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EXTRAORDINARY

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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L.D.—O.46/44.

An Ordinance to amend the Maternity Benefits Ordinance, No. 32 of 1939.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1. This Ordinance may be cited as the Maternity Benefits (Amendment) Ordinance, No. of 1945.

Short title.

2. Section 4 of the Maternity Benefits Ordinance, No. 32 of 1939, (hereinafter referred to as "the principal Ordinance"), is hereby amended in section 4 thereof, by the substitution, for all the words from "for a period" to the end of that section, of the following :—

Amendment of section 4 of Ordinance No. 32 of 1939.

"for not less than one hundred and twenty days within the period of one year immediately preceding the date of the notice required by section 6 (2)."

3. Section 5 of the principal Ordinance is hereby repealed and the following new section is substituted therefor :—

Replacement of section 5 of the principal Ordinance.

5. (1) Subject to the provisions of sub-sections (2), (3) and (4), the employer of a woman worker shall pay to such worker maternity benefit at the prescribed rate for the entirety of the period of two weeks immediately preceding her confinement and of the period of four weeks immediately following her confinement.

Liability of employer and rate of maternity benefit.

(2) No woman worker who has worked in her employment on any day during the period of two weeks immediately preceding her confinement shall be entitled to any maternity benefit for that day or for that part of the period which precedes that day.

(3) Where the Commissioner has issued to any employer a written certificate which states that such employer is an employer who has made arrangements for providing for female labourers employed on his estate such alternative maternity benefits as may be prescribed, such employer shall provide, in lieu of the maternity benefits referred to in sub-section (1), those alternative maternity benefits—

(a) to every female labourer who is resident on such estate ; and

(b) to every female labourer who is not resident on the estate and who has, prior to her confinement, given notice in the prescribed manner to such employer of her desire to receive those alternative maternity benefits.

(4) Any female labourer referred to in sub-section (3) who refuses to accept from her employer the alternative maternity benefits referred to in that sub-section shall not be entitled to receive the maternity benefit referred to in sub-section (1).

(5) A certificate issued to any employer under sub-section (3) shall be liable to be cancelled by the Commissioner, if the Commissioner is satisfied, after such inquiry as he may deem necessary, that the employer has ceased to make arrangements for providing for female labourers on his estate the alternative maternity benefits referred to in that sub-section.

(6) Where a certificate issued to any employer of an estate under sub-section (3) is cancelled by virtue of the provisions of sub-section (5), the employer shall pay to the female labourers on his estate, the maternity benefit referred to in sub-section (1).

(7) Where payment of money in cash is to be part of the alternative maternity benefits referred to in sub-section (3), the Executive Committee shall not prescribe as the amount of such payment any sum which exceeds, or any sums which in the aggregate exceed, four-sevenths of the total amount payable as maternity benefit under sub-section (1).

(8) In the computation of the periods in respect of which payments are made under this section, Sundays and holidays shall be taken into account.

Insertion of new section 5A in the principal Ordinance.

4. The following new section is hereby inserted immediately after section 5, and shall have effect as section 5A, of the principal Ordinance :—

Women not to claim benefits, in respect of the same confinement, from more than one employer.

5A. Nothing in the provisions of section 4 or section 5 shall be deemed to entitle any woman to claim either the maternity benefit or the alternative maternity benefits referred to in this Ordinance from more than one employer in respect of the same confinement.

Amendment of section 10 of the principal Ordinance.

5. Section 10 of the principal Ordinance is hereby amended, in sub-section (1) thereof, by the substitution, for the words "within a period of three months before her confinement shall have the effect of depriving her of any maternity benefit" of the words "within a period of five months before her confinement shall have the effect of depriving her of any maternity benefit or alternative maternity benefits".

Replacement of section 11 of the principal Ordinance.

6. Section 11 of the principal Ordinance is hereby repealed and the following new section substituted therefor :—

Power to obtain information.

11. (1) The Commissioner may at any time by notice communicated to any employer require him to furnish before a specified date a return containing such particulars as may in the opinion of the Commissioner be necessary for the purposes of this Ordinance, and it shall be the duty of such employer, when so required, to furnish such a return to the Commissioner before that date.

(2) Any notice of the Commissioner under sub-section (1) shall be deemed to have been duly communicated to any employer to whom such notice is applicable if it is—

- (a) published in the *Gazette*; or
- (b) sent by letter posted to such employer at his usual place of business or residence.

Amendment of section 12 of the principal Ordinance.

7. Section 12 of the principal Ordinance is hereby amended as follows :—

- (1) in sub-sections (1) and (2) thereof, by the substitution, for the word "inspector" wherever that word occurs in those sub-sections, of the words "special officer"; and
- (2) by the omission of sub-section (3) thereof.

Amendment of section 13 of the principal Ordinance.

8. Section 13 of the principal Ordinance is hereby amended, in paragraph (g) of sub-section (2), by the substitution, for the words "inspectors, officers and servants", of the words "a special officer".

Amendment of section 14 of the principal Ordinance.

9. Section 14 of the principal Ordinance is hereby amended, by the substitution, for the words "regulation made thereunder", of the words "regulation made thereunder, or any woman who claims any benefit under the Ordinance in respect of the same confinement from more than one employer,".

Amendment of section 16 of the principal Ordinance.

10. Section 16 of the principal Ordinance is hereby amended, by the substitution, for the words "six months" wherever they occur collectively therein or in the marginal note thereto, of the words "two years".

Amendment of section 19 of the principal Ordinance.

11. Section 19 of the principal Ordinance is hereby amended as follows :—

- (1) by the substitution, for the definition of "Controller", of the following new definition :—

"Commissioner" means the person for the time being holding the office of Commissioner of Labour, and includes any person for the time being holding the office of Deputy Commissioner of Labour ; ;

- (2) by the insertion immediately after the definition of "shop", of the following new definition :—

"special officer" means any Deputy or Assistant Commissioner of Labour, any Inspector of the Department of Labour, or any person

appointed by the Commissioner in writing for the purpose of enforcing the provisions of this Ordinance ;’ ;

and

(3) by the substitution, for the definition of “ woman worker ”, of the following new definition :—

“ woman worker ” means a woman employed on wages in any shop, mine, factory or estate in which ten or more persons are employed, whether such wages are calculated by time or by work done or otherwise and whether the contract of employment or service was made before or after the commencement of this Ordinance, and whether such contract is expressed or implied, oral or in writing.’.

Objects and Reasons.

Under section 4 of the Maternity Benefits Ordinance, No. 32 of 1939, no woman is entitled to maternity benefit unless she has been employed under the employer from whom she claims such benefit for a period of not less than nine months immediately preceding the date on which she gives notice under section 6 of that Ordinance. As the employment of women workers is usually intermittent or seasonal, this provision causes considerable hardship by depriving a large number of women workers of benefits under the Ordinance. The object of the amendment in Clause 2 of this Bill is to remove this hardship by substituting the provision that the qualifying period for benefits under the Ordinance will be one hundred and twenty days within the period of one year immediately preceding the date on which the woman worker gives the obligatory notice under section 6 (2) of the Ordinance. As the new qualifying period is likely to enable some women workers to claim benefits from more than one employer in respect of the same confinement, it is proposed in this Bill that such multiple claims should be prevented and that women workers who make such claims should be prosecuted for the offence and punished with a fine not exceeding five hundred rupees. (Clauses 4 and 9.)

2. The benefits required by the Maternity Benefits Ordinance take the form either of a cash payment at the rate of fifty cents a day or of certain prescribed alternatives. The Ordinance also provides that where such alternative benefits include any money payments, those payments should not exceed in the aggregate twelve rupees. The frequent variations in the cost of living make these fixed rates and amounts

unsuitable and it is proposed in Clause 3 of this Bill to replace section 5 by a new section which will provide that all such payments are to be made at rates prescribed by regulation.

3. Section 10 of the Ordinance now provides that no notice of dismissal given without sufficient cause by an employer to a woman worker within a period of three months before her confinement will have the effect of depriving her of any of the benefits under the Ordinance. This provision leaves it open to an employer to give notice of dismissal to women workers during the early stages of their pregnancy, and thus save himself from the obligation of providing benefits under the Ordinance. It is therefore proposed in Clause 5 of the Bill to prevent such an evasion of the law by extending the period to five months, as has been done by the Government of Madras in the case of the Madras Maternity Benefit Act, 1934.

4. The Ordinance does not give the Department of Labour the power to call for returns from employers for the purposes of the Ordinance. The object of Clause 6 of this Bill is to give the Department such a power.

5. Under section 12 of the Ordinance the power of inspection is exercisable by inspectors of labour appointed under the Indian Immigrant Labour Ordinance (Chapter 111). As it is intended that this power should be exercised by any officer of the Labour Department other than the Commissioner, the Bill provides for such inspection by any such officer, or by any person appointed in writing by the Commissioner or Deputy Commissioner of Labour. (Clauses 7 and 11.)

6. Under section 16 of the Ordinance a prosecution for any offence against the Ordinance or any regulation made thereunder has to be instituted within six months of the date of the offence. As the period of six months specified in that section has been found in practice to be too short, it is proposed in Clause 10 of the Bill to extend that period to two years.

7. In view of the provisions of the Controller of Labour (Change of Designation) Ordinance, No. 22 of 1945, the designations, Controller, Deputy Controller and Assistant Controller of Labour are no longer appropriate. Throughout this Bill, therefore, the designations, Commissioner, Deputy Commissioner and Assistant Commissioner of Labour, which are authorised by that Ordinance, are used.

I. X. PEREIRA,

Acting Minister for Labour, Industry and Commerce.
Colombo, February 13, 1946.