

1948-49.

## THE SENATE.

## SEAMEN'S COMPENSATION BILL 1949.

MEMORANDUM SHOWING THE AMENDMENTS PROPOSED TO  
BE MADE TO THE SEAMEN'S COMPENSATION ACT  
1911-1947.

*(Circulated by the Minister for Shipping and Fuel, Senator Ashley.)*

The words printed in italics are words proposed to be omitted from the Principal Act.

The words printed in black type are words proposed to be added to the Principal Act.

## CLAUSE 1.—SHORT TITLE AND CITATION.

## CLAUSE 2.—COMMENCEMENT.

## CLAUSE 3.—INTERPRETATION.

3.—(1) *In this Act, unless the contrary intention appears—*

\* \* \* \* \*

*“County Court” means a County Court, District Court, or Local Court of any State, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a Judge or a Police, Stipendiary, or Special Magistrate :*

*“Dependants” means, in relation to a deceased seaman—*

(a) *a member of the seaman's family ;*

(b) *a person to whom the seaman stood in loco parentis or who stood in loco parentis to the seaman ;*

(c) *any ex-nuptial child or grand-child of the seaman : and*

(d) *if the seaman was an ex-nuptial child, any parent or grand-parent of the seaman,*

*who was wholly or in part dependent upon his earnings at the time of his death or who would, but for his incapacity due to injury, have been so dependent :*

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

“Judge of a County Court” includes the Judge of a County Court, District Court, or Local Court, and also any Police, Stipendiary, or Special Magistrate presiding or having jurisdiction to preside over a County Court as defined by this Act :

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister :

“Port” includes place and harbour :

“Seaman” means apprentice, pilot, or other person employed or engaged in any capacity on board a ship in connexion with the navigation or working of the ship, but does not include a master, engineer or deck officer of a ship :

“Ship” includes every vessel used in navigation not ordinarily propelled by oars :

“Vessel” means any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation.

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

3.—(1.) In this Act, unless the contrary intention appears—

“County Court” means a County Court, District Court or Local Court of any State, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a judge or a police, stipendiary or special magistrate ;

“dependants”, in relation to a deceased seaman, means—

- (a) a member of a seaman’s family ;
- (b) a person to whom the seaman stood in loco parentis or who stood in loco parentis to the seaman ;
- (c) any ex-nuptial child or grand-child of the seaman ; and
- (d) if the seaman was an ex-nuptial child, any parent or grand-parent of the seaman,

who was wholly or in part dependent upon his earnings at the time of his death or who would, but for his incapacity due to the injury, have been so dependent ;

“disease” includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and also includes the aggravation or acceleration of a disease and the recurrence of a pre-existing disease ;

- “ employer ” includes the Crown (whether in right of the Commonwealth or of a State), any authority constituted by or under the law of the Commonwealth or of a State or Territory of the Commonwealth, any body of persons (whether corporate or unincorporate) and the legal personal representative of a deceased employer ;
- “ injury ” means any physical or mental injury and includes the aggravation or acceleration of an injury and the recurrence of a pre-existing injury ;
- “ Judge of a County Court ” includes the Judge of a County Court, District Court or Local Court and also any police, stipendiary or special magistrate presiding, or having jurisdiction to preside, over a County Court as defined by this Act ;
- “ member of the family ”, in relation to a seaman, means the wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, mother-in-law or any woman who for not less than three years immediately prior to his death or incapacity was wholly or mainly maintained by the seaman and who, although not legally married to him, lived with him as his wife on a permanent and bona fide domestic basis and who, at the date of his death or incapacity, is maintaining one or more children under sixteen years of age or is not less than fifty years of age ;
- “ port ” includes place and harbour ;
- “ seaman ” means an apprentice, a pilot or any other person employed or engaged in any capacity on board a ship in connexion with the navigation or working of the ship, but does not include a master, mate, engineer or radio officer of a ship ;
- “ ship ” includes every vessel used in navigation not ordinarily propelled by oars ;
- “ vessel ” means any ship or boat and includes any vessel of any other description used for any purpose on the sea or in navigation.

(2.) Any reference to a seaman who has been injured shall, where the seaman has died as the result of the injury, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

(3.) In the application of the provisions of this Act to and in relation to a seaman to whom section five C of this Act applies, any reference in those provisions to a personal injury by accident arising out of or in the course of a seaman's employment shall be read as including a reference to a disease due to the nature of the employment in which the seaman was engaged.

(4.) Where a person with whom a seaman has entered into a contract of service or apprenticeship temporarily lends or lets on hire the services of the seaman to another person, the first-mentioned person shall, for the purposes of this Act, be deemed to continue to be the employer of the seaman while he is working for that other person.

CLAUSE 4.—COMPENSATION FOR PERSONAL INJURIES TO SEAMEN.

5.—(1.) If personal injury by accident arising out of *and* or in the course of the employment is caused to a seaman, his employer shall, subject to this Act, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that—

- (a) the employer shall not be liable under this Act in respect of any injury which does not disable the seaman from earning full wages :
- (b) a seaman shall not be entitled to recover compensation both independently of and also under this Act ; but subject to this paragraph this Act shall not affect any civil liability of an employer under any other law :
- (c) if it is proved that the injury to a seaman is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed :
- (d) in the case of the death of a seaman leaving no dependants, no compensation shall be payable under this Act if the owner of the ship is under any Act, Imperial Act, or State Act liable to pay the expenses of burial :
- (e) if it appears that the claimant has a claim for compensation for the injury under any law of the United Kingdom or of any other part of the King's Dominions or of any foreign country, compensation under this Act shall only be allowed upon the claimant undertaking not to claim compensation for the injury under any such law.

\* \* \* \* \*

CLAUSE 5.—INJURY WHILE TRAVELLING TO OR FROM WORK.

5AA.—(1.) *Where personal injury by accident is caused to a seaman while he is travelling or or from work, the employer shall, subject to this Act, be liable to pay to the seaman or his dependants compensation in accordance with this Act as if the accident were an accident arising out of and in the course of his employment.*

(2.) *In this section "travelling to or from work" means, in relation to a seaman—*

- (a) *travelling between the seaman's place of abode and the place of his employment ; or*
- (b) *travelling between the seaman's place of abode or place of employment and a Mercantile Marine Office,*

*but does not include travelling during or after any substantial interruption of, or substantial deviation from the shortest convenient route for, any such journey, made for a reason unconnected with his employment or unconnected with his attendance at a place where he is required or expected by his employer to attend.*

5AA.—(1.) *Where personal injury by accident is caused to a seaman while he is travelling to or from—*

- (a) *his place of employment ;*
- (b) *a Mercantile Marine Office ; or*
- (c) *a place which it is necessary for him to attend to obtain a medical certificate or to receive medical, surgical or hospital treatment or compensation in respect of a previous injury,*

*the employer shall, subject to this Act, be liable to pay compensation in accordance with this Act as if the accident were an accident arising out of or in the course of his employment.*

(2.) In this section, "travelling" means travelling by the shortest convenient route for the journey, and does not include travelling during or after any substantial interruption of the journey or any substantial deviation from the route made for a reason unconnected with the seaman's employment, attendance at the Mercantile Marine Office, or obtaining the certificate, treatment or compensation, as the case may be :

Provided that if it is shown that, in the circumstances of any particular case, the nature, extent, degree and content of the risk of accident were not materially changed or increased by reason only of the interruption or deviation, the injury or accident shall be deemed to have been caused to the seaman while travelling to or from work.

#### CLAUSE 6.—MEDICAL BENEFITS.

5A.—(1.) Where any compensation is payable by the employer under this Act to, or in respect of, a seaman, or where a seaman suffers injury or disease in circumstances in which compensation would be payable under this Act but for the fact that the seaman is not rendered incapable of earning full wages or but for the operation of clause (i) or (ii) of sub-paragraph (b) of paragraph (2.) of paragraph (4.) or of paragraph (4A.), of the First Schedule to this Act, the employer shall pay the cost, not exceeding in any case One hundred pounds, of such medical, surgical and hospital treatment and ambulance services in relation to the injury, or disease, as the case may be, as are, in the opinion of the Minister administering this Act, reasonably necessary :

Provided that an employer shall not be liable to pay the cost of medical, surgical and hospital treatment and ambulance services both independently of and also under this section :

Provided also that if the seaman is left on shore at any port and there is a public hospital at or convenient to that port and the seaman elects to be treated elsewhere than in that hospital, the liability of the employer in respect of the cost of medical, surgical and hospital treatment and ambulance services shall be limited to the amount that would be payable for the treatment and services if the seaman were treated as an in-patient of that hospital or the sum of One hundred pounds, whichever is the less:

Provided also that, where, in the opinion of the Minister, the exceptional circumstances of any case warrant payment of an amount in excess of One hundred pounds, the employer shall be liable to pay such amount in excess of One hundred pounds as appears to the Minister to be reasonable in those circumstances.

(2.) For the purposes of this section—

"ambulance services" includes any conveyance of an injured seaman to a medical practitioner or to a hospital ;

"medical treatment" includes—

- (a) treatment by a duly qualified medical practitioner, a registered dentist, a registered physio-therapist or a masseur ;
- (b) the provision of skiagrams, crutches, artificial members and artificial replacements ; and
- (c) any nursing, medicines, medical or surgical supplies or curative apparatus supplied or provided for an injured seaman otherwise than as a patient at a hospital ; and

“hospital treatment” means treatment at any hospital and includes the maintenance of an injured seaman as a patient at the hospital, and the provision or supply by the hospital of nursing, attendance, medicines, medical or surgical supplies or other curative apparatus; any any other ancillary service.

CLAUSE 7.—COMPENSATION FOR CERTAIN INJURIES.

5B.—(1.) *Subject to this Act, where a seaman sustains, by accident arising out of and in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Act, the compensation payable under this Act shall, when the injury results in incapacity other than total and permanent incapacity for work, be the amount specified in the second column of that Schedule opposite the specification of the injury in the first column, less any amount received by the seaman under the First Schedule to this Act.*

(1.) Subject to this Act, where a seaman sustains, by accident arising out of or in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Act, the compensation payable under this Act shall, when the injury results in incapacity other than total and permanent incapacity for work, be the amount specified in the second column of that Schedule opposite the specification of the injury in the first column.

(1A.) Upon payment of an amount under this section the seaman shall not be entitled to any payment in accordance with sub-paragraph (b) or sub-paragraph (c) of paragraph (1.) of the First Schedule to this Act in respect of a period of incapacity for work resulting from the injury, but the amount payable under this section shall not be subject to any deduction in respect of any amount previously paid to the seaman in accordance with either of those sub-paragraphs.

\* \* \* \* \*

CLAUSE 8.—COMPENSATION IN RESPECT OF DEATH OR INCAPACITY OF SEAMAN THROUGH DISEASE DUE TO EMPLOYMENT.

5C.—(1.) Where—

(a) *a seaman is suffering from any of the diseases mentioned in the Fourth Schedule to this Act and is thereby incapacitated from earning full wages at the work at which he was employed ; or*

(b) *the death of a seaman is caused by any of those diseases, and the disease was caused, within twelve months prior to the date of incapacity, by his employment as a seaman, the employer who last employed the seaman shall, subject to this Act, be liable to pay to the seaman or his dependants compensation in accordance with this Act as if the disease were a personal injury by accident arising out of and in the course of that employment within the meaning of section five of this Act and, for the purposes of section six of this Act, the date of incapacity shall be deemed to be the date of the occurrence of the accident.*

(1.) Where—

(a) a seaman is suffering from a disease and is thereby incapacitated for work ; or

(b) the death of a seaman is caused by a disease,

and the disease is due to the nature of the employment in which the seaman was engaged, the employer shall, subject to this Act, be liable to pay compensation in accordance with this Act as if the disease were a personal injury by accident arising out of or in the course of the seaman's employment.

(2.) A claimant for compensation under this section shall if so required furnish to the employer from whom compensation is claimed any information in his possession as to the names and addresses of all the other employers by whom the seaman was employed *during the period of twelve months* prior to the date of incapacity or death.

(3.) If the disease is of such a nature that it is contracted by a gradual process, any other employers who, *at any time during the period of twelve months preceding prior to the seaman's incapacity*, employed the seaman in any employment which caused or contributed towards the contraction of the disease, shall be liable to make to the employer from whom compensation is recoverable such contributions (not exceeding the maximum amounts prescribed under the First Schedule to this Act) as, in default of agreement, are settled by arbitration, in accordance with the Second Schedule to this Act, or by proceedings in a County Court.

(4.) *If a seaman produces a certificate from a duly qualified medical practitioner that he is suffering from one of the diseases specified in the Fourth Schedule to this Act and that such disease was contracted through his employment, and a Medical Inspector of Seamen appointed under the Navigation Act 1912-1935 is satisfied that the disease was so contracted, the disease shall, in the absence of proof to the contrary, be deemed to have been caused by the employment in which the seaman was engaged.*

#### CLAUSE 9.—MAXIMUM COMPENSATION.

5D. *Notwithstanding anything contained in this Act, a seaman shall not, in respect of personal injury caused by any one accident, except when the injury results in total and permanent incapacity, be entitled to receive as compensation under this Act an amount exceeding One thousand pounds in addition to such payments as are made under section five A of this Act.*

5D.—(1.) Notwithstanding anything contained in this Act, the amount of compensation payable in respect of an injury or injuries caused by any one accident shall not, except as provided by this section, exceed One thousand two hundred and fifty pounds.

(2.) Where an injury results in the death or the total and permanent incapacity of the seaman for work, sub-section (1.) of this section shall not apply to limit the total amount of compensation payable under this Act.

(3.) In the application of sub-section (1.) of this section in relation to the total amount of compensation payable to a seaman under section five B of this Act, the total amount of any compensation paid to the seaman in accordance with the First Schedule to this Act before payment to him of the amount specified in the Third Schedule to this Act shall be disregarded.

#### CLAUSE 10.—REMEDIES BOTH AGAINST THE EMPLOYER AND A STRANGER.

10. *Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person, other than the employer, to pay damages in respect thereof—*

(a) *the seaman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and*

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

10.—(1.) Where an injury in respect of which compensation is payable under this Act is caused under circumstances which create, or appear to create, a legal liability in some person other than the employer to pay damages in respect of the injury (which other person is in this section referred to as 'the third party'), the provisions of this section shall apply.

(2.) The seaman may take proceedings both against the third party to recover damages and against the employer for compensation, but shall not be entitled to retain both damages and compensation.

(3.) The employer may request the seaman to take proceedings against the third party and, where the seaman takes such proceedings at the request of the employer, the proceedings shall be conducted on the seaman's behalf at the expense of the employer, but the seaman shall pay to the employer the amount of any costs received by the seaman from the third party in respect of the proceedings.

(4.) Where the seaman receives both compensation under this Act and damages from the third party, the seaman shall repay to the employer such amount of the compensation as does not exceed the amount of damages recovered from the third party.

(5.) Upon notice to the third party, the employer shall have a first charge on moneys payable by the third party to the seaman to the extent of any compensation which the employer has paid to the seaman.

(6.) Where the seaman has received compensation under this Act, but no damages or less than the full amount of damages to which he is entitled, the third party shall be liable to indemnify the employer against so much of the compensation paid to the seaman as does not exceed the damages for which the third party is liable.

(7.) Payment of money by the third party to the employer under the last preceding sub-section shall, to the extent of the amount paid, be a satisfaction of the liability of the third party to the seaman.

(8.) All questions as to the right to and amount of any indemnity for which a third party is liable under this section, shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

#### LIABILITY OF EMPLOYER INDEPENDENTLY OF THIS ACT.

10A.—(1.) Except as provided by this Act, a seaman shall not be entitled, in respect of personal injury by accident arising out of or in the course of his employment, to receive compensation or any payment by way of compensation from the employer both independently of and also under this Act.

(2.) Where personal injury is caused to a seaman in circumstances which create, or appear to create, a legal liability in the employer to pay damages in respect of the injury and the seaman has received compensation under this Act, the seaman shall not be entitled to take proceedings against the employer to recover damages unless he commences those proceedings within twelve months after the date upon which he received payment, or the first payment, of compensation under this Act.

(3.) A seaman who recovers damages from an employer in respect of an injury shall not be entitled to compensation or any payment under this Act in respect of the same injury and any sum received by him under this Act in respect of that injury prior to the award of the damages shall be deducted from the amount of the damages recoverable from the employer.

#### CLAUSE 11.—AMENDMENT OF THE FIRST SCHEDULE.

##### FIRST SCHEDULE.

##### SCALE AND CONDITIONS OF COMPENSATION.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) if the seaman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the four years next preceding the injury, or the sum of Four hundred pounds, whichever of those sums is the larger, but not exceeding in any case Eight hundred pounds :

*Provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption of those payments, shall be deducted from that sum, but so that the amount payable to the dependants upon the death of the seaman shall not be less than Two hundred pounds :*

*Provided also that, if the period of the seaman's employment by that employer has been less than that period of four years, the amount of his earnings during that period shall be deemed to be two hundred and eight times his average weekly earnings during the period of his actual employment by that employer ;*

(ia) in addition to any amount payable under the last preceding clause, an amount of Twenty-five pounds in respect of each child who is, at the date of the seaman's death, under the age of sixteen years and who was totally or mainly dependent upon the seaman at the date of the injury ;

(i) if the seaman leaves any dependants wholly dependent upon his earnings, the sum of One thousand pounds and, in addition, an amount of Fifty pounds in respect of each child who, being a dependant under the age of sixteen years at the date of either the injury or the death of the seaman, was at the date of the injury wholly or mainly dependent upon the earnings of the seaman ;

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

(iii) if he leaves no dependants, the reasonable expenses of his burial, not exceeding Twenty-five pounds ;

(b) where total or partial incapacity for work results from the injury—

*a weekly payment during the incapacity not exceeding two-thirds of the seaman's average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed Three pounds :*

*Provided that—*

(i) where compensation is payable for incapacity for a part of a week the amount shall bear the same ratio to compensation for a full week that normal working time during such part bears to the seaman's full normal working week ; and

(ii) in the case of a seaman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Two pounds five shillings, one hundred per centum shall be substituted for two-thirds of his average weekly earnings, but the weekly payment shall in no case exceed One pound ten shillings ; and

(c) where total incapacity for work results from the injury, there shall be added to any amount payable under sub-paragraph (b) of paragraph (1.) of this Schedule—

(i) an amount of One pound per week in respect of—

- (1) the wife of the seaman ; or
- (2) if he has no wife, or if compensation is not payable in respect of his wife, one female who has attained the age of twenty-one years and is caring for any child of the seaman under the age of sixteen years, or who is a member of the seaman's family and is over the age of sixteen years, if she was totally or mainly dependent on the seaman at the date of the injury ; and

(ii) an amount of Eight shillings and sixpence per week in respect of each child who, at the date of the injury, was under the age of sixteen years and totally or mainly dependent upon the seaman and who, being under the age of sixteen years, remains so dependent.

(b) where the seaman is totally incapacitated for work by the injury—a weekly payment during his incapacity of the sum of Four pounds and, in addition, the sum of—

(i) One pound five shillings in respect of—

- (1) the wife of the seaman ; or
- (2) if he has no wife, or if compensation is not payable in respect of his wife—one female, over the age of sixteen years, who is—
  - (A) caring for a child under the age of sixteen years and wholly or mainly dependent upon the earnings of the seaman ; or
  - (B) a member of the seaman's family, if she was wholly or mainly dependent upon the earnings of the seaman at the date of the injury and remains so dependent ; and

(ii) Ten shillings in respect of each child who, at the date of the injury, was under the age of sixteen years and wholly or mainly dependent upon the earnings of the seaman and who, being under the age of sixteen years, remains so dependent ; and

(c) where the seaman is partially incapacitated for work by the injury—a weekly payment during his incapacity—

(i) of the amount (if any) by which the weekly amount which he is earning, or is able to earn in some suitable employment or business, after the injury is less than his weekly pay at the date of the injury, or of the amount of Four pounds whichever is the less ; or

(ii) of the amount (if any) by which the weekly amount which he is earning, or is able to earn in some suitable employment or business, after the injury is less than the weekly amount which would have been payable to him under sub-paragraph (b) of this paragraph, if he had been totally incapacitated,

whichever is the greater.

(1A.) Notwithstanding anything contained in sub-paragraphs (b) and (c) of paragraph (1.) of this Schedule, no payment shall be made under those paragraphs which is in excess of the amount of the weekly pay of the seaman at the date of the injury.

(1B.) The amount of any endowment under the Child Endowment Act 1941–1945 received by a seaman or a dependant shall not be taken into account in determining, for the purposes of this Schedule, whether or not any child in respect of whom the endowment is received is or was totally or mainly dependent on the seaman.

(2.) For the purposes of the provisions of this Schedule relating to “ earnings ” and “ average weekly earnings ” of a seaman, the following rules shall be observed :—

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the seaman was being remunerated and in computing such average weekly earnings amounts paid by way of overtime to the seaman shall be included. Provided that where by reason of the shortness of the time during which the seaman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment ;

(b) where the seaman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;

- (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the seaman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;
- (d) where the employer has been accustomed to pay to the seaman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.
- (e) where a seaman receives, as a regular condition of employment, board or board and lodging in addition to wages, the earnings of the seaman shall include such amount, not exceeding Thirty shillings per week, as is assessed as the value of the board or board and lodging.

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

(4.) No weekly payment shall be payable in respect of any period during which the owner of the ship is under any Act, Imperial Act or State Act liable to payment of full wages to the injured seaman.

(2.) Notwithstanding anything contained in paragraph (1.) of this Schedule—

(a) where death results from the injury—

- (i) any amount paid or payable before the death of the seaman by way of weekly payments in respect of his total or partial capacity for work shall not be deducted from the sum payable under clause (i) of sub-paragraph (a) of that paragraph, or shall be disregarded in determining the sum payable under clause (ii) of that sub-paragraph, as the case may be ; but
- (ii) the amount by which any lump sum, paid to a seaman in pursuance of paragraph (18) of this Schedule or section five B of this Act before the death of the seaman, exceeds the total of all weekly payments which would have been payable under sub-paragraph (b) or sub-paragraph (c) of that paragraph, if they had continued until the date of his death, shall be deducted from the sum payable under clause (i) of sub-paragraph (a) of paragraph (1.) of this Schedule, or shall be taken into account in determining the sum payable under clause (ii) of that sub-paragraph, as the case may be, but the sum so payable shall not be reduced to less than Two hundred pounds ; or

(b) where the employee is totally or partially incapacitated for work by the injury—

- (i) no payment shall be made under sub-paragraph (b) or sub-paragraph (c) of that paragraph which is in excess of the amount of the weekly pay of the seaman at the date of the injury ;
- (ii) no such payment shall be made in respect of any period during which the owner of the ship is under any Act, Imperial Act or State Act liable to pay full wages to the injured seaman ; and
- (iii) if the seaman is a minor who is not entitled under the terms of any award, order or determination of an industrial authority, any industrial agreement or any law to receive the same rate of pay as an adult, the words " Three pounds " shall be deemed to be substituted for the words " Four pounds " in the application of the provisions of sub-paragraph (b) of sub-paragraph (c) of that paragraph in relation to the seaman while he remains such a minor.

(2A.) The amount of any child endowment paid under Part VI. of the Social Services Consolidation Act 1947-1948 in respect of a child shall be disregarded in ascertaining, for the purposes of this Schedule, whether or not that child is or was dependent upon the earnings of a seaman.

(3.) For the purposes of this Schedule—

(a) " pay " means the salary or wages of the seaman, and includes—

- (i) where the seaman receives, as a regular condition of his employment, board or board and lodging in addition to wages—such amount, not exceeding Thirty shillings per week, as is assessed as the value of the board or board and lodging ; and
- (ii) unless otherwise prescribed—any allowance payable to the seaman in respect of his employment,

but, subject to the regulations, does not include any allowance which is intermittent or any allowance or sum which is payable in respect of special expenses incurred or likely to be incurred by the seaman in respect of his employment ; and

(b) any reference to the weekly pay of the seaman at the date of the injury means, if the rate of pay of seamen of the same class is subsequently varied under the terms of any award, order or determination of an industrial authority, any industrial agreement or any law, the rate of pay as so varied.

(4.) The amount of any weekly payment of compensation payable to a seaman under this Schedule shall be subject to deduction of the amount of any payment, allowance or benefit which the seaman receives from the employer during the period of the seaman's incapacity.

(4A.) Where under any Act, Imperial Act or State Act, the employer is liable to defray the expenses of maintenance of the injured seaman, the amount of any weekly payment of compensation payable to the seaman under this Schedule shall be subject to deduction of the amount of the weekly cost of maintenance of the seaman paid by the employer ;

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

(6.) The payment in the case of death shall, unless otherwise provided in this Schedule or by the regulations, be paid to a prescribed authority, and the sum so paid shall be dealt with as prescribed for the benefit of the persons entitled thereto.

Provided that, if so agreed, the payment in case of death shall, if the seaman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the persons to whom payments in respect of medical, surgical and hospital treatment, ambulance services and burial expenses are due.

(7.) Where a weekly payment is payable under this Act to a person under any legal disability, the weekly payment shall be paid during the disability to a prescribed authority, and dealt with as prescribed for the benefit of the person entitled thereto.

(7A.) Where any person under any legal disability is entitled to any amount of compensation under this Act in the form of a lump sum, that amount may be paid to a trustee or trustees appointed by a committee or by an arbitrator and approved by a prescribed authority, or appointed by a Judge or a County Court, and the amount so paid shall, subject to any general or special direction of a Judge or a County Court, be held and applied by the trustee or trustees for the benefit of the person so entitled.

(8.) Any question as to—

(a) who is a dependant ; or

(b) how the compensation shall be allotted among, or otherwise dealt with for the benefit of, the dependants

shall, in default of agreement, be settled by arbitration under this Act, or by a County Court.

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

(10.) Where, on application being made to a prescribed authority that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of any of the dependants, or for any other sufficient cause, an order of the Court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any dependant is to be dealt with, ought to be varied, the prescribed authority may make an application to a County Court for the variation of the order or the award, and the County Court may make such order thereon as it thinks just.

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

(12.) A seaman shall not be required to submit himself for examination by a medical practitioner under the provisions of this Schedule otherwise than in accordance with the regulations, or at more frequent intervals than is prescribed by those regulations.

(13.) Where a seaman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or seaman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the seaman's condition, then, in the event of no agreement being come to between the employer and the seaman as to the seaman's condition or fitness for employment, the prescribed authority, on application being made to him by both parties, may, on payment by the applicants of such fee, not exceeding Two pounds, as is prescribed, refer the matter to a medical referee.

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

(15.) Where no agreement can be come to between the employer and the seaman as to whether or to what extent the incapacity of the seaman is due to the accident, the provisions of this Schedule relating to reference to an examination and certificate by a medical referee shall, subject to the regulations, apply as if the question were a question as to the condition of the seaman.

(16.) If a seaman refuses to submit himself for examination by a medical referee, as provided in this Schedule, or in any way obstructs the examination, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation, or, in the case of a seaman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until the examination has taken place.

(17.) Any weekly payment may be reviewed in the prescribed manner at the request either of the employer or of the seaman, and on such review may be ended, diminished, or increased, subject to the maximum above provided:

*Provided that where the seaman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding two-thirds of the weekly sum which the seaman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding Three pounds.*

(18.) Where any weekly payment has been continued for not less than six months, the liability therefor may, at the option of the employer, but subject to the regulations, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity, purchase an annuity for the seaman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case is settled by arbitration under this Act, or by a County Court, and such lump sum may be ordered by the committee or arbitrator or Judge of the County Court to be paid to a prescribed authority to be invested or otherwise applied for the benefit of the person entitled thereto:

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18A.) The last preceding paragraph shall not apply in any case where the incapacity is total and permanent.

(19.) If a seaman receiving a weekly payment ceases to reside in Australia, he shall cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the seaman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(20.) Any amount paid in compensation under this Act, whether by way of weekly payment or sum paid in redemption thereof, or lump sum payment for a specific injury fixed in accordance with the Third Schedule to this Act, shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.

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

## CLAUSE 12.—AMENDMENT OF SECOND SCHEDULE.

### SECOND SCHEDULE.

#### PROCEEDINGS FOR COMPENSATION.

(1.) For the purpose of settling any matter which under this Act may be settled by arbitration, if any committee, representative of an employer and his seamen, exists with power to settle matters under this Act in the case of the employer and seamen, the matter may, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of the committee, or be referred by it to arbitration as hereinafter provided.

(2.) If there is no such committee, or if either party objects to the settlement of the matter by the committee, or if the committee refers the matter to arbitration or fails to settle it within six months from the making of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or, in the absence of agreement, appointed by a County Court or by arbitration before a Judge of a County Court.

(3.) The provisions of any Act or State Act relating to arbitration shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of a County Court, and the decision of the County Court on any question of law, either on such submission, or in any case where a County Court settles the matter under this Act, or where it gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by the regulations either party appeals to the High Court or to the Supreme Court of the State in which the County Court is situated.

(4.) Any arbitrator appointed by a County Court shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings before him were an action in the County Court.

(5.) In any arbitration under this Act, any party to the proceedings may appear personally or by any other person appointed to represent him.

(6.) The costs of and incidental to the arbitration and proceedings connected therewith shall, subject to the regulations, be in the discretion of the committee a Judge or arbitrator. The costs, whether before a committee a Judge or an arbitrator, shall not exceed the limit prescribed by the regulations.

(7.) In the case of the death or refusal or inability to act of an arbitrator, the County Court may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by the regulations, by the committee or arbitrator, or by any party interested, to the prescribed authority, who shall, subject to the regulations, on being satisfied as to its genuineness, record the memorandum, and thereupon the memorandum shall for all purposes be enforceable as if it were a judgment of a County Court: Provided that—

- (a) no such memorandum shall be recorded before seven days after the despatch by the prescribed authority of notice to the parties interested;
- (b) where a seaman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with the regulations, objects to the recording of the memorandum, and proves that the seaman has in fact returned to work and is earning the same wages as he did before the accident, the memorandum shall only be recorded, if at all, on such terms as the prescribed authority, under the circumstances, thinks just;
- (c) a County Court may at any time make such order in relation to the recording of the memorandum, including the removal of such record, as it thinks just;
- (d) where it appears to a prescribed authority, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be recorded by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement, and refer the matter to a County Court, which may, in accordance with the regulations, make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just;
- (e) a County Court may, within six months after the recording of a memorandum of an agreement as to the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability or to dependants, order that the record be removed on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just.

(9.) An agreement as to the redemption of a weekly payment by a lump sum, if not recorded in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so recorded, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(10.) Where any matter under this Act is to be done in a County Court, it may be done in any County Court, but if the Judge of the County Court in which the proceedings are taken, is satisfied that the matter can be more conveniently dealt with in some other County Court, he may order the transfer of the proceedings to that Court, and upon such transfer that Court shall have the like jurisdiction in relation to the proceedings as if they had been commenced in that Court.

(11.) Any sum awarded as compensation shall, unless paid to a prescribed authority, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation.

(12.) Any committee, arbitrator, Judge or County Court may, subject to the regulations, submit to a medical referee for report any matter which seems material to any question arising in the proceedings.

(13.) The Minister may, by order, either unconditionally or subject to such conditions or modifications as he thinks fit, confer on any committee representative of an employer and his seamen, as respects any matter in which the committee acts as arbitrator, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act on a County Court, and may by the order modify any of the provisions of this Schedule, and may provide for such incidental, consequential, or supplemental provisions as may appear to the Minister to be necessary or proper for the purposes of the order.

(14.) A Judge of a County Court may, in relation to any proceedings in the Court, exercise all the jurisdiction and powers of a County Court under this Schedule.

## CLAUSE 13.—THIRD SCHEDULE AND FOURTH SCHEDULE.

## THIRD SCHEDULE.

## Compensation for Specified Injuries.

Nature of Injury.	Amount Payable.	
	£	s. d.
Loss of both eyes .. .. .	800	0 0
Loss of both hands .. .. .		
Loss of both feet .. .. .		
Loss of hand and foot .. .. .		
Total and incurable loss of mental powers, involving inability to work .. .. .		
Total and incurable paralysis of limbs or mental powers .. .. .		
Loss of sight of one eye .. .. .	400	0 0
Loss of sight of an only useful eye, the other being blind or absent .. .. .	300	0 0
Loss of one eye, with serious diminution of the sight of the other .. .. .	675	0 0
Loss of hearing .. .. .	640	0 0
Complete deafness of one ear .. .. .	200	0 0
Loss of right arm or greater part thereof .. .. .	720	0 0
Loss of left arm or greater part thereof .. .. .	675	0 0
Loss of lower part of right arm, right hand or five fingers of right hand .. .. .	640	0 0
Loss of lower part of left arm, left hand or five fingers of left hand .. .. .	600	0 0
Loss of leg above knee .. .. .	640	0 0
Loss of leg below knee .. .. .	600	0 0
Loss of foot .. .. .	560	0 0
Loss of right thumb .. .. .	240	0 0
Loss of left thumb .. .. .	225	0 0
Loss of right forefinger .. .. .	160	0 0
Loss of left forefinger .. .. .	150	0 0
Loss of right little finger, middle finger or ring finger .. .. .	120	0 0
Loss of left little finger, middle finger or ring finger .. .. .	112	10 0
Loss of phalanx of right thumb .. .. .	160	0 0
Loss of phalanx of left thumb .. .. .	120	0 0
Loss of portion of terminal segment of right thumb, involving one third of its flexor surface without loss of phalanx .. .. .	120	0 0
Loss of portion of terminal segment of left thumb, involving one third of its flexor surface without loss of phalanx .. .. .	112	10 0
Loss of total movement of joint of right thumb .. .. .	120	0 0
Loss of total movement of joint of left thumb .. .. .	112	10 0
Loss of two phalanges or joints of finger of right hand .. .. .	100	0 0
Loss of two phalanges or joints of finger of left hand .. .. .	95	0 0
Loss of phalanx or joint of finger of right hand .. .. .	95	0 0
Loss of phalanx or joint of finger of left hand .. .. .	90	0 0
Loss of great toe .. .. .	100	0 0
Loss of phalanx or joint of great toe .. .. .	90	0 0
Loss of any other toe .. .. .	90	0 0
Loss of two phalanges or joints of any other toes .. .. .	80	0 0
Loss of phalanx or joint of any other toe .. .. .	75	0 0

## FOURTH SCHEDULE.

## Description of Disease.

Lead poisoning.  
 Poisoning by benzol or its homologues.  
 Poisoning by carbon monoxide.  
 Dermatitis produced by oil or grease or dust or caustic or corrosive liquids.  
 Pneumonia.  
 Pleurisy.  
 Any infectious disease contracted by employment involving contact with the infectious sources of the disease.

**THIRD SCHEDULE.**  
**Compensation for Specified Injuries.**

Nature of Injury.	Amount Payable.		
	£	s.	d.
Loss of both eyes .. .. .	1,250	0	0
Loss of an only useful eye, the other being blind or absent .. .. .	1,250	0	0
Loss of one eye, with serious diminution of the sight of the other .. .. .	937	10	0
Loss of one eye .. .. .	500	0	0
Loss of hearing .. .. .	875	0	0
Complete deafness of one ear .. .. .	250	0	0
Loss of both hands .. .. .	1,250	0	0
Loss of right arm or greater part thereof .. .. .	1,000	0	0
Loss of left arm or greater part thereof .. .. .	900	0	0
Loss of lower part of right arm, right hand or five fingers of right hand .. .. .	875	0	0
Loss of lower part of left arm, left hand or five fingers of left hand .. .. .	787	10	0
Loss of right thumb .. .. .	375	0	0
Loss of left thumb .. .. .	337	10	0
Loss of right forefinger .. .. .	250	0	0
Loss of left forefinger .. .. .	225	0	0
Loss of right middle finger .. .. .	200	0	0
Loss of left middle finger .. .. .	187	10	0
Loss of right ring finger .. .. .	175	0	0
Loss of left ring finger .. .. .	162	10	0
Loss of right little finger .. .. .	162	10	0
Loss of left little finger .. .. .	150	0	0
Loss of total movement of joint of right thumb .. .. .	175	0	0
Loss of total movement of joint of left thumb .. .. .	162	10	0
Loss of distal phalanx or joint of right thumb .. .. .	200	0	0
Loss of distal phalanx or joint of left thumb .. .. .	187	10	0
Loss of portion of terminal segment of right thumb involving one-third of its flexor surface without loss of distal phalanx or joint .. .. .	175	0	0
Loss of portion of terminal segment of left thumb involving one-third of its flexor surface without loss of distal phalanx or joint .. .. .	162	10	0
Loss of two phalanges or joints of right forefinger .. .. .	150	0	0
Loss of two phalanges or joints of left forefinger .. .. .	137	10	0
Loss of two phalanges or joints of right middle or ring fingers .. .. .	137	10	0
Loss of two phalanges or joints of left middle or ring fingers .. .. .	125	0	0
Loss of two phalanges or joints of right little finger .. .. .	125	0	0
Loss of two phalanges or joints of left little finger .. .. .	112	10	0
Loss of distal phalanx or joint of right forefinger .. .. .	125	0	0
Loss of distal phalanx or joint of left forefinger .. .. .	112	10	0
Loss of distal phalanx or joint of other finger of right hand .. .. .	100	0	0
Loss of distal phalanx or joint of other finger of left hand .. .. .	90	0	0
Loss of hand and foot .. .. .	1,250	0	0
Loss of both feet .. .. .	1,250	0	0
Loss of leg above knee .. .. .	937	10	0
Loss of leg below knee .. .. .	812	10	0
Loss of foot .. .. .	750	0	0
Loss of great toe .. .. .	250	0	0
Loss of any other toe .. .. .	100	0	0
Loss of two phalanges or joints of any other toe .. .. .	80	0	0
Loss of phalanx or joint of great toe .. .. .	125	0	0
Loss of phalanx or joint of any other toe .. .. .	75	0	0