPLOYEES FOR OVERSEAS EMPLOYMENT
AND WORK PERMIT****DIVISION 1**
Recruiting

Interpretation and application

303.— (1) In this division “employment agent” includes a person who is a body corporate or an unincorporated body carrying out the functions of an employment agent.

(2) This Division applies only to the recruitment of persons within Saint Lucia for employment outside of Saint Lucia.

Restriction on recruitment of children and young persons

304.— (1) A person shall not recruit a person aged sixteen years or under for employment to be performed outside of Saint Lucia.

(2) A person shall not recruit a young person over the age of sixteen for employment to be performed outside of Saint Lucia except with the written consent of his or her parent or guardian.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Licensing of employment

305.— (1) A person shall not perform the functions of an employment agent unless he or she is the holder of an employment agent’s licence issued, subject to subsection (5), by the Labour Commissioner and complies with the employment agent’s licence and this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

(3) The following provisions shall apply to an employment agent’s licence —

- (a) an employment agent’s licence shall be valid for a period of up to twelve months and shall expire on the 31st day of December in the year in which the employment agent’s licence was issued; and
- (b) an employment agent’s licence shall not be transferable between one person and another.

(4) The fees payable for an employment agent's licence shall be prescribed by the Minister by Order published in the *Gazette*.

(5) An employment agent's licence shall be in the form prescribed.

Application for employment agent's licence

306. An application for an employment agent's licence or for the renewal of an employment agent's licence, shall be in the prescribed form and shall be accompanied by such information as the Labour Commissioner may require and by the prescribed fee.

Issuance of employment agent's licence

307.— (1) The Labour Commissioner may —

- (a) if he or she is satisfied that the applicant is a fit and proper person to be issued an employment agent's licence, issue or renew the employment agent's licence; or
- (b) refuse to issue the employment agent's licence if not satisfied pursuant to paragraph (a).

(2) An employment agent's licence shall be issued subject to such conditions as the Labour Commissioner may impose.

Revocation or suspension of employment agent's licence

308. The Labour Commissioner may revoke or suspend an employment agent's licence, if the Labour Commissioner is satisfied that the person holding the licence —

- (a) has breached a condition of the employment agent's licence; or
- (b) has conducted himself or herself in such a way, that it is undesirable that he or she should continue to hold an employment agent's licence; or
- (c) has committed an offence pursuant to this Act.

Appeal against revocation or suspension

309. A person whose licence is revoked or suspended under subsection (1) may, within seven days of being notified in writing of such action, appeal in writing to the Minister against the revocation or suspension, as the case may be, and where such appeal is lodged, the

revocation or suspension shall be stayed until the Minister has made his or her decision, which shall be final.

Demand for production of licence

310. The Labour Commissioner or a labour officer may at any time demand that a person exercising the functions of an employment agent or a recruiting assistant produce his or her employment agent's licence.

Offence of failure to produce licence

311.— (1) A person exercising the function of an employment agent shall not fail to comply with a demand made pursuant to section 310.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

False representation

312.— (1) A person shall not induce any other person to engage himself or herself for employment by either a representation as to terms and conditions which he or she knows to be false.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Investigation of conditions of recruiters

313. Where the Labour Commissioner is of the opinion that there is a threat or danger to the health or welfare of any persons being recruited because of the employment conditions for which such persons are being or may be recruited, the Labour Commissioner may investigate the matter.

Report on conditions of recruiters

314.— (1) Where after an investigation initiated pursuant to section 313, the Labour Commissioner is satisfied that recruitment is not in the best interests of the persons who are being or who may be recruited, he or she may —

- (a) make a written report setting out the findings of his or her investigation;
- (b) stop the recruitment of any persons by the person named in the investigation initiated pursuant to paragraph (a); or
- (c) intervene in the recruitment for the purpose of laying down any conditions which the Labour Commissioner reasonably believes are necessary to rectify any of the problems revealed in his or her investigation.

(2) The Labour Commissioner shall submit a copy of the report completed pursuant to subsection (2) to the Minister.

Power to make Regulations

315. The Minister may make Regulations establishing any condition for the recruitment of workers in Saint Lucia for employment outside of Saint Lucia.

DIVISION 2 *Work Permits*

Interpretation

316. In this Division —

- “foreign national” means a person who is not a citizen of Saint Lucia but does not mean —
- (a) a person who holds a permit issued under the provisions of the Immigration Ordinance, Cap 76, Revised Laws of Saint Lucia 1957 or any other enactment replacing it which entitles him or her to reside permanently in Saint Lucia;
 - (b) a person under the age of eighteen years who is the child, stepchild of a citizen of Saint Lucia or child adopted in a manner recognized by law by a citizen of Saint Lucia.

Control of employment

317.— (1) A foreign national shall not engage in any occupation in Saint Lucia for reward or profit, or be employed in Saint Lucia, unless there is in force in relation to him or her —

- (a) a valid work permit and he or she so engages or is so employed in accordance with the terms and conditions which may be specified in the permit; or
- (b) an exemption from the requirement for a work permit pursuant to this Code or any other law in force in Saint Lucia.

(2) A person shall not have in his or her employment in Saint Lucia a foreign national without there being in force a valid work permit or an exemption from the requirement for a work permit pursuant to this Code or any other law in force in Saint Lucia in relation to that employment.

(3) Any —

- (a) foreign national who engages in any occupation in Saint Lucia or is employed in Saint Lucia in contravention of the provisions of subsection (1) of this section; and
- (b) person who has in his or her employment in Saint Lucia a foreign national in contravention of the provisions of subsection (2) of this section;

is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding one year or to both; and in the case of a subsequent offence to a further fine not exceeding five hundred dollars for each day upon which the offence continues after the prior offence or to imprisonment for a term not exceeding two years or both.

(4) It shall be presumed, upon the trial of any person for a contravention of the provisions of subsection (1) or (2) of this section that the person is a foreign national unless the contrary is proved by the person charged.

(5) For the avoidance of doubt, it is hereby declared that the provision of this Division shall not apply to —

- (a) a Judge or the Chief Registrar of the Eastern Caribbean Supreme Court or Caribbean Court of Justice;
- (b) any person employed in the public service in a civil capacity in respect of the Government of Saint Lucia; or
- (c) professional occupation by a legal representative in or for defending a person charged with a criminal offence.

(6) The manifestation or propagation of any religion or belief in religious worship, teaching, practice or observance by any person entitled to be in or to enter Saint Lucia shall be exempt from the requirements of a work permit where, upon application by that person, the Minister grants a certificate of exemption, in the form prescribed to that person having regard to the recommendation of the Minister responsible for Ecclesiastical Affairs.

(7) In this section “legal representative” means a person entitled to be in or to enter Saint Lucia and entitled to practise as an attorney-at-law in Saint Lucia.

(8) In this section a reference to a religion shall be construed as including a reference to a religious denomination and cognate expressions shall be construed accordingly.

Application for and grant of work permit

318.— (1) An application for the grant of a work permit shall be submitted to the Minister in the prescribed form and shall be accompanied by the prescribed fee and such other information as the Minister may require or as may be prescribed.

(2) The Minister may grant a work permit either conditionally or without conditions or may refuse to grant it.

(3) A work permit shall be in the prescribed form and different forms of work permits may be prescribed for different classes of persons as the circumstances require.

Appointment of authorised persons

319.— (1) The Minister may appoint such persons as he or she thinks fit to be authorised persons for the purposes of this Division.

(2) Every authorised person appointed under this section shall be furnished with a certificate of appointment and where he or she seeks to exercise his or her power under this Division shall, if so required, produce his or her certificate of appointment.

Production of work permit

320.— (1) Every work permit shall be kept by the person to whom it is issued, who shall at all times produce the permit to an authorised

person or a police officer on demand, or within three days after such demand at such police station as may be specified by the person first mentioned at the time of the demand.

(2) A person having in his or her possession a work permit appearing to have been issued under this Division shall answer all questions put to him or her by an authorised person or a police officer for the purpose of establishing his or her identity.

(3) Any person who —

- (a) fails without reasonable excuse or refuses to produce a permit as required by subsection (1) of this section; or
- (b) refuses to answer any question put to him or her, contrary to subsection (2) of this section;

is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.

Minister to vary or cancel work permit

321. The Minister may, after giving the holder of a work permit not less than thirty days written notice, vary or cancel a work permit.

Power to grant exemptions

322. The Minister may, by Order published in the *Gazette*, declare that any person or class of persons shall be exempt, either unconditionally or subject to such conditions as he or she may so prescribe, from all or any of the provisions of this Division.

Offences and penalties

323. — (1) A person shall not —

- (a) make any statement which he or she knows to be false for the purpose of procuring, whether for himself or herself or for any other person, the grant of a permit under this Division;
 - (b) unlawfully use or permit to be so used any work permit issued under this Division;
 - (c) obstruct, hinder or oppose any authorised person or police officer in the execution of his or her duty under this Division;
- or

- (d) being a person exempt, subject to conditions imposed by the Minister, from all or any of the provisions of this Division, contravene any such condition.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year.

PART VII

TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS

DIVISION 1

Rights to Association

Interpretation

324. In this Division “register” means the register maintained by the Registrar pursuant to section 334.

Non-application

325. The provisions of this Division shall not apply to the protective services except where expressly stated.

Basic employee rights

326. Every employee has the right to —

- (a) take part in the formation of any trade union;
- (b) be or not to be a member of any trade union;
- (c) take part in lawful trade union activities;
- (d) hold office in any trade union or federation of trade unions;
- (e) take part in the election of shop stewards;
- (f) be elected a shop steward or be a candidate for such election;
- (g) act in the capacity of a shop steward; and
- (h) exercise any right conferred or recognized by this Code or any law in force and assist any employee, shop steward, safety and health representative or trade union in the exercise of such rights.

Protection against discrimination and threats

327.— (1) An employer or employers' organization, or person acting on behalf of an employer or an employers' organization, shall not, with respect to any employee or any person seeking employment —

- (a) require that he or she does not join a trade union or relinquish trade union membership;
- (b) discriminate or take any prejudicial action, including discipline or dismissal against such employee or person by reason of trade union membership or representation or because of participation in lawful trade union activities, whether past, anticipated or present;
- (c) discriminate or take any prejudicial action, including discipline or dismissal, against such employee or person because of his or her exercise or anticipated exercise of any right to association conferred or recognized under this Division or under any law in force in Saint Lucia relating to employment or labour relations;
- (d) threaten such employee or person that he or she will suffer any disadvantage from exercising any right conferred or recognized under this Code or under any other law in force in Saint Lucia or under any collective agreement;
- (e) promise such employee or person any benefit or advantage for not exercising any right to association conferred or recognized under this Division or under any law in force in Saint Lucia relating to employment or labour relations;
- (f) restrain or seek to restrain such an employee or person by a contract of employment or otherwise from exercising any right to association conferred or recognized under this Division or under any law in force in Saint Lucia relating to employment or labour relations; or
- (g) discriminate against or impose any discipline or disadvantage upon an employee for refusing to do work outside of the terms of his or her contract of employment, being work normally done by an employee who is on strike or who is locked out, unless such work must be done to prevent actual danger to life, health or personal safety.

(2) Any contractual term which purports to exert any restraint referred to under subsection (1) is void, whether agreed to before or after the coming into force of this Code.

(3) Nothing in this section shall be interpreted as preventing an employer from dismissing or otherwise disciplining an employee for a valid reason in accordance with this Code.

Protection of trade union from employer interference

328.— (1) A person shall not engage in any activity designed to promote the establishment of a trade union under the domination of an employer or employers' organization, or to support trade unions by financial or other means with the object of placing the trade union under the control of employers or employers' organizations.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Basic employer rights

329. An employer has the right to —

- (a) take part in the formation of an employers' organization;
- (b) be a member of an employers' organization or association, and take part in its lawful activities;
- (c) hold office in an employers' organization; and
- (d) exercise any or all rights conferred or recognized by this Division or any law in force on employment or labour relations, and assist any employer or employers' organization in the exercise of such rights.

Interference with individual's freedom of association

330. — (1) A person shall not seek by the use of any threat or intimidation, to compel or coerce any other person to join or not to join, or to support or not to support, any trade union or employers' organization.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Membership of trade unions and employers' organizations

331. Any person eligible for membership in a trade union or employers' organization under its constitution has the right to

membership in that trade union or employers' organization if he or she pays the fees that are due to it, and such person has the right to remain a member as long as he or she complies with the rules of the trade union or employers' organization.

Federations

332. A trade union or an employers' organization may form, participate in, be affiliated to, contribute to or join any national or international federations of trade unions or employers' organizations.

Remedies

333.— (1) Any complaint with respect to infringement of the rights and protections contained in this Division may be presented to the Tribunal.

(2) Where it is alleged in a complaint presented to the Tribunal that an employee or person seeking employment was dismissed or denied employment contrary to section 327, the burden is on the employer to prove that the dismissal or denial had no connection to the trade union membership or activities of the employee or the person seeking trade union membership.

(3) Where the Tribunal finds that a complaint presented to it under subsection (1) is well founded, it shall make such order as it deems necessary to secure compliance with this Division, including an order for the reinstatement of an employee and, if requested and deemed appropriate, the restoration to him or her of any benefit, entitlement or advantage.

Registrar

334.— (1) The Public Service Commission shall appoint a person to be the Registrar of Trade Unions and Employers' Organizations.

(2) The Registrar shall keep a register of all trade unions and employers' organizations registered under this Division in the prescribed form and shall discharge all the duties required pursuant to this Division and the Regulations.

Registration

335.— (1) A trade union and employers' organization to which this Division applies shall be registered in accordance with this Division.

(2) The rights or benefits conferred by this Division on a trade union, or an employers' organization, or its members, may be exercised only if it is registered in accordance with this Division.

(3) Any —

- (a) twenty members or more of a trade union, other than a federation of trade unions;
- (b) two or more members of a federation of trade unions; or
- (c) six members or more of an employers' organization;

may by subscribing their names to the rules of the trade union or employers' organization and otherwise complying with the provisions of this Division, apply to the Registrar for registration as a trade union or employers' organization.

(4) Three copies of the constitution of the trade union or employers' organization, duly authenticated by the signature of the president or chairperson and secretary, shall be submitted by the members to the Registrar along with the application.

(5) If the Registrar is satisfied in respect of an application made under subsection (3) that —

- (a) the requirements of this section have been met;
- (b) the constitution of the trade union or employers' organization is consistent with this Division and the Constitution of Saint Lucia and does not contain provisions which are contrary to any enactment in force in Saint Lucia;
- (c) the name of the trade union or employers' organization is not identical to that of any existing trade union or employers' organization or so closely resembles such name as to be likely to deceive its own members or the members of the public; and
- (d) none of the proposed officers of the trade union is a person who has been convicted of an offence involving fraud or dishonesty unless that conviction is spent pursuant to the Criminal Records (Rehabilitation of Offenders) Act 2004; No. 2;

the Registrar shall forthwith register the trade union or employers' organization and furnish it with a certificate of registration.

Disqualification from office

336. A person who, while holding office in a trade union or employers' organization, is convicted of an offence involving fraud or dishonesty shall be disqualified from holding such office for a minimum period of five years.

Objection to registration

337.— (1) Where the Registrar is satisfied that a trade union or employers' organization making an application is not entitled to be registered because it does not fulfill the requirements of this Division, he or she shall, within twenty one days of the receipt of the application serve notice on the trade union or employers' organization, specifically indicating in the notice the reasons for the objections and giving to the applicant a reasonable period which shall not, in any case, exceed six months after the date of the notice for the purpose of complying with the requirements of the notice, and submitting the answers to the objections.

(2) If, after the receipt of the answers raised in the objections of the Registrar and after such further discussion as the Registrar may allow in respect of the matter, the Registrar is satisfied that the objections raised in subsection (1) have been satisfactorily met, he or she shall register and issue a certificate of registration in the prescribed form on the payment of the prescribed fee.

(3) Where the Registrar is not satisfied after such further discussion as the Registrar may allow in respect thereof that the objections have been met, he or she shall reject the application.

Existing registration

338. A trade union or employers' organization which was registered prior to the commencement of this Code shall be deemed to be registered under this Division and shall be furnished by the Registrar with a certificate of registration.

Fees

339.— (1) The fees prescribed in the Sixth Schedule shall be payable to the Accountant General.

(2) A trade union or an employers' organization to which section 338 applies, is exempted from the provisions of this section.

Constitution

340.— (1) Every trade union and employers' organization shall have a constitution duly approved and ratified by the general membership.

(2) The constitution of every trade union or employers' organization shall incorporate the information contained in the Seventh Schedule.

(3) A trade union or employers' organization existing at the commencement date of this Division shall comply with subsection (1) within one year of that date.

Alterations in constitution or name

341.— (1) A trade union or employers' organization may alter its constitution in accordance with the procedures set out in its own constitution.

(2) A trade union or employers' organization shall transmit any proposed alterations to its constitution to the Registrar and, if the Registrar is satisfied that the said alterations are consistent with the provisions of this Division, the Registrar shall certify the alterations to the constitution and shall issue a written certificate stating the approval and the date on which it was given and, as from that date the new or altered constitution shall have effect.

(3) Subject to section 335(5)(c), a trade union or employers' organization may change the name under which it is registered in the same manner as an alteration of its constitution, and if this section has been complied with, the Registrar shall issue a new certificate and make the necessary alterations in the register.

Annual return to Registrar

342. Within six calendar months after the end of its financial year, a trade union or employers' organization shall submit to the Registrar an annual return which shall include —

- (a) the address of the trade union or employers' organization;
- (b) the names and addresses of its current office holders;

- (c) the number of fully paid up members of the trade union or employers' organization; and
- (d) an audited annual financial statement.

Suspension and cancellation of registration

343.— (1) The Registrar may suspend, cancel or withdraw registration of any trade union or employers' organization —

- (a) where it fails to submit an annual return in accordance with this Division;
- (b) if he or she is satisfied that the registration was obtained by fraud or by mistake;
- (c) where, by reason of a change in its constitution, the principal objects of the trade union or employers' organization, in his or her opinion, are no longer statutory objects or where in his or her opinion the principal objects for which the trade union or employers' organization is actually carried on are unlawful or against its constitution;
- (d) where the trade union or employers' organization has violated a requirement relating to the matters imposed on it by or under this Division and has persisted in its default after the Registrar has given it notice to remedy such default and the time for remedying such is expired;
- (e) at the request of the trade union or employers' organization;
- (f) on satisfactory proof that the trade union or employers' organization or its funds are being used for an unlawful purpose or a purpose not authorized under this Code or its own constitution;
- (g) on satisfactory proof that the accounts of the trade union and employers' organization are not being kept in accordance with this Division and its own constitution.

(2) In the case of the grounds specified in subsections (1)(a), (c), (f) and (g), the Registrar shall cause to be served a notice on the trade union or employers' organization specifying the grounds on which he or she intends to withdraw or cancel the registration, and the organization shall within eight weeks or such longer period as the Registrar may grant, commencing from the date of the service of the notice, comply with the requirements of the notice and remedy the default, failing which the Registrar shall cancel the registration.

(3) A trade union or employers' organization whose certificate of registration has been withdrawn or cancelled, shall, from the time of such withdrawal or cancellation, absolutely cease to enjoy the rights and privileges of a registered trade union or employers' organization and pursuant to subsection (4) shall proceed to wind up its affairs, but without prejudice to any liability actually incurred by such trade union or employers' organization which may be enforced against the same as if such withdrawal or cancellation had not taken place.

(4) Every trade union or employers' organization not registered in accordance with the provisions of this Division shall be dissolved within three months from the date when any of the events mentioned in paragraph (a) or (b) shall have taken place, that is —

- (a) where the Registrar has refused or rejected an application to register or has withdrawn or cancelled the registration of a trade union or employers' organization and in either case, the period provided for in this Division for appealing therefore has expired; or
- (b) where an appeal has been unsuccessfully maintained by a trade union or employers' organization in respect of a refusal or rejection to register or withdrawal or cancellation of registration by the Registrar.

Appeals for refusal to register

344.— (1) A trade union or employers' organization aggrieved by a refusal or failure of the Registrar to register it, or the suspension, withdrawal, or cancellation of its registration by the Registrar, is entitled to apply to the Tribunal within thirty days of the Registrar's decision or, after such reasonable time, where the Registrar fails to register, for redress.

(2) A review by the Tribunal of a decision of the Registrar to refuse to register, suspend or cancel registration or his or her failure to register, shall determine the matter.

Defunct organization

345.— (1) The Registrar may, on his or her initiative or application by another person, after making such inquiries as he or she may consider necessary, declare a trade union or an employers' organization to be defunct if the Registrar is satisfied that it is no longer carrying on any of its activities for a period of at least two years.

(2) A declaration made under this section shall include the winding up of the trade union or employers' organization and direction for the disposal of the trade unions or employers' organization's assets, as the Registrar may deem just, having regard to the objects and the constitution of the trade union or the employers' organization or a resolution of the majority members of the trade union or employers' organization in good standing.

(3) A trade union or employers' organization may, subject to a declaration made under this section, appeal to the Tribunal.

Legal status, immunity from civil suits and restraint of trade

346.— (1) A registered trade union or registered employers' organization shall have capacity to contract and to hold property, and to sue and be sued.

(2) Notwithstanding subsection (1), civil proceedings except those expressly allowed under this Code or any enactment in force in Saint Lucia shall not be brought against a trade union or employers' organization issued with a certificate of registration in accordance with this Division, or against any officer, representative or member of a trade union or employers' organization, in respect of any act done in good faith, done by, or on behalf of the trade union or employers' organization in contemplation and furtherance of a trade dispute or the objects of its constitution.

(3) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his or her capital or labour as he or she wishes.

(4) Subsection (2) shall not be construed as exempting a trade union or employers' organization or any of its officers, representatives or members from contractual liability for goods or services, from obligations incurred in respect of property, or from liability for any criminal, malicious or negligent act.

(5) The purpose of a registered trade union or employers' organization shall not, by reason merely that it is in restraint of trade, be deemed to be unlawful so as to render any member of such organization liable to conspiracy or otherwise.

(6) The purpose of a registered trade union or an employers' organization shall not, by reason only that they are in restraint of trade be unlawful so as to render voidable any agreement or trust.

Amalgamation

347. A trade union or employers' organization may, in accordance with its constitution and subject to this Division, amalgamate with any other trade union or employers' organization.

Compliance with constitution

348. Subject to this Division, every former and current officer, member or employee of a trade union or employers' organization shall comply with the constitution of their trade union or employers' organization.

Powers of discipline and expulsion

349. A member of a trade union or employers' organization shall only be disciplined, suspended or expelled from that trade union in accordance with the constitution of that trade union or employers' organization and the rules of natural justice.

Improper election practices

350.— (1) A person shall not attempt to influence the outcome of an election for any office in a trade union or employers' organization by improper means or conduct.

(2) Upon application to the Registrar by any member of a trade union or employers' organization, claiming, upon reasonable grounds, a violation of subsection (1), the Registrar may declare such election void, determine a date for the holding of a fresh election, or make provision for the filling of the offices concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

(3) A person aggrieved by the determination of the Registrar pursuant to subsection (1) may appeal to the Tribunal against the determination.

Deposit and safeguard of funds

351.— (1) A trade union or employers' organization shall have power to apply the funds of the trade union or employers' organization for any lawful objects or purposes authorized under its constitution.

(2) All funds received by, or on behalf of a trade union or employers' organization, shall be deposited in a bank account of the trade union or employers' organization or in a financial institution approved by the Registrar.

(3) Any expenditure of funds by or on behalf of a trade union or employers' organization, shall be evidenced by a written receipt or voucher, which shall be kept with the accounts of the trade union or employers' organization.

(4) The person responsible for the custody of a trade union's or employers' organization's funds and property, including records, shall hand over such funds and property to the trade union or employers' organization when he or she leaves office, or earlier, if so directed by the governing body of the trade union or employers' organization.

(5) Upon the application of a member or officer of the trade union or employers' organization, the Tribunal may make such order as it deems necessary to secure compliance with this section.

Accounting

352.— (1) Every trade union or employers' organization registered under this Division shall keep a register of its members in such form as the Registrar may require and it shall be the duty of every Treasurer and Secretary of every such trade union or employers' organization to keep the register in such form.

(2) Subject to subsection (3) —

(a) every trade union or employers' organization registered under this Division shall cause the Treasurer or other officer to keep proper accounting records with respect to its assets and liabilities and cause the Treasurer or other officer to establish and maintain a satisfactory system of control of its accounting records, its cash holdings, receipts, remittances, bonds, securities or other assets at such times as are provided by the rules of the trade union or employers' organization for the rendering of accounts; or

(b) upon being required so to do, every treasurer or other officer shall account to the trustees of the trade union or employers' organization, or to the members of the trade union, or employers' organization, at a meeting of the trade union or employers' organization for all receipts, remittances and other monies and all bonds, securities or other assets in his or her custody since he or she last rendered such accounts.

(3) Every trade union or employers' organization registered under this Division, shall take steps to ensure that the accounting records referred to in subsection (2), are kept in such a manner as is necessary to give a true and fair view of the financial affairs of the trade union or employers' organization and to explain its transactions.

(4) Subject to the provisions of subsection (9), the trustees shall ensure that the accounts are audited promptly by a fit and proper person or persons appointed by the trade union or employers' organization and approved by the Registrar for that purpose.

(5) The Treasurer or other officer, on the request of the trustees in consequence of the audit referred to in subsection (4), shall hand over to the trustees any balance which on the audit appears to be due from him or her and shall also, if requested, hand over to the trustees all bonds, securities and other assets and all books, papers and documents in his or her custody.

(6) If the Treasurer or other officer fails to comply with the provisions of subsection (5), the trustees may sue the Treasurer or other officer in any competent court for —

- (a) any balance appearing to be due from the Treasurer or other officer upon the account audited in accordance with subsection (4);
- (b) all monies since received by the Treasurer or other officer on account of the trade union or employers' organization; or
- (c) all bonds, securities, other assets, and all books, papers and documents in the hands or custody of the Treasurer or other officer.

(7) The Treasurer or other officer may set off in any suit arising under paragraphs (6)(a) and (b) such sums, if any, which the Treasurer or other officer has since paid on account of the trade union or employer's organization and in any action arising under this subsection,

the trustees shall be entitled to recover their full costs to be taxed as between attorney-at-law and client.

(8) The Registrar may, upon presentation of the audited annual return or financial statement of any trade union or employers' organization, or upon complaint by a member of a trade union or employers' organization, if it appears to him or her that there may be infringements concerning the accounts or financial affairs of a trade union or employers' organization, make an order in writing directing that the books, accounts, vouchers, documents, funds, bonds, securities and other assets of that trade union or employers' organization be inspected or audited.

(9) Where the Registrar makes an order pursuant to subsection (7), he or she shall give notice of such order to the Minister who may appoint some fit and proper person or persons for the purpose of conducting the inspection or audit.

(10) In order to assist the person or persons appointed to conduct an inspection or audit under subsection (8), a Treasurer, Secretary or other officer of a registered trade union or employers' organization has a duty to —

- (a) make available to the person or persons so appointed all books, accounts, vouchers, documents, funds, bonds, securities and other assets;
- (b) answer any inquiries from the appointed person which that person deems necessary for the inspection or audit; and
- (c) give such information and explanation as is reasonable for the conduct of the inspection or audit.

(11) A person shall not perform any inspection or audit under this section in connection with a trade union or employers' organization if he or she is an officer, partner or employee of the trade union or an employers' organization.

(12) The Trustees shall pay to the person or persons appointed for the purpose of conducting an inspection or an audit under this section, such fees as shall be prescribed.

Offences

353— (1) A trade union or employers' organization which contravenes or fails to comply with any of the provisions of sections 351 and 352 or willfully neglects to perform any duty imposed on it by or under the provisions of those sections, commits an offence.

(2) Any offence committed by a trade union or employers' organization under subsection (1), shall be deemed to have been committed by any officer on whom a duty is imposed to perform the act of which the offence committed is a breach.

(3) Any person who with intent to falsify any document or enable a trade union or employers' organization to evade any of the provisions referred to in subsection (1), wilfully makes or alters, or causes to be made or altered, or omits or causes to be omitted from any document which is required for any of the purposes of those provisions commits an offence.

(4) A person, who commits an offence under this section, is liable to a fine not exceeding five thousand dollars.

Provision for review

354. A trade union or employers' organization that is aggrieved by any decision, request or penalty under this Division, may apply for a determination of the matter in accordance with the provisions of this Code.

DIVISION 2*Recognition of the Rights to Bargaining and Representation***Non- application**

355. The provisions of this Division shall not apply to —

- (a) the protective services; or
- (b) managerial employees.

Interpretation

356. For the purposes of this Division, "majority" means not less than fifty percent plus one of the bargaining unit.

Application procedures

357.— (1) A trade union claiming to have as members in good standing a majority of the employees of an employer in a bargaining unit may, subject to this Division, make an application to the Labour Commissioner to be certified as the exclusive bargaining agent of the employees in the bargaining unit.

(2) All existing trade unions which were certified as bargaining agents immediately before the coming into force of this Division shall be deemed to be certified.

Certification particulars

358.— (1) The application referred to in section 357 shall be in writing and shall include —

- (a) a description of the proposed bargaining unit; and
- (b) facts upon which the trade union relies to demonstrate that a substantial number of employees in the bargaining unit wish to have the trade union certified as their exclusive bargaining agent.

(2) The Labour Commissioner shall, subject to subsection (5), give notice in the prescribed form of an application or having determined the authenticity of an application shall notify the employer to which the application relates.

(3) Subject to subsection (4), an application made under subsection (1) shall be determined in accordance with this Division as soon as is practicable but not later than two months from the date of receipt of the application by the Labour Commissioner.

(4) The Labour Commissioner may, where the circumstances of the case demand, extend the time referred to in subsection (3) as he or she deems necessary to conclude the process.

(5) The Labour Commissioner shall not, in the notice pursuant to subsection (2), submit to an employer information which discloses the identity of any employee in the bargaining unit.

Appropriateness of bargaining unit

359.— (1) Where an application for recognition is made under section 357, the employer and the trade union applying for recognition may,

through discussion, agree on the bargaining unit, and the Labour Commissioner shall be informed of such agreement, in writing, within seven days of the application being made.

(2) Where the Labour Commissioner is not informed of an agreement in accordance with subsection (1), the Labour Commissioner shall, after consultation with the employer and the trade union, determine the bargaining unit he or she considers appropriate in the circumstances and, in so doing, shall have regard to—

- (a) the community of interests among the employees in the proposed bargaining unit;
- (b) the nature and scope of the duties of the employees in the proposed unit;
- (c) the views of the employer and the trade unions concerned as to the appropriateness of the bargaining unit; and
- (d) the historical development, if any, of collective bargaining in the employer's undertaking.

(3) Where an agreement or determination is made pursuant to subsection (1) or (2), the Labour Commissioner may, before recognition, include additional employees in or exclude employees from the bargaining unit.

(4) Where an employer or a trade union is aggrieved by the determination of the Labour Commissioner pursuant to this section, the employer or trade union may appeal to the Tribunal against the determination.

Employer's recognition

360.— (1) Subject to subsections (2) and (3), upon receipt of a notice from the Labour Commissioner, under section 358, an employer shall, within twenty-one days of receiving the notice, communicate—

- (a) his or her agreement to recognize the trade union as the bargaining agent for that bargaining unit; or
- (b) that the employer doubts that the trade union is entitled to be recognized as the bargaining agent for that bargaining unit.

(2) A communication from an employer under subsection (1), shall be made in writing.

(3) A communication from an employer under subsection (1) (b) shall specify the employer's reasons for doubting that the trade union is entitled to be so recognized.

Certification following employer recognition and refusal to recognize where one trade union applies

361.—(1) Where only one trade union has applied for certification under section 357, and the employer has communicated his or her agreement to recognize the trade union as the bargaining agent under section 360, the Labour Commissioner shall certify the trade union.

(2) Where only one trade union has applied for certification under section 357 and the employer doubts that the trade union is entitled to be recognized as the bargaining agent for the bargaining unit under section 360, the Labour Commissioner shall carry out a secret poll among a bargaining unit and shall certify the trade union if the result of the secret poll show that the majority of workers within the bargaining unit voted in favour of the trade union.

(3) Where the results of the secret poll pursuant to subsection (2) show that the trade union does not have a majority of votes cast, the trade union involved or any other trade union shall not bring an application for certification to the Labour Commissioner until a period of three months has elapsed.

Certification by poll majority

362.— (1) Where two or more trade unions have applied under section 357 in relation to the same bargaining unit, the Labour Commissioner shall carry out a secret poll among employees in the bargaining unit and, in accordance with section 361, shall certify as the recognized bargaining agent for the bargaining unit the trade union which is shown by the secret poll to have the greatest support among the employees in the bargaining unit, where the total sum of the votes cast exceed fifty percent of the bargaining unit.

(2) Where the results of the secret poll pursuant to subsection (1) show a tie and the combined votes exceed fifty percent of the bargaining unit and joint representation is not requested by the trade unions, a second secret poll shall be carried out within seven days unless extended for good cause by the Labour Commissioner.

(3) Where the results of the second secret poll pursuant to subsection (2) show a tie and the combined votes exceeds fifty percent

of the bargaining unit and joint representation is not requested by the trade unions, no trade union shall bring a further application for certification until a period of six months has elapsed since the taking of the second secret poll.

Employer duties in conduct of poll

363. In relation to the conducting of a secret poll, every employer shall—

- (a) take all necessary steps to ensure that the employees who are eligible to vote in a secret poll are given the opportunity to do so;
- (b) permit each such employee to be absent from work, for a reasonable period of time not to exceed two hours, without pay deduction for the purpose of voting; and
- (c) facilitate the conduct of a secret poll on the premises of the employer.

Penalty for breach to section 363

364. An employer who contravenes section 363 is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one month.

Restrictions in conduct of poll

365.— (1) In relation to the conducting of a secret poll a person shall not —

- (a) seek, on any premises on the day on which the secret poll is being held or within one hundred yards of such premises, to influence an employee to vote or refrain from voting for a trade union; or
- (b) wilfully obstruct any person from voting or carrying out any function imposed on that person under this Division.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one month or to both.

Employee duties in conduct of poll

366.— (1) In relation to the conducting of the secret poll, an employee shall not —

- (a) receive or agree to receive any money, loan, reward, office or place of employment for voting or agreeing to vote or for refraining or agreeing to refrain from voting for a trade union; or
- (b) accept or take any food or drink or provision from any person where the intent is to induce the employee to vote or refrain from voting or to reward the employee for having voted or refrained from voting.

(2) An employee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one month or both.

Grant or refusal of certification

367. The Labour Commissioner shall, in writing, within a period of forty-five days of the receipt of the application under section 357 —

- (a) in accordance with this Division, certify the trade union as the recognized bargaining agent for the bargaining unit;
- (b) refuse to certify the trade union on the grounds that it has not satisfied the requirement in accordance with section 362; or
- (c) refuse to certify the trade union on the grounds that the bargaining unit identified by the trade union is not appropriate.

Effect of certification and compulsory recognition and duty to negotiate in good faith

368.— (1) Where a trade union is certified under this Chapter as the exclusive bargaining agent for the employees in the bargaining unit —

- (a) the trade union shall replace any other trade union that before such certification was the bargaining agent for the employees in the bargaining unit and shall have exclusive authority to bargain collectively on behalf of the employees in the bargaining unit and to bind them by a collective agreement so long as such certification remains in force;

- (b) if another trade union had previously been certified or was deemed to have been certified in respect of employees in the bargaining unit, the certification of the last mentioned trade union shall be deemed to be revoked in respect of such employees; and
- (c) the certified trade union shall be substituted as a party to any collective agreement applicable to any employees in the bargaining unit in the place of the bargaining agent named in the collective agreement.

(2) Where a trade union has been certified as the recognized bargaining agent for a bargaining unit in accordance with this Division, the employer shall recognize the trade union and the trade union and the employer shall meet and engage in collective bargaining in good faith and make every reasonable effort to conclude a collective agreement.

Closing or restructuring of undertaking

369.— (1) Where a trade union has been certified in accordance with this Division, or has made application for certification pursuant to this Division, an employer who decides to close or restructure an undertaking must communicate in writing to the Labour Commissioner and to the trade union —

- (a) reasonable notice of intention;
- (b) reason for closure or restructuring; and
- (c) the number and categories of employees to be affected.

(2) An employer who closes an undertaking without complying with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) In any prosecution under subsection (2), the onus shall be on the employer to prove that he or she gave the Labour Commissioner and the trade union concerned reasonable notice and reasons for the closure or restructuring.

New collective agreement

370. A collective agreement shall remain in force until a new agreement is signed by the certified trade union and the employer.

Revocation of exclusive bargaining rights

371.— (1) Any time after one year from the certification of a trade union as the exclusive bargaining agent for a bargaining unit, any employee in that bargaining unit may apply to the Labour Commissioner for the withdrawal of the certification on the basis that the majority of employees in the bargaining unit no longer wish to have the trade union as their exclusive bargaining agent.

(2) An application under subsection (1), shall be accompanied by evidence that a substantial number of employees in the bargaining unit do not wish to have the trade union as their exclusive bargaining agent.

(3) Within thirty days of receiving an application under subsection (1), accompanied by evidence as required by subsection (2), the Labour Commissioner shall conduct a secret poll of the employees in the bargaining unit.

(4) After a secret poll conducted under subsection (3), the Labour Commissioner shall grant the application made under subsection (1), if more than fifty per cent of those employees in the bargaining unit vote against having the trade union represent the bargaining unit as the exclusive bargaining agent, in which case the Labour Commissioner shall cancel the certification of the trade union and the trade union shall not bring a further application for certification until a period of six months has elapsed.

(5) If the application for cancellation of the certification is refused, no one shall bring a further application for the cancellation of the certification until a period of six months has elapsed.

Right to appeal

372. Where there is a dispute regarding the applicability of section 362 or 363 an aggrieved party may apply for determination by the Tribunal of the matter in accordance with this Code.

Right to choose representative

373. Nothing in this Division prevents an employee from being assisted by a representative of his or her choice, including an officer of a trade union which has not been certified under this Division, in a personal grievance or disciplinary matter relating to his or her employment.

Access to employer's premises

374.— (1) An employer shall not deny to an officer or authorized representative of any trade union certified under this Division such access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

(2) In granting the access pursuant to subsection (1), an employer may impose such restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations and in the interest of safety.

Appropriate time for trade union representatives

375.— (1) Subject to section 374, a representative of a certified trade union at the workplace shall have appropriate time during work hours as is necessary for the performance of his or her duties as the representative and shall not suffer any detriment, discrimination or disadvantage, including any loss in normal pay by reason of such representation.

(2) In determining what is appropriate time, due regard shall be given to the efficient operation of the enterprise.

Offence of refusing to meet to bargain in good faith

376.— (1) An employer shall not refuse or fail to meet to bargain collectively in good faith with a trade union certified as the bargaining agent for its enterprise in accordance with this Division.

(2) A trade union certified as the bargaining agent for an enterprise shall not refuse or fail to meet to bargain collectively in good faith with an employer in accordance with this Division.

(3) An employer or a trade union certified as a bargaining agent that contravenes subsection (1) or (2) commits an offence and is liable for a first offence on summary conviction to a fine not exceeding five thousand dollars or on summary conviction for a second or subsequent offence to a fine not exceeding five hundred dollars for each day on which the offence continues after conviction for the prior offence.

(4) Where there is doubt whether the trade union or employers' organization is meeting and engaging in collective bargaining in good faith and making every effort to conclude a collective agreement in accordance with this Division, the matter shall be determined by the Labour Commissioner.

Meaning of “to bargain collectively”

377.— (1) For the purposes of this Division—

- (a) to “bargain collectively” means the performance of the mutual obligation of the employer or his or her representative and the certified trade union to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or termination of employment with a view to reaching agreement, to execute a written contract incorporating any agreement reached, if requested by any party, and, a written contract having been executed, to discuss any question or interpretation thereof;
- (b) “refusal to bargain collectively” includes, but is not limited to, the following-
 - (i) on the part of either an employer or a trade union which is the certified trade union, a failure to adhere to any of the requirements of paragraph (a);
 - (ii) on the part of an employer, unilaterally to change working conditions;
 - (iii) on the part of an employer, during the negotiation of a collective agreement, the refusal, upon request, to give to a certified trade union, information which is essential to meaningful bargaining; or
 - (iv) on the part of an employer or trade union, refusal to discuss a grievance under an existing collective agreement or in the discussion of a grievance, to refuse, on request, to give to an employer or a certified trade union, information which is essential to a meaningful discussion of the grievance.

DIVISION 3
Collective Agreements

Collective agreements

378.— (1) A collective agreement shall —

- (a) be committed to writing and signed by the parties to the agreement;
- (b) contain the date of its duration;
- (c) contain effective procedures for the avoidance and settlement of rights and interests disputes which procedures may include a reference of any dispute to conciliation, mediation or arbitration;
- (d) contain provisions for the settlement of all differences arising out of the interpretation, application and administration of the agreement;
- (e) provide for such other matters as may be agreed between the parties to the agreement;
- (f) be signed in the presence of and lodged with the Labour Commissioner or his or her representative.

(2) Nothing in this section shall affect the validity of a collective agreement which is valid and existing immediately before the coming into force of this Division and such agreement shall remain in force until it expires or is replaced by another collective agreement.

Enforceability of collective agreements

379.— (1) A collective agreement is legally enforceable on a certified trade union and an employer that have entered into it and on an employee who is a member of the recognized trade union, or member of a bargaining unit for whom that trade union has been recognized if the collective agreement —

- (a) is in writing;
- (b) provides that the parties intend it to be a legally enforceable contract in its entirety.

(2) Where a collective agreement which is in writing contains a provision stating that the parties intend one or more parts, but not the whole of the collective agreement as a legally enforceable contract, then —

- (a) the specified part or parts shall be legally enforceable; and
- (b) the remainder of the collective agreement shall not be legally enforceable,

and the part or parts of the collective agreement which are legally enforceable shall be incorporated into the contract between the employer and employee.

(3) Any party to a binding collective agreement may apply to the Tribunal to enforce the collective agreement.

Successor rights and obligations

380.— (1) If a business or a part of it is sold, leased, transferred, or otherwise disposed of —

- (a) the purchaser, lessee or transferee is bound by all the proceedings under this Part that were commenced before the date of the disposition and the proceedings shall continue as if no change had occurred;
- (b) if a collective agreement is in force, it continues to bind the purchaser, lessee, or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee.

(2) Where a dispute arises regarding the applicability of this section, an affected party may apply to the Tribunal for a determination of the matter in accordance with this Part.

Regulations

381. The Minister in consultation with the Labour Commissioner may make Regulations for —

- (a) the conduct, organization and timing of a secret poll; or
- (b) the carrying out of the provisions of this Division into effect.

PART VIII
PRINCIPLES AND PROCEDURES IN INDUSTRIAL RELATIONS
AND INDUSTRIAL DISPUTES

DIVISION 1
Settlement of Trade Disputes

Non-application

382. The provisions of this Division do not apply to members of the protective services.

Freedom to engage in industrial action

383. Every person has the freedom to engage in industrial action within the limits prescribed by this Code and no court shall have jurisdiction with respect to the granting of any restraining order or any injunction, temporary, or permanent, in connection with industrial action taken in accordance with this Code.

Peaceful picketing

384. Notwithstanding anything contained in this Code or any other law to the contrary, one or more persons acting on their own behalf or on behalf of a trade union, or of an individual employer, in furtherance and contemplation of a trade dispute, may attend at or near a place where a person works or carries on business, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

Effect of strike on contract of employment

385. A person does not commit a delict, a breach of contract or a breach of a collective agreement merely by taking part in a strike or a lockout in compliance with this Code.

Employee not entitled to remuneration during strike

386. An employer is not obliged to remunerate an employee for services that the employee does not render during a strike or lockout.

Trade disputes to be reported to Labour Commissioner

387. Where a trade dispute exists or is contemplated, it shall be reported to the Labour Commissioner by, or on behalf of the parties to the dispute, and the Labour Commissioner shall consider the matter and take such steps as seem to him or her, expedient for promoting a settlement of such dispute.

Referral of trade dispute to the Tribunal with consent

388. After a trade dispute is reported to the Labour Commissioner, he or she may, and if both parties to the dispute consent, refer the matter for settlement to the Tribunal.

Conciliation procedures to be exhausted

389. — (1) Where there exists in any trade or industry arrangements for settlement of disputes by conciliation or arbitration made pursuant to an agreement between employers' organizations and trade union organizations, the Labour Commissioner shall not, unless with the consent of both parties to the dispute, and unless and until there has been a failure to obtain a settlement by means of those arrangements, refer the matter for settlement in accordance with this Division.

(2) Notwithstanding the provisions of subsection (1), where a party has referred a matter for settlement to the Labour Commissioner and the Labour Commissioner discovers a failure by the parties to exhaust the steps outlined in the grievance procedure before its referral, the Labour Commissioner shall not consider the matter and shall direct the parties to abide by the provisions of the grievance procedure.

Minister to attempt mediation

390.— (1) Notwithstanding the provisions of section 389, where a trade dispute exists or is contemplated the Minister may, if in his or her opinion such dispute is likely to be harmful to the public interest, intervene in the dispute or pending dispute, for the purposes of mediation.

(2) Where the Minister intervenes pursuant to subsection (1), he or she shall take such steps as he or she deems expedient for promoting a settlement of the dispute including the summoning of the parties together to attempt reconciliation.

(3) If the Minister fails at promoting a settlement to the dispute, he or she shall notify the parties to the dispute and thereafter be referred to the Tribunal for settlement.

DIVISION 2*Regulation of Disputes in the Essential Services***Dispute procedure**

391.— (1) Any trade dispute which exists or is contemplated in an essential service shall be reported in writing to the Minister by or on behalf of either party to the dispute.

(2) Where the Minister —

- (a) after a report is made to him or her in accordance with subsection (1) and he or she is satisfied that such trade dispute exists or is contemplated in an essential service; or
- (b) on his or her own initiative becomes aware of the existence of a trade dispute in an essential service or contemplates such dispute,

the Minister may investigate any matter appearing to him or her to be relevant to that dispute or take such steps as appear expedient to the Minister to promote a settlement.

(3) The Minister shall consider any dispute reported to him or her in accordance with subsection (1) or that he or she became aware of in accordance with subsection (2)(b), and, if in the Minister's opinion, suitable means for settling the dispute already exist in an agreement between the parties to the dispute, he or she shall refer the dispute for settlement in accordance with the agreement.

(4) Where steps to promote a settlement of the dispute have been taken by the Minister under the provisions of subsection (2) or (3) and those steps have not resulted in a prompt settlement of the dispute, the Minister shall —

- (a) within fourteen days from the date on which the dispute was reported to him or her; or
- (b) within fourteen days from the date when the Minister first took cognisance of the dispute in accordance with subsection (2);

refer the dispute for settlement to the Tribunal.

(5) Where there is no suitable means of settlement for a trade dispute in accordance with subsection (3) or where a dispute exists in an essential service and industrial action is taking place in that essential service, the Minister, notwithstanding the existence of means for settling the dispute in accordance with subsection (3), shall refer the dispute to the Tribunal before the expiration of fourteen days of the date on which the dispute was reported to him or her in accordance with subsection (1) or on which he or she took cognisance of the dispute in accordance with subsection (2)(b).

Prohibition of lockouts, strikes and industrial action

392.— (1) A person shall not take part in industrial action in connection with a trade dispute in an essential service —

- (a) during the period when the dispute is before the Tribunal; or
- (b) where the Minister has referred the matter for settlement in accordance with section 391(3);

and in any event, not before the expiration of thirty-one days following the report of the dispute in accordance with section 391(1).

(2) A person who contravenes the provisions of subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) A person who incites or instigates or in any way encourages, persuades or influences a person employed or engaged in an essential service to take part in industrial action in contravention of this Division, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Employer to post copy of section on premises

393.— (1) An employer in an essential service shall ensure that a printed copy of section 392(3) is kept posted in some conspicuous place in the workplace where it may conveniently be read.

(2) A person, who unlawfully damages, defaces, obliterates, destroys or removes any printed copy of section 392(3) posted as required pursuant to subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

Endangering life and property

394.— (1) A person shall not wilfully take part in industrial action in an essential service, knowing or having reasonable cause to believe that the probable consequences of his or her so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury, or to expose valuable property, whether immovable or movable, to destruction or serious damage.

(2) A person shall not incite or instigate, or in any way encourage, persuade or influence another to take part in industrial action in an essential service, knowing or having reasonable cause to believe that

the probable consequences of that other person so doing would be to endanger human life or cause serious bodily injury, or to expose valuable property, whether land or personal, to destruction or serious damage.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Permission from Attorney General for prosecutions

395. A prosecution for an offence under this Division shall not be commenced without the consent of the Attorney General.

Duty of Minister to take measures for the preservation of essential services

396.— (1) It shall be the duty of the Minister to take all lawful measures including the expenditure of public funds for the preservation, maintenance and continuity of any essential service.

(2) Sums required for the purposes of subsection (1) or for carrying out the provisions of this Division may be payable out of the Consolidated Fund.

Services declared to be essential services

397. The services specified in the Eighth Schedule are declared to be essential services.

Minimum service in some sectors

398. Where industrial action takes place or is contemplated in an essential service, provision shall be made for minimum service to be rendered to the public such that the economy, health or safety of the country is not endangered.

Power of Minister to make Regulations

399. The Minister may make Regulations generally for giving effect to or for the better carrying out of the provisions of this Division.

DIVISION 3

*Dispute Resolution by Labour Department***Department of Labour**

400. The Department of Labour shall administer and carry out all administrative functions as laid down under this Code and as the Minister may direct.

Officers of the Department of Labour and appointment

401.— (1) There shall be labour officers of the Department of Labour comprised of a Labour Commissioner, a Deputy Labour Commissioner, occupational safety and health officers, a law officer and such other labour officers as may be necessary for the efficient functioning of this Code.

(2) The Public Service Commission shall appoint such number of labour officers as may be necessary to carry out the duties of the department effectively.

(3) For the purposes of this Code “law officer” has the meaning given to it pursuant to the Legal Professions Act, Cap. 2.04.

Responsibilities of the Labour Commissioner

402.— (1) The Labour Commissioner shall be responsible for the general administration of the work of the Department of Labour, for the administration of the Code and such other functions as may be assigned to him or her by the Minister.

(2) Without derogating from the generality of subsection (1) in particular, the Labour Commissioner shall —

- (a) promote the settlement of any differences between employers and employees in accordance with the provisions of this Code including the facilitation of any meetings for the purposes of conciliation between the parties to a trade dispute;
- (b) advise the Minister on all labour matters and on measures to improve industrial relations generally;

- (c) encourage the development of tripartism and collective bargaining and provide technical advice to employers and trade unions on industrial relations;
- (d) be responsible for the inspection of all workplaces in accordance with this Code;
- (e) prepare an annual report on the work of the department of labour and on its functions under this Code and such reports shall be published within twelve months after the end of the year to which they relate;
- (f) make recommendations to the Minister for the promotion of good industrial relation practices;
- (g) where he or she deems appropriate, recommend to the Minister to collect, prepare and publish statistics relating to any matter pertaining to this Code and labour matters in the country;
- (h) where possible, facilitate mechanisms for training and retraining of workers in Saint Lucia on a tripartite basis;
- (i) delegate certain of his or her powers to other labour officers in order to enforce the provisions of this Code and to revoke such delegation at any time; and
- (j) act, to the best of his or her ability, as an advisor on all matters pertaining to the Code and all matters concerning employment in Saint Lucia when called upon to do so by employers or trade unions.

Power of Labour Commissioner to institute proceedings

403. The Labour Commissioner may institute or cause to be instituted any hearing, prosecution, or proceeding before the Tribunal for investigation and determination for the purposes of enforcing the provisions of this Code.

Proceedings instituted by Labour Commissioner upon complaint

404. Where any person alleges a violation of a provision of this Code, he or she may report the matter to the Labour Commissioner who may institute or cause to be instituted proceedings before the Tribunal.

Labour Commissioner to hold informal inquiries

405. The Labour Commissioner may inquire informally into any dispute or, pending dispute between an employer and employee or a complaint under this Code brought to his or her notice, and use his or her offices and influence to bring about a fair and reasonable settlement of such dispute or complaint without recourse to formal or legal proceedings.

Power of the Labour Commissioner to summon witnesses

406. The Labour Commissioner may, in the exercise of his or her functions under this Code, summon any employer, union, employee, interested party or witness to the Department of Labour for the purposes of facilitating an investigation of any complaint, matter or query under this Code or the resolution of any industrial relations dispute.

Powers of labour officers

407. A labour officer may —

- (a) enter any workplace or place where an employee is housed, freely and without previous notice or warrant, during working hours, for the purposes of inspection or investigation in relation to matters arising from this Code;
- (b) enter, during working hours, any premises which he or she reasonably believes to be a workplace;
- (c) enter the private home of an employer with the consent of the employer or with a warrant from a Magistrate where a labour officer reasonably believes that the private home of the employer is an industrial establishment or workplace;
- (d) carry out any examination, test or enquiry which he or she considers necessary in order to satisfy himself or herself that the provisions of this Code relating to the employment of persons or the operation of a workplace are being strictly observed;
- (e) seek information from the employer or the employees of the undertaking or interested parties or any witness on any matter concerning the application of any such provision of this Code;
- (f) require the production of any records, books, registers or other documents, the keeping of which is prescribed by this Code and copy such documents or make extracts of them;

- (g) upon giving a receipt, seize any records, books, registers or other documents the keeping of which is prescribed by this Code which are, in the opinion of the labour officer, necessary for the resolution of a dispute, matter or query under this Code, and where the labour officer reasonably believes that such records, books registers or other documents are not likely to be forthcoming voluntarily from the employer; but where such books, records or other documents are necessary for the continued operations of the business reasonable access thereto shall be allowed to the employer;
- (h) enforce the posting of notices required by legal provisions;
- (i) for purposes of analysis take or remove samples of materials and substances used or handled, subject to the employer or the employer's representative being notified of, shown and authenticating any samples or substances to be taken or removed for that purpose;
- (j) take such photographs or video shots as may be useful for such purposes;
- (k) require the employer or any person in the service of that employer to give the labour officer all reasonable assistance with, and to answer all questions relating to the examination.
- (l) require from employers, information as to the terms and conditions of employment of the employees and any other information necessary to enforce the provisions of this Code;
- (m) search, if necessary with the assistance of any other person, any building, receptacle or place for books, records, documents, papers or things which may afford evidence as to the violation of any provision of this Code; or
- (n) exercise any additional powers laid down under section 176 when acting in the capacity of an occupational safety and health officer.

Immunity of labour officers

408. An action shall not be brought against any labour officer in respect of anything done or omitted to be done by him or her in good faith in the execution of his or her powers and duties under this Code.

Duty of confidentiality

409.— (1) Except where otherwise provided under this Code and the Regulations or as required by law —

- (a) a labour officer, a person accompanying a labour officer or a person who, at the request of a labour officer obtains information or makes an examination, test or inquiry pursuant to the powers conferred on him or her under this Code, shall not publish, disclose or communicate to any person any information, material statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Code or the Regulations;
- (b) a person shall not publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Code or the Regulations made thereunder;
- (c) a person to whom information is communicated under this Code and the Regulations shall not divulge the name of the informant to any person.

(2) The duty of confidentiality referred to under subsection (1) shall not apply —

- (a) where written instructions of the Minister to disclose has been issued save that the Minister may not issue instructions to disclose matters referred to under subsection (1) (b);
- (b) where disclosure is required in the necessary course of the duties of the labour officer;
- (c) where evidence is being given before a court of competent jurisdiction or the Tribunal; and
- (d) where the consent of the person affected by such a disclosure has been obtained.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Individual complaints

410.— (1) Except where provision is made under this Code for a complaint to be addressed directly to the Tribunal, any complaint made

by an individual, alleging a contravention of any of the provisions of this Code, shall be made to the Labour Commissioner in the first instance.

(2) Upon receipt of a complaint under subsection (1), the Labour Commissioner may refer the matter to the Tribunal for determination.

Individual disputes

411. Where an employee or employer, or a person acting on behalf of such employee or employer, or a trade union representative acting on behalf of an employee where there is no certified trade union at that establishment, makes a complaint to the Labour Commissioner, it shall be deemed to be an individual dispute.

Procedure for individual disputes by Labour Commissioner

412. Where the Labour Commissioner decides to, in his or her discretion, hear and determine an individual dispute made to him or her, he or she may summon the parties in order to determine the matter.

Evidence and arguments

413. At a hearing of an individual dispute, the parties may present evidence on the issues, argue orally or present written briefs to the Labour Commissioner and to all parties to the dispute.

Witnesses and documents

414. The Labour Commissioner may examine the parties and witnesses to a hearing orally and may request such documents or records which he or she determines to be relevant to the matter being heard.

Time limit for determination

415. Within six weeks of a hearing pursuant to section 412, the Labour Commissioner shall make a determination of the matter and—

- (a) the decision shall be in writing;
- (b) the decision shall contain findings of facts, explanations of the evidence and relevant sections of this Code; and
- (c) the decision shall outline the relevant issues presented and the underlying reasons for the decision.

Time limit for review

416.— (1) Within six weeks of a determination made pursuant to section 415 by the Labour Commissioner, any party to the decision may make an application for a review of the decision to the Tribunal.

(2) If the Labour Commissioner has failed to determine the matter after six weeks from the date of receipt of the complaint, the matter shall be referred to the Tribunal for determination.

Decision of Labour Commissioner to be final and binding

417.— (1) Subject to subsection (2), where a decision of an individual dispute has been made by the Labour Commissioner, that decision shall be final and binding.

(2) Subsection (1) shall not apply where the matter is referred to the Tribunal for review.

Impartiality of Labour Commissioner

418.— (1) The Labour Commissioner shall be impartial in his or her determination of any matter before him or her and in particular, shall not accept or receive any reward or benefit or promise of reward or benefit in connection with his or her handling of any matter referred to him or her either before, during or subsequent to his or her handling of such matter.

(2) The Labour Commissioner shall declare any personal, financial or other interest in any matter for determination and shall withdraw from such matter.

(3) A person shall not threaten the Labour Commissioner or cause him or her to suffer any reprisal or prejudice in connection with his or her handling of any matter.

(4) A person shall not give, or promise to give the Labour Commissioner any reward or benefit in connection with his or her handling of any matter referred to him or her for determination.

(5) Any person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding six months or both.

Powers of Labour Commissioner to recommend remedies

419. Where the Labour Commissioner makes a statement of finding in accordance with section 415, he or she may recommend an appropriate remedy and in particular may —

- (a) in an unfair dismissal matter, recommend the payment of a sum of money equal to the loss of remuneration sustained from the date of dismissal;
- (b) recommend the reinstatement or re-engagement of any employee where appropriate and in accordance with this Code;
- (c) in any case alleging an infringement of a provision of this Code, recommend that the act, conduct or omission found to be unlawful be ceased and, or not repeated, including any act, conduct or omission which is part of a collective agreement or other agreement;
- (d) direct the payment of remuneration where due;
- (e) direct an employee to repay loans advanced as wages pursuant to section 48;
- (f) direct any sum payable at the termination of employment including-
 - (i) any severance or redundancy payment due under this Code;
 - (ii) any vacation, notice or other benefits; or
- (g) recommend the taking of vacation leave or maternity leave when due in accordance with this Code.

Recommended remedy

420.— (1) The parties to a remedy recommended by the Labour Commissioner under section 419 may accept such remedy and where accepted, the remedy shall be registered by the Tribunal within three weeks and shall become binding as an award of the Tribunal.

(2) Where the remedy recommended by the Labour Commissioner is not accepted by both parties to the matter, the recommendation shall be forwarded to the Tribunal within two weeks and the Tribunal may, in its discretion —

- (a) accept the recommended remedy and deem it a binding award of the Tribunal; or
- (b) substitute the recommendation for an appropriate award of its own.

Refusal to abide by decision

421.— (1) A person shall not refuse to abide by a determination or remedy of the Labour Commissioner as agreed by the parties to a dispute in accordance with this Division.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding three months or to both.

Obstruction of Labour Commissioner's hearing

422.— (1) A person shall not refuse to obey a summons of or a request for documents made by the Labour Commissioner for the purposes of conducting a hearing and determining an individual dispute pursuant to this Part, or otherwise obstruct the Labour Commissioner in the execution of his or her duties.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Interpretation of decisions

423. A party to a decision of the Labour Commissioner may apply to the Labour Commissioner for a resolution of any question of interpretation which arises from that decision and such resolution shall be made without further hearing and shall form part of the original decision.

DIVISION 4
The Labour Tribunal

Establishment of Labour Tribunal

424. There is hereby established a tribunal to be known as the Labour Tribunal which shall have jurisdiction to hear and decide all matters referred to it in accordance with this Code.

Composition of Tribunal

425.— (1) The Tribunal shall comprise seven members appointed by the Minister as follows —

- (a) the Chairperson who shall be an attorney-at-law of at least three years standing with experience or qualifications in industrial relations chosen by the Minister in his or her own deliberate judgement;
- (b) two persons chosen by the Minister in his or her own deliberate judgement;
- (c) two persons nominated by or on behalf of the bodies most representative of employers; and
- (d) two persons nominated by or on behalf of the bodies most representative of employees or trade unions.

(2) The members of the Tribunal shall select a member to be the Deputy Chairperson.

Sittings of Tribunal

426.— (1) Subject to subsection (2), the Tribunal shall sit in Divisions.

(2) A Division of the Tribunal shall comprise —

- (a) the Chairperson or the Deputy Chairperson;
- (b) one representative of the trade unions; and
- (c) one representative of employers' organisations.

(2) The Deputy Chairperson may act as the Chairperson in any matter before the Tribunal where, in the opinion of the Chairperson, it is expedient to do so.

(3) The Tribunal may sit at such times as are necessary for the settlement of a dispute or complaint.

Remuneration of Members

427. The remuneration of the members of the Tribunal shall be as set out in the Regulations made in accordance with this Part.

Appointment of officers and committees

428.—(1) The Minister may appoint such officers to the Tribunal as are necessary for the proper exercise of its duties.

(2) The Tribunal —

- (a) shall subject to subsection (3) appoint a medical committee for the purpose of advising the Tribunal on the matters referred to in section 94 or for the purposes of determining appeals relating to medical matters; and
- (b) may appoint other committees for the purpose of advising the Tribunal on matters before it.

(3) A medical committee appointed pursuant to subsection (1) shall comprise two medical practitioners and a registered nurse.

Tribunal to regulate its own procedure

429. The Tribunal shall, subject to this Part, regulate its own procedure.

Vacancies in the Tribunal

430.— (1) Where a vacancy exists in the membership of the Tribunal, except where the vacancy is in respect of the Chairperson, the Tribunal may, with the consent of the parties to a dispute, act notwithstanding the vacancy.

(2) Any act, proceeding, or determination of the Tribunal shall not be called in question or invalidated by reason of a vacancy, provided that in the circumstances referred to in subsection (1) the required consent has been first obtained.

Powers of Tribunal

431. For the purpose of dealing with any matter referred to it, the Tribunal shall adhere to the principles of natural justice and may, without being bound by the rules of evidence in civil or criminal proceedings —

- (a) request any person to furnish in writing or otherwise such particulars in relation to the matter;

- (b) where necessary summon and enforce the attendance of any person before the Tribunal to give evidence on oath or otherwise;
- (c) request the production of documents by a person so as to elicit all such information as in the circumstances may be necessary;
- (d) administer oaths and affirmations;
- (e) enter any premises of an employer where work is being or has been done by employees and inspect and view any work, material, machinery, appliances or articles therein and seek information from any person with respect to any matter that is before the Tribunal;
- (f) adjourn or postpone the hearing from time to time;
- (g) abridge or enlarge the time for instituting any proceeding or for doing any act, filing any document or presenting any evidence in connection with the proceeding;
- (h) amend or permit the amendment of any document filed in connection with the proceeding;
- (i) decide any question that may arise in the proceeding, including, without restricting the generality of the foregoing, any question as to whether-
 - (i) a person is an employer or employee;
 - (ii) a group of employees is an appropriate bargaining unit.

Power of the Tribunal to hear matters *ex parte*

432. The Tribunal shall have power to hear any complaint, dispute, industrial dispute or other matter referred to it for determination, on the Tribunal being satisfied that due notice of the hearing was served on a party to the dispute, notwithstanding that that party fails to appear before the Tribunal.

Orders declaring rights and imposing duties

433. The Tribunal shall have authority to make orders —

- (a) declaring the rights of the parties in any matter arising out of this Code;

- (b) directing any person to comply with any duty imposed on him or her by this Code.

Orders or awards of the Tribunal for trade disputes

434.— (1) The Tribunal shall have jurisdiction to hear and determine trade disputes in accordance with this Code.

(2) The Tribunal shall make such order or award within fourteen days of the receipt of the matter being referred to it or such longer period as the Tribunal may determine.

Order may be retroactive

435. An order or award in any matter referred to the Tribunal for determination may be made operative from such date as the Tribunal may consider fair and just having regard to all the circumstances of the case.

Binding effect of orders on relevant persons

436.— (1) An order or award of the Tribunal shall be binding on—

- (a) all parties to the dispute who appear or are represented before the Tribunal;
- (b) in the case of an employer, any successor to, or assignee of the business of the employer who is a party bound by such order or award, including any company that has acquired or taken over the business of such a party;
- (c) any trade union on whom such order or award is at any time declared by the Tribunal to be binding as well as on its successors; and
- (d) all workers whom the dispute concerns and to whom such order or award refers.

(2) The Tribunal may, during the course of any dispute pending before it, direct that any successors to, or any assignees of the employer who are parties to the dispute shall be joined or substituted as parties to the dispute and any order or award of the Tribunal in such a dispute shall, except to the extent that it is otherwise expressed in such order or award, be binding on the successors or assignees of that employer.

(3) For the purpose of this section, a question whether a person is the successor to or an assignee of another, shall be determined by the Tribunal from all the circumstances in accordance with the principles of good industrial relations practice and such determination shall be binding on the persons referred to in subsection (1).

Tribunal may sit in private

437.— (1) The Tribunal may sit in private for the purpose of hearing evidence if, in the opinion of the Tribunal, the interests of the parties or the public so require.

(2) Evidence given before the Tribunal at a hearing held in private in accordance with the provisions of subsection (1), shall not be disclosed to any person except with the consent of the Tribunal.

(3) A person who discloses any evidence in contravention of subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Appearance of counsel and presentation of evidence

438.— (1) The Tribunal may —

- (a) allow the presentation of evidence in written briefs from any party;
- (b) allow any party to give evidence orally;
- (c) permit an interested person to appear before it by counsel on any proceeding or inquiry; or
- (d) permit any person, whether a trade union representative or otherwise to appear before it as the representative of a party to a dispute where that party requests such representation in writing.

(2) Where evidence is given in written briefs, the Tribunal may further examine the evidence presented by —

- (a) seeking further clarification or elaboration in writing;

- (b) summoning any of the parties or their representative or counsel to an oral hearing.

Attendance of public or media

439. The Tribunal may admit or exclude the public or media from any of its sittings.

Appointment of experts

440.— (1) In any proceeding where it is appropriate, the Tribunal may appoint persons who are experts in a particular subject area of relevance to a particular dispute before the Tribunal to act as special advisors to the Tribunal.

(2) Where experts are appointed pursuant to subsection (1), their appointment shall be automatically revoked after a determination of the particular matter in dispute before the Tribunal.

Failure to attend

441.— (1) A person shall not —

- (a) without sufficient cause, fail or refuse to attend before the Tribunal in obedience to a summons;
- (b) without sufficient cause, fail or refuse to produce any paper, book, record, or document which he or she was required by such summons to produce;
- (c) being a witness, leave the Tribunal without the permission of the Tribunal;
- (d) being a witness, refuse, without sufficient cause, to answer any question put to him or her by or with the permission of the Tribunal; or
- (e) wilfully obstruct or interrupt the proceedings of the Tribunal.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Awards

442.— (1) Without prejudice to any provision of this Code giving powers to the Tribunal, it shall have the right to award an applicant any sum of money judged to be due to him or her under this Code.

(2) Without prejudice to the generality of subsection (1), the Tribunal's award may include any one or more of the following —

- (a) compensation for unfair dismissal;
- (b) an award of termination benefit;
- (c) an award of remuneration that has not been properly given as required under this Code;
- (d) an award of leave pay when the employer has not complied with the provisions of this Code relating thereto;
- (e) reinstatement or re-engagement in accordance with this Code;
- (f) an award of damages.

(3) Any monetary award of the Tribunal shall be recoverable as a liquidated civil debt.

(4) An award by the Tribunal shall be included amongst the debts which under the relevant law are in the distribution of the property or assets of a bankrupt, or in the winding-up of a company and shall rank *pari passu* with taxes upon the bankrupt or company where application to the Tribunal has been made before the date of the receiving order of the commencement of the winding up of the company as the case may be.

Award binding and not to conflict with Code

443. An award made by a Tribunal pursuant to section 442, shall not be inconsistent with any provision of this Code and shall be final and binding.

Interpretation of decisions of the Tribunal

444. Any party to a decision of the Tribunal may apply to the Tribunal for a resolution of any question of interpretation which arises from that decision and such resolution shall be made without further hearing and shall form part of the original decision.

Publication of award

445. An award of a Tribunal shall be submitted to the Minister who shall as soon as possible cause it to be published in a manner he or she thinks fit.

Majority vote

446. The decisions of the Tribunal and every decision thereof shall be by the votes of the majority of its members and where there is no majority vote, the decision of the Chairperson shall prevail.

Decision to be in writing

447. The decision of the Tribunal shall be in writing setting out—

- (a) the issue or issues determined;
- (b) any conflicting evidence presented;
- (c) the reasons for the decision; and
- (e) the relevant section or sections of this Code.

Decision not to be questioned

448. Any party to an application or matter before the Tribunal shall be entitled to apply to the High Court for judicial review in respect of any decision of the Tribunal on grounds including one or more of the following —

- (a) the Tribunal did not have jurisdiction in the proceeding;
- (b) the Tribunal exceeded its jurisdiction in the proceeding;
- (c) the decision was obtained by fraud;
- (d) the decision is *ultra vires*; or
- (e) the decision is erroneous in law.

Order of Court

449. On an application made to it pursuant to section 448, the High Court may make such order as the circumstances of the case require including, without restricting the generality of the foregoing, a order—

- (a) quashing the decision of the Tribunal and remitting the matter to the Tribunal with such direction as the High Court considers necessary;
- (b) directing a new hearing on any question without interfering with the decision of the Tribunal upon any other question; or
- (c) dismissing the application.

Decision to be filed in Court

450.— (1) Where a person or organization has failed to comply with any decision, award or direction of the Tribunal, any person or organization affected thereby may, after fourteen days from the date on which the decision was made or the date provided in it for compliance, whichever is the later date, file in the High Court a copy of the decision.

(2) A decision or direction of the Tribunal that has been filed in the Court pursuant to subsection (1), shall be registered in the High Court and, when registered, shall have the same force and effect, and the proceedings may be taken thereon, as if the decision were a judgement obtained in the High Court.

Regulations

451. The Minister, after consultation with the Chairperson of the Tribunal, may make Regulations for the proper functioning of the Tribunal.

PART IX
MISCELLANEOUS

General offences against administration

452.— (1) A person shall not —

- (a) fail or refuse without reasonable cause or refuse to do an act which he or she is required to do to facilitate the lawful exercise of the powers or the carrying out of the duties of a labour officer under this Code;
- (b) prevent, or attempt to prevent, another person from appearing before a labour officer or from answering any question to which a labour officer may, under this Code, require an answer;
- (c) make or prompt a statement which he or she knows to be false, where the statement is made in compliance with a lawful requirement by a labour officer to give information under this Code, or for the purpose of obtaining for himself or herself for another person the issue of any certificate or any other document required under this Code;

- (d) intentionally make a false entry in any register or any other document required to be kept and maintained pursuant to this Code;
- (e) with intent to deceive, forge, counterfeit or use a document which he or she knows to be false and which resembles any document required under this Code; or
- (f) falsely pretend to be a labour officer.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment not exceeding two years.

Obstructing, assaulting or threatening labour officers

453.— (1) A person shall not assault or threaten with violence or intentionally hinder or obstruct a labour officer in the exercise of his or her duties.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

Penalty for disobedience of summons

454.— (1) A person shall not refuse to obey a summons by the Labour Commissioner for the purposes of facilitating an investigation of any complaint, matter or query, or the resolution of any trade dispute under this Code.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months.

Complaint to court after internal remedies exhausted

455. Except where expressly exempted in this Code, an application for redress of any alleged contravention of this Code may be made to a court only after a complaint has been made to the Labour Commissioner or to the Tribunal or to any other tribunal established for the purposes of dispute resolution under this Code and has been exhausted.

Time limits for proceedings and prosecutions

456.— (1) Subject to subsections (2) and (3), a complaint for redress to the Tribunal shall be brought before the Tribunal within one year.

(2) Where any law in force provides for a greater time period for proceeding before a tribunal in respect of any matter, that law shall prevail over the provisions of subsection (1).

(3) Where a matter has been referred to the Labour Commissioner for determination, the time period shall begin from the date of determination or referral to the Tribunal where no determination has been made.

Power of court to order contravention to be remedied

457. Where a person is convicted of an offence under this Code, the Court may order him or her, within the time specified in the order, to take any specific action to remedy the cause of the contravention.

Offences by corporate bodies

458. Where a corporate body has contravened any provision of this Code and the contravention is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director or manager of the corporate body, he or she as well as the corporate body shall be deemed to have contravened that provision and be liable to be proceeded against and punished accordingly.

Proceeding in tort and criminal proceedings

459. Notwithstanding any provision made for redress of a contravention under this Code, nothing contained in this Code shall be taken to prohibit or prejudice any suit or proceeding in tort, or any criminal proceeding or any suit under any other law in force in Saint Lucia, existing or in the future, for any act or omission arising out of employment.

Service and sending of documents

460.— (1) Any notice, complaint, decision or other document required or authorized to be served under this Code may be served on any person by sending it by prepaid registered post to his or her last known address —

- (a) on any individual by handing it to him or her or by leaving it at his or her residence;
- (b) on any firm by handing it to any partner thereof, or by leaving it at the principal place of business of such firm;
- (c) on any limited company by handing it to an officer of the company, or by leaving it at its registered office; and
- (d) on the Manager of the workplace, even though it is a limited company, in the manner referred to in paragraph (a), (b) or (c).

(2) Any such document intended to be served upon the Manager of the workplace may be addressed to “the Manager” at the proper address of the workplace without further name or description.

General power of the Minister to make Regulations

461. The Minister may make Regulations generally for the purposes of this Code and without prejudice to the generality of the foregoing may make Regulations —

- (a) prescribing the form of any notice, application, complaint or other document required by this Code;
- (b) varying any time periods established or required under this Code; or
- (c) prescribing an offence pursuant to this Code to be a ticketable offence in accordance with section 466.

Repeal

462. The following enactments are repealed —

- (a) Equality of Opportunity in Employment Act, Cap. 16.14;
- (b) Minimum Wages Act, Cap. 16.09;
- (c) Registration, Status and Recognition of Trade Unions and Employers’ Organizations Act, Cap. 16.06;
- (d) Essential Services Act, Cap. 16.12;
- (e) Contracts of Service Act, Cap. 16.03;
- (f) Employment of Women, Young Persons and Children Ordinance, Cap. 100, Revised Laws of Saint Lucia 1957;

- (g) Employment of Women Ordinance Cap. 99, Revised Laws of Saint Lucia 1957;
- (h) Employment of Children (Restriction) Ordinance Cap. 98, Revised Laws of Saint Lucia 1957;
- (i) Employers and Servants Ordinance Cap. 97, Revised Laws of Saint Lucia 1957;
- (j) Foreign Nationals and Commonwealth Citizens (Employment) Act, Cap. 16.13;
- (k) Holiday With Pay Act, Cap. 16.11;
- (l) Protection of Wages Act, Cap. 16.08;
- (m) Shop Hours Ordinance, Cap. 42, Revised Laws of Saint Lucia 1957;
- (n) Employees (Occupational Health and Safety) Act, Cap. 16.02; and
- (o) Factories Act, Cap. 13.02.

Savings

463. All subordinate legislation made under the repealed Acts listed in section 462, immediately before the coming into force of this Code, so far as they are not inconsistent with the provisions of this Code, continue in force as if made under this Code until revoked under this Code.

Power to amend Schedules

464. The Minister may by Order published in the *Gazette* amend the Schedules.

General penalty

465. A person who commits an offence in contravention of any provision of this Code for which no penalty is provided is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Ticketable offences

466. — (1) The Minister may prescribe a summary offence pursuant to this Act provided for in the Regulations to be a ticketable offence.

(2) Regulations in which a ticketable offence is prescribed shall subject to this section prescribe —

- (a) the form of the ticket for the ticketable offence;
- (b) the mode of service of the ticket;
- (c) the amount of the pecuniary penalty which shall not be more than one thousand dollars; and
- (d) the notice period which shall be a date not less than twenty eight days following the service of the ticket during which the prescribed pecuniary penalty must be paid.

(3) Where a police officer believes that a person has committed a ticketable offence, the police officer may, in the prescribed mode, serve on that person a ticket in offering the opportunity to discharge liability of conviction for the ticketable offence by payment to the District Court of the prescribed pecuniary penalty.

(4) A person shall not be liable to be convicted of a ticketable offence if the prescribed penalty is paid in accordance with this section before the expiry of the prescribed notice period pursuant to subsection 2(d).

(5) Where a person pays the prescribed pecuniary penalty in accordance with this section, the District Court shall accept the amount as and in complete satisfaction of any liability to conviction.

(6) In any proceedings, a certificate that payment of the prescribed pecuniary penalty was or was not paid to the District Court by a date specified in the certificate shall, if the certificate purports to be signed by the District Court be sufficient evidence of the facts stated unless the contrary is proved.

(7) A ticket pursuant to this section shall —

- (a) specify the offence alleged;

- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state the prescribed notice period during which proceedings will not be taken for the offence, the amount of the prescribed pecuniary penalty and the address at which the prescribed pecuniary penalty is to be paid.

(8) Where a person is issued with a ticket pursuant to this section and fails to pay the amount specified in the ticket in accordance with the requirements set in the ticket, the person liable to pay the prescribed pecuniary penalty shall attend the District Court on the date specified in the ticket for summary trial.

FIRST SCHEDULE

(Section 13(2) and (3))

A written contract shall include the following particulars as applicable —

- (a) the names of the employee and employer;
- (b) the term of the employment if other than indefinite;
- (c) the probationary period, if any;
- (d) the scale or rate of remuneration and the method to be used for calculating the remuneration;
- (e) the intervals at which remuneration is to be paid;
- (f) normal hours of work and rest periods;
- (g) leave entitlement;
- (h) maternity leave;
- (i) any provision for the termination of the contract other than those provided by this Code;
- (j) any provision for pensions or National Insurance Schemes;
- (k) the length of notice which the employee is obliged to give and entitled to receive to determine the contract of employment;
- (l) the period of time for such apprenticeship or training, if any;
- (m) any other term or condition of employment that has been agreed upon.

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SECOND SCHEDULE

(Section 97)

Period of employment	Minimum entitlement in respect of each twelve months period
Up to five years	14 working days
Exceeding five years	21 working days

THIRD SCHEDULE

(Section 246)

**NOTICE OF ACCIDENT CAUSING DISABLEMENT WHERE
DISABLEMENT HAS CEASED**

1. Name of employer _____
 2. Workplace and address of workplace _____

 3. Nature of business _____

 4. Branch or department and exact place where accident occurred _____

 5. Injured person's-
 - (i) Surname _____
 - (ii) Other names _____
 - (iii) Address _____
 - (iv) Sex _____
 - (v) Age at last birthday _____
 - (vi) Precise occupation _____
 6. Date and hour of accident _____
 7. Time injured person commenced work _____
 8. Nature of accident _____

- If caused by machinery-
- (a) give name of machine and part causing accident _____

 - (b) state whether machine was moved by mechanical power at the time of
the accident _____

9. Extent of disablement _____

10. Date disablement ceased _____

Date: _____

Signature of Employer

FOURTH SCHEDULE

(Section 247)

NOTICE OF OCCUPATIONAL DISEASE

- 1. Name of employer _____
- 2. Workplace and address of workplace _____

- 3. Nature of business _____

- 4. Nature of occupational disease _____

- 5. Injured person's –
 - (a) Surname _____
 - (b) Other names _____
 - (c) Address _____
 - (d) Sex _____
 - (e) Age at last birthday _____
 - (f) Precise occupation _____

Date: _____

Signature of Employer

FIFTH SCHEDULE

(Section 251)

Regulations to be made pursuant to section 251

The purposes referred to in section 251 are as follows:

1. prohibiting the employment of, or modifying or limiting the period of employment of all persons or any class of persons in connection with any manufacture, machinery, plant, process or description of labour certified by the Department of Labour by notice published in the *Gazette*, to be dangerous;
2. prohibiting, limiting or controlling the use of any material or process;
3. modifying or extending any special provision to any class of industrial establishments;
4. for the purpose of ensuring the health or safety of persons who are employed in any industrial establishment or in connection with machinery or with any employment within the meaning of paragraph (a);
5. the safe means of approach or access to, and exit from, any industrial establishment, or machinery;
6. the fencing and covering of all dangerous places or machines;
7. life saving and first aid appliances and first aid services to be provided by employers;
8. safety measures in connection with all operations carried on in an industrial establishment;
9. safety measures in connection with the use of cranes, winches, pulley blocks, and of all engines, machinery, mechanical gear and contrivances generally;
10. the periodic inspection, testing and classification, according to age, type or condition, of boilers, and for the issue and display of certificates in connection therewith, and for the regulation of the type of safety valves to be fixed to any boiler and the maximum pressure at which boilers of any age, type, class, or condition may be operated;
11. specifications of proper ventilation of any industrial establishment, having regard to the nature of the process carried on therein;
12. the sanitation standards, including the provision of lavatory accommodation and sanitary conveniences (having regard to the number of workers employed) at any industrial establishment;

13. the fees to be paid for the inspection or examination of any industrial establishment or class of establishment and any machinery therein;
14. the forms and certificates to be used under Division 3 of Part IV;
15. the records and registers to be maintained;
16. the lifting or moving of loads by any woman or young person;
17. the appointment, powers, duties, and fees of medical inspectors;
18. the manner of medical supervision of employees;
19. occupations for the purposes of Division 3 of Part IV;
20. the contents of notices required to be displayed under Part IV;
21. any industry, workplace, employer or class of workplaces or employers for the purposes;
22. criteria for exempting any workplace, industry, activity, business, work, trade, occupation, profession, employer or any class thereof from the application of a regulation or any provision thereof;
23. criteria for limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, employer or any class thereof;
24. criteria for exempting an employer from the provisions relating to a hazardous chemical and the compliance required thereunder;
25. any matter or article that is required or permitted to be regulated or prescribed;
26. any fees other than the fees referred to in paragraph 13;
27. the classes of workplace for which and circumstances under which a committee shall consist of more than six persons and in each case prescribing the number of persons;
28. the employers or workplaces or classes thereof for the purposes of section 192(1)(b);
29. the criteria for exempting any workplace, industry, activity, business, work, trade, occupation, profession, employer or any class thereof from the application of section 192(2);
30. the conditions for eligibility, qualifications, selection and term of committee members, and the operation of the committee;
31. measures regulating or prohibiting the installation or use of any machine, device or article or any class thereof;

32. the classes of employers who shall establish and maintain a medical surveillance program in which workers may volunteer to participate;
33. medical surveillance programs;
34. the reporting system by physicians and others of workers affected by any chemical, physical agent, or biological agent or combination thereof;
35. atmospheric conditions to which any worker may be exposed in a workplace;
36. the methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any chemical, physical agent, or biological agent or combination thereof in a workplace;
37. any chemical, physical agent, or biological agent or combination thereof as a critical substance;
38. the prohibition, regulation, restriction, limitation or control of the handling of, exposure to, or the use and disposal of any critical substance;
39. the adoption of any code or standard and may require compliance with any such code or standard that is so adopted;
40. criteria for approving laboratories for the purpose of carrying out and performing sampling, analyses, tests and examinations, and to certify approved laboratories;
41. training programmes that employers shall provide;
42. floor plans for the purposes of Part IV;
43. the forms and notices and providing for their use under Part IV;
44. building standards for industrial establishments;
45. the name or description of any chemical as a hazardous chemical, any biological agent as a hazardous biological agent, and any physical agent as a hazardous physical agent;
46. the criteria to be used by the Labour Commissioner to determine whether information is confidential business information for purposes of section 206(1);
47. the instances under which an employer can be required to disclose to such persons as may be prescribed the source of toxicological data used by the employer to prepare a chemical safety data sheet;
48. the format and contents of a chemical safety data sheet;
49. the intervals at which a safety and health representative or a committee member shall inspect all or part of a workplace;

50. the medical examinations and tests that an employee is required to undergo to ensure that the employee's health will not affect his or her ability to perform his or her job in a manner that might endanger others;
51. criteria for declaring certain diseases to be occupational disease for the purposes of Division 3 of Part IV;
52. the threshold quantity of a given hazardous substance or category of substances which, if exceeded, constitute a major hazard installation;
53. all other matters which the Minister may consider to be in any way incidental to, connected with or conducive to the discharge of the provisions of Division 3 of Part IV.

SEVENTH SCHEDULE

[Section 340(2)]

**CONSTITUTION OF TRADE UNION OR EMPLOYERS'
ORGANIZATION**

The constitution of every trade union and employers' organization shall include the following information-

- (a) the name of the trade union or employers' organization ;
- (b) the objects of the trade union or employers' organization ;
- (c) the qualifications for membership;
- (d) provision for the office-bearers in the trade union or employers' organization among whom shall be the president or chairperson, a secretary or general secretary and treasurer;
- (e) provision for periodic elections to all offices and for the appointment of a temporary replacement if an office-holder becomes disqualified or incapacitated from holding office;
- (f) provision for a general meeting open to all members, at least once every two years;
- (g) a provision that any member or delegate may propose a resolution at a general meeting;
- (h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his or her good standing;
- (i) the grounds on which an officer or member may be disciplined, fined, suspended or expelled from office or from membership, each ground being specified;
- (j) the procedure for suspension or expulsion from office or from membership, including a provision that the affected officer or member be fully informed in writing of the allegations against him or her, that he or she shall have a reasonable opportunity challenge the allegations and shall have the right of appeal;
- (k) provision for the keeping of full and accurate records by the treasurer or other appropriate officer, for the annual audit of those accounts by an auditor appointed by the trade union or employers' organization who shall not be a member of that trade union or organization, and for the availability to all members on request of full, audited annual statements of account;

- (l) provision for the banking and investment of the trade unions or employers' organizations funds;
- (m) provision for the paying out of the trade unions or employers' organizations funds, including the authority to sign cheques;
- (n) the conditions under which a member may become entitled to any financial benefit provided by the trade union or employers' organization;
- (o) provision for amendment of the constitution;
- (p) the duration of its financial year;
- (q) the inspection of the register of members and other books of the trade union or employers' organization by its members;
- (r) the manner of amalgamating with other trade unions or employers' organizations;
- (s) the manner of dissolving the trade union or employers' organization.

EIGHTH SCHEDULE

(Section 397 (1))

SERVICES SPECIFIED TO BE ESSENTIAL SERVICES

1. Any undertaking which generates and supplies electricity to the public
2. Telephone Services
3. Hospital Services
4. Any service undertaking the supply of water to the public
5. Public Health Services
6. Sanitation Services
7. Air Traffic Information and Aeronautical Information Services

NINTH SCHEDULE**(Section 2)****Article 6 of International Labour Organization Chemicals Convention****Article 6****CLASSIFICATION SYSTEMS**

1. Systems and specific criteria appropriate for the classification of all chemicals according to the type and degree of their intrinsic health and physical hazards and for assessing the relevance of the information required to determine whether a chemical is hazardous shall be established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or international standards.
2. The hazardous properties of mixtures composed of two or more chemicals may be determined by assessments based on the intrinsic hazards of their component chemicals.
3. In the case of transport, such systems and criteria shall take into account the United Nations Recommendations on the transport of dangerous goods.
4. The classification systems and their application shall be progressively extended.

