

**Employees' Provident Fund (Amendment)  
Act, No. 1 of 1985**

[Certified on 9th January, 1985]

L.D.O. 68/83

AN ACT TO AMEND THE EMPLOYEES' PROVIDENT FUND ACT,  
No. 15 OF 1958.

BE it enacted by the Parliament of the Democratic Socialist  
Republic of Sri, Lanka as follows : —

1. This Act. may be cited as the Employees' Provident Short title.  
Fund (Amendment) Act, No, 1 of 1985.

2 Section 5 of the Employees' Provident Fund Act, Amendment  
No. 15 of 1958 (hereinafter referred to as the "principal of section 5  
enactment ") is hereby amended in subsection (1) thereof of Act No. 15  
of 1958  
as follows : —

(1) by the insertion immediately after paragraph (b)  
thereof, of the following new paragraph :-

“ (bb) the Board shall determine with the  
concurrence of the Minister, the amount  
**of** surcharge to be distributed, among  
the members affected by the failure of  
their employers to pay' the contributions  
due from him to the Fund, on the day  
such contribution is due; out of the  
money received by way of surcharge  
under the provisions of section 16 ; ” ;  
and

(2) by the substitution for paragraph (k) thereof; of the  
following paragraph : —

“ (k) shall deduct from -the income from the  
investment of moneys of the -Fund, the  
expenses incurred by the Board and the  
Commissioner in carrying out their respec-  
tive functions under this Act; ”.

3. Section 7A of the principal enactment is hereby Replacement  
repealed and the following section, substituted therefor :- of section 7A  
of the principal  
enactment.

“ Expenses  
incurred  
in the  
adminis-  
tration of  
the Act.

7A The expenses incurred by the Commis-  
sioner and the Monetary Board in carrying  
out the provisions of this. Act . shall be  
charged on the income from the investment  
of moneys of the Fund. ”.

**Amendment of section 10 of the principal enactment.**

4. Section 10 -of the principal enactment is hereby amended as, follows: —

- (1) in subsection (1) thereof, by the substitution for the words from “ employment during that month : Provided that ” to the end’ of that subsection, of the words “ employment during that month. ” ; and ..
- (2) in subsection (2) thereof, by the substitution for the words “ to pay to the Fund before the last day. of the succeeding. month ”, of the words “.to pay to the Fund on or before the last day of the succeeding m o n t h ”.

**Amendment of section 23 of the principal enactment.**

5. Section 23 of the principal enactment is hereby amended as follows : —

- (1) by the renumbering of that section as subsection. (1) thereof;
- (2) in the renumbered subsection (1) by the substitution fur paragraph (e) thereof of the following paragraph : —
  - “ (e). after such member ceases to be employed in a covered employment and takes up pensionable employment-
    - (i) ‘in the public service;
    - (ii) in the Local Government Service constituted by the Local Government Service Act, No. 16 of 1974;
    - (iii) in the District Service established under section 47 of the Development Councils Act, No.’ 36 of 1980;
    - (iv) in the service of any local authority other than as a member of the Local Government Service : ” ; and
- (3) by the addition immediately after the renumbered, subsection (1) of the following new subsection :-
  - “ (2) The Commissioner of Labour may, where he has reason to doubt the genuiness of a Medical Certificate submitted by a member under. paragraph (c) of subsection (1) of this section, refer the member concerned for- re-examination: by a duly constituted Medical Board or a ‘Government’ Medical officer and where on such re-examination the original Medical Certificate is found to be false

in any material particular, the Commissioner shall reject such certificate, and he shall be entitled to refuse to accept future medical certificates issued by such registered medical practitioner. "

6. Section 27 of the principal enactment is hereby amended as follows : —

Amendment  
of section 27  
of the  
principal  
enactment.

(1) by the insertion immediately after subsection (2) thereof, of the following new subsections : —

“(2A) Where contributions payable **under this** Act by the employers or administrators of any approved provident fund or approved contributory pension scheme in respect of any month have not been paid to such fund or scheme on or before the last day of the succeeding month and the employer or administrator is unable to explain to the satisfaction of the Commissioner that the failure to pay such contribution was due to circumstances beyond **his control, he shall be liable to pay to** such fund or scheme in addition to the amount of the contributions due, a surcharge on such amount calculated in the following manner :—

(a) Where the contributions are in arrears for a period not exceeding ten days, a surcharge of five per **centum** of the amount of the contributions due ;

(b) where the contributions are **in** arrears for a period exceeding ten **days** but not exceeding one month a surcharge of fifteen per **centum** of the amount of the contributions due ;

(c) where the contributions are in **arrears for a period exceeding one month but not exceeding three months, a surcharge of twenty per centum of the amount of the** contributions: due:

- (d) **where** the contributions are in arrears for a period **exceeding** three months but not exceeding six months, a surcharge of thirty per centum of the amount of the contributions due ;
- (e) where the contributions are in, arrears for a period exceeding six months but not exceeding twelve months, a surcharge of forty per centum of the amount of the 'contributions due; and
- (f) where the contributions are in arrears for a period exceeding twelve months, a surcharge of fifty per centum of the contributions due .

(2B) The moneys received by way of surcharges and p&d- into the fund of any approved provident fund or approved contributory pension scheme shall be deemed to form part of the income of such fund or scheme as the case may be and shall accordingly be distributed among the members of the respective fund or scheme."; and

- (2) by the ' addition immediately after subsection (II), thereof,' of the following new subsection :-

"(12) Where the Commissioner has been notified of the existence of a dispute, between an employer or administrator as the case may be, and any member of an approved provident fund or approved contributory pension scheme he shall issue such directions as he may deem appropriate in the circumstances for the settlement of such dispute. Any directions issued, by the Commissioner under this subsection shall be binding on the parties to 'the dispute.'"

7. Section 34 of the principal enactment Is hereby amended as follows :-

- (1), in paragraph (b) thereof, by the **substitution for the** words untrue or incorrect ; or ", of ~~the~~ words " untrue or incorrect ; " ;

- (2) in paragraph (c) thereof, by the substitution for the words "powers under 'section 32 ", of the words " powers under section 32 ; or " ; and
- (3) by the insertion, immediately after paragraph (c) thereof, of the following new paragraph :-
- (<sup>6</sup> d) contravenes any direction made by the Commissioner in the 'exercise of his powers under section 27, "

8. Section 38 of the principal enactment is hereby amended as follows :-

**Amendment  
of section 38  
of the  
principal  
enactment.**

- (1) in subsection (1) of that section, by the substitution for the words "having jurisdiction in any district where the defaulting employer resides or in which any property, movable or immovable owned by such employer is situate, ", of the words "having jurisdiction in any district in which the member or members of the fund in respect of whom default is made, is or was, employed by such . defaulting employer, " ; and
- (2) in subsection (2) of that section, by the substitution for the words "to the Magistrate having jurisdiction in the division in which such place 'is situate ", of the words " to the Magistrate having jurisdiction in the division in which the place of work of the member' or members- of the fund in respect of whom default is made, is situate. " .

9. Section 47 of the principal enactment is hereby amended as follows :-

**Amendment  
of section 47  
of the  
principal  
enactment.**

- (1) by the insertion, immediately after the definition of "covered employment ", of the following definition:-

" duly constituted Medical Board " means a Me&-cal Board **nomi**nated by the Director-General of Health Services on an application made by the Commissioner for the purpose of examining persons whose medical certificates give rise to reasonable doubt ; ;

- (2) by the substitution for 'the definition of " earnings" of the followings definition : -

"earnings " m e a n s -

- (a) wages, salary or fees ;

(b) cost of living allowance, special living allowance and other similar allowances ;

, (c) payment in respect of holidays ;

, (d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose **decision** on such appeal shall be final ;

(e) meal allowance ; and

(f) such other forms of remuneration as may be prescribed ; ;

(3) by the substitution for 'the definition of " employee " of the following definition :-

" employee " means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work of labour, and includes any person ordinarily employed under any such contract, whether such person is or is not 'in employment at any particular time ; ; and

(4) by the substitution for the definition of " employer " of the following new definition : — .

" employer " means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm; company, corporation or trade union), and any person who on behalf of any other person employs any workman, and includes the legal heir, successor in law; executor or administrator and liquidator of a company and in the case of an incorporated body, the President or the Secretary of such body, and in the **case** of a partnership, the Managing Partner or Manager ;