

SOCIAL SECURITY ACT, 2010

(Act 11 of 2010)

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SOCIAL SECURITY ACT, 2010

(Act 11 of 2010)

I assent



A handwritten signature in black ink, appearing to read 'Michel'.

J. A. Michel
President

2nd July, 2010

AN ACT to repeal and replace the Social Security Act, 1987.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Social Security Act, 2010. Short title

Interpretation

2. In this Act—

“beneficiary” means a person entitled to a benefit;

“benefit” means a benefit under this Act;

“Director” means the Director appointed under section 28;

“employed person” means a person gainfully employed in Seychelles whether under a contract of service, as a director or a member of the board of a body corporate, or as the holder of an office, and includes—

(a) a person, though not bound by a formal contract of service, who is subject to the control of another person as to the manner and method in which the first mentioned person carries out that person’s duties; and

(b) a person working on an approved government employment project or scheme under the Unemployment Relief Scheme Act, 1995;

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but does not include a self-employed person unless the person is so registered with the Revenue Commissioner;

“family income” means the aggregate of the income of a person entitled to a benefit and the income of other persons living with that person;

“family subsistence level”, in relation to a person, means the aggregate of the level of subsistence of that person and that of other persons living with that person;

“Fund” means the Social Security Fund referred to in section 25;

“level of subsistence” means the level of subsistence declared by the Minister under section 22;

“Medical Board” means the Medical Board established under section 30;

“person covered” means a person eligible to receive a benefit;

“officer” has the same meaning as in section 11(1) of the Seychelles Revenue Commission Act and includes a member of the board of trustees appointed under this Act;

“prescribed disease” means an injury or disease prescribed under this Act;

“prescribed period”, in relation to a maternity benefit, means a period of 14 days;

“prescribed period of residence”, in relation to a benefit, means a period of residence in Seychelles prescribed by the Minister as a condition for entitlement to a benefit;

“regular employment” means the normal or habitual level of occupational activity as an employed person which the person carried on prior to the person’s retirement;

“retirement” means retirement from regular employment and presumes that occupational activity has ceased or largely ceased;

“retirement age” means the age of retirement prescribed by the Minister under this Act;

“Revenue Administration Act” means the Revenue Administration Act, 2009;

“Revenue Commissioner” means the Revenue

Commissioner appointed under section 4 of the Seychelles Revenue Commission Act, 2009;

“revenue laws” are the laws listed in the Schedule to the Seychelles Revenue Commission Act including the Social Security Act;

“Revenue Tribunal” means the review forum created by Part XII of the Revenue Administration Act, 2009;

Act 26 of 2009

“Seychelles Revenue Commission Act” means the Seychelles Revenue Commission Act, 2009;

“working day” means a day of the week on which at least four hours of work is completed or normally completed.

PART II - PERSONS ELIGIBLE AND BENEFITS

Persons entitled to benefits

3. A person who is a citizen of Seychelles and is resident in Seychelles is entitled to apply for benefits payable under this Act.

Benefits

4.(1) The benefits under this Act are —

- (a) sickness benefit which consists of periodic payments to a person covered who is rendered temporarily incapable of work otherwise than as a result of an injury or disease which occurred in the course of, or arose out of, employment or who is prevented from attending work due to quarantine restriction;
- (b) maternity benefit which consists of periodic payments to a woman who is a person covered in the event of her pregnancy or confinement;

- (c) injury benefit which consists of periodic payments to a person covered, being an employed person, who is rendered temporarily incapable of work due to an injury or prescribed disease which occurred in the course of, or arose out of, employment;
- (d) invalidity benefit which consists of periodic payments to a person covered who is partially or totally incapable of work;
- (e) disablement benefit which consists of periodic payments to a person covered, being an employed person, who is partially or totally incapable of work following a period of entitlement to injury benefit;
- (f) survivor benefit which consists of periodic payments in the event of the death of a person covered;
- (g) funeral benefit which consists of a grant payable to the person responsible for the funeral arrangements of a deceased person who was a person covered;
- (h) retirement pension which consists of periodic payments to a person covered who is over retirement age;
- (i) dependant benefit which consists of an increase to the personal periodic payments of benefit on account of the dependants of the beneficiary;
- (j) orphan benefit which consists of periodic payments in respect of a child who is an orphan; and

- (k) abandoned child benefit which consists of periodic payments in respect of a child abandoned by the parents of that child.

(2) The Minister may by regulations prescribe additional classes or categories of benefits payable under this Act.

Sickness
benefit

5.(1) A person covered shall, subject to section 10, be entitled to sickness benefit for any working day on which the person is incapacitated for work due to sickness or is prevented from attending work due to a quarantine restriction if—

- (a) the person's incapacity or quarantine restriction is certified by a medical practitioner in a form approved by the Minister;
- (b) but for the person's incapacity or the quarantine restriction, the person would have been in employment, either as an employed person or a self-employed person; and
- (c) the person is not entitled to any other benefit.

(2) The Minister may, by regulations, provide that a person who is unable to attend work because of the sickness of a close relative shall, subject to the conditions specified in the regulations, be treated as if the person were incapacitated for work and be entitled to sickness benefit under this section.

Maternity
benefit

6. A woman being a person covered shall be entitled to maternity benefit for a prescribed period if—

- (a) her confinement, or expected confinement, for childbirth is certified by a medical practitioner in a form approved by the Minister;
- (b) she was in employment, either as an employed person or self-employed person, immediately

prior to the period for which she is claiming benefit; and

- (c) she is not entitled to any other benefit other than survivor benefit.

7. Where a medical practitioner certifies in a form approved by the Minister that the person covered referred to in section 6 is incapable of work on account of her confinement, or expected confinement, for childbirth for more than the period prescribed under section 6, the person covered shall be entitled to sickness benefit under and in accordance with section 5 and thereafter to invalidity benefit under and in accordance with section 10.

Prolonged
sickness
resulting
from
pregnancy

8. Subject to this Act, a person covered who is an employed person and who is rendered incapable of work because of an accident which occurred in the course of, or arose out of, employment or because of a disease which the person contracted in the course of employment or which arose out of employment, shall be entitled to injury benefit in respect of any working day for which the person is incapable of work if—

Injury benefit

- (a) the person's incapacity is certified by a medical practitioner in a form approved by the Minister; and
- (b) the person is not entitled to receive disablement benefit in respect of the accident or disease.

9. The Minister may, by regulations—

- (a) specify the circumstances in which an accident or disease may be treated —
 - (i) in the case of an accident, as having occurred in the course of, or arisen out of, a person's employment; and

Regulations
relating to
accidents and
diseases

- (ii) in the case of a disease, as having been contracted in the course of, or arisen out of, a person's employment;
- (b) having regard to the cause, nature and incidence of any injury or disease or any other relevant circumstances, prescribe an injury or disease as, in the absence of proof to the contrary, having occurred or contracted in the course of, or having arisen out of, a particular employment;
- (c) provide for the determination of—
 - (i) the time at which a person is to be treated as having developed a prescribed disease;
 - (ii) the circumstances in which a disease or injury, where a person has previously suffered from the disease or injury, is to be treated as having recrudesced or as having been contracted or received afresh;
 - (iii) where compensation is awarded by court for any accident which occurred in the course of, or arose out of, employment or any disease which was contracted in the course of, or which arose out of, employment, the rate and manner of payment from the Fund of the compensation.

Invalidity
benefit

10.(1) Where a person covered would, but for this section, have continued to be entitled to sickness benefit after a continuous period prescribed by the Minister, the person shall, for any continuous working day after that continuous period—

- (a) cease to be entitled to sickness benefit; and

- (b) subject to subsection (2), be entitled to invalidity benefit if—
 - (i) the person is not entitled to any other benefit; and
 - (ii) the person satisfies the prescribed period of residence, unless the Minister waives the period of residence.
- (2) The Minister may by regulations—
 - (a) provide —
 - (i) for any matter relating to the assessment and review of the degree of invalidity;
 - (ii) for the manner of calculating the benefit; and
 - (iii) the amount of invalidity benefit payable; and
 - (b) prescribe the period of residence referred to in subsection (1)(b)(ii).

11. Where a person covered, being a person of or over the age of 15 years, would have been entitled to invalidity benefit but for the fact that the person was not entitled to sickness benefit because the person was not an employed person immediately prior to the day on which the person became incapacitated for work, as provided for in section 5 (1)(b), the person shall, for the purposes of section 10, be treated as if the person has been entitled to sickness benefit for the continuous period prescribed by the Minister for the purposes of section 10 if the person's incapacity continued for that continuous period.

Pre-existing
medical
condition

12.(1) Subject to this section, where a person would, but for this section, have continued to be entitled to injury benefit in

Disablement
benefit

respect of the original accident or disease which gave rise to an entitlement to the injury benefit after a continuous period prescribed by the Minister, the person shall, for any continuous working day after that continuous period—

- (a) cease to be entitled to injury benefit; and
- (b) subject to subsection (3), be entitled to disablement benefit if the person satisfies the prescribed period of residence, unless the Minister waives the period of residence.

(2) Where a person who is entitled to injury benefit ceases to be totally incapacitated, the person shall, for any working day on which the person remains partially incapacitated in respect of the original accident or disease which gave rise to the entitlement to injury benefit thereafter—

- (a) cease to be entitled to injury benefit; and
- (b) subject to subsection (3), be entitled to disablement benefit if the person satisfies the prescribed period of residence, unless the Minister waives the period of residence.

(3) The Minister may make regulations prescribing—

- (a) the manner of assessing and reviewing the degree of injury;
- (b) the manner of calculating the disablement benefit and the standard or rate of benefit for certain losses; and
- (c) the manner in which the benefit is to be paid.

(4) Notwithstanding any other provision of this Act, a person covered who is entitled to disablement benefit may undertake paid employment without loss of benefit under this

section if the Minister is satisfied that the employment undertaken is unlikely to be prejudicial to the health of the person concerned or give rise to a worsening of an existing health condition.

13.(1) On the death of a person covered—

Survivor
benefit

- (a) all benefits to which the person covered was entitled immediately prior to death; and
- (b) if the spouse of the person covered becomes entitled to survivor benefit, all benefits to which the spouse was entitled immediately prior to the death of the person covered,

shall cease to be payable.

(2) The Minister may make regulations for the purpose of—

- (a) determining to whom the survivor benefit is to be paid;
- (b) determining the type of survivor benefit to which a person is entitled;
- (c) prescribing the circumstances and conditions on which the survivor benefit is to be paid;
- (d) determining the amount and the manner of payment of the survivor benefit to be paid; and
- (e) providing for the review of the survivor benefit paid to any person.

14. Subject to this Act, on the death of a person covered there shall be paid—

Funeral benefit

- (a) to the person responsible for the payment of the funeral expenses of the person covered; or
- (b) directly to the undertaker who carried out the arrangements for the funeral of the person covered,

on production of an account of the expenses supported by the relevant receipts, a funeral benefit.

Retirement
benefit

15.(1) A person covered shall, subject to this Act, be entitled to retirement benefit on reaching retirement age and shall, unless otherwise provided in this Act, cease to be entitled to any other benefit.

(2) The Minister may make regulations —

- (a) prescribing the age of retirement; and
- (b) the conditions on which retirement benefit is to be paid and the circumstances in which it may be varied, suspended or withdrawn.

Dependant
benefit

16.(1) Subject to this section, a person covered shall, in addition to entitlement to the benefits referred to in section 4 (a) to (f), be entitled to a dependant benefit.

(2) Where immediately before the person becomes entitled to retirement benefit a person covered is receiving a dependant benefit, the person shall, in addition to the retirement benefit but subject to this section, be entitled to a dependant benefit.

(3) The Minister may, subject to this section, direct the payment of a dependant benefit, in addition to a retirement benefit, to a person covered.

(4) A person covered shall be entitled to a dependant benefit —

(a) in respect of not more than one adult who may be—

(i) a spouse; or

(ii) another adult dependant who is not in receipt of a retirement benefit and who is

(A) nursing the person covered; or

(B) a person incapable of work and not in receipt of a benefit; and

(b) in respect of a dependent child.

(5) A person covered shall not be entitled to a dependant benefit if the person's family income exceeds the family subsistence level.

(6) The Minister may make regulations—

(a) prescribing the age limit for dependent children; and

(b) providing for circumstances in which a dependant benefit may be reduced or extinguished.

17. Subject to section 19, orphan benefit shall be payable in respect of a child where—

Orphan
benefit

(a) both parents of the child are dead; or

(b) in the case of an illegitimate child who has not been recognised or whose parental descent has not been proved in accordance with the law, the mother of the child is dead.

18.(1) Subject to section 19, abandoned child benefit shall be payable in respect of a child where the Director is satisfied

Abandoned
child benefit

that the child has been and remains abandoned by the child's parents.

(2) The Director may at any time review payment of abandoned child benefit.

Limit of benefit for orphan or abandoned child with income

19.(1) A benefit under section 17 or section 18 shall not be paid in respect of a child whose income exceeds the rate of the benefit.

(2) Where an orphan or abandoned child is receiving an income but the income is less than the rate of benefit under section 17 or section 18, as the case may be, the benefit payable shall be an amount by which the rate of benefit exceeds the income.

(3) An orphan benefit or abandoned child benefit shall be paid—

(a) where the child is in the care of an institution which is approved by the Minister, to the institution; or

(b) in any other case, to the guardian of the child.

Working during incapacity

20. Except where it is otherwise provided in this Act, a person covered who is entitled to a benefit under section 4 (a) to (e) shall lose entitlement to a benefit if the person undertakes paid employment or carries on any business in terms of the Business Tax Act, 2009 during the period that the person is entitled to the benefit.

Days for which benefit is payable

21. A person covered shall not be entitled to receive a benefit described in section 4 (a) to (e) for more than 5 working days in any week.

Level of subsistence

22.(1) Subject to this section, the Minister may, by regulations, declare a level of subsistence for any period which the Minister may specify in the regulations.

(2) The level of subsistence declared under subsection (1) shall be related to the basic pecuniary needs of a person and shall, subject to subsection (3), be the base point for setting the rates of benefits.

(3) Notwithstanding the declaration of a level of subsistence under subsection (1), the rates of sickness benefit, maternity benefit and injury benefit may be calculated without reference to the level of subsistence if the rate of the benefits is related to the actual income of the person entitled to the benefits.

23.(1) Subject to this section, the Director shall not pay an invalidity benefit or a survivor benefit to a person if the family income of that person exceeds the family subsistence level of that person.

Abatement or extinction of invalidity benefit or survivor benefit

(2) Where a person who is entitled to an invalidity benefit or a survivor benefit has an income which is less than the family subsistence level of that person, the Director shall pay the person a benefit which is the lesser of —

- (a) the applicable rate of benefit; or
- (b) the amount by which the family subsistence level of that person exceeds his family income.

24. Claims for benefits and any other question arising under or in connection with this Act shall be determined in accordance with regulations made by the Minister.

Determination of claim, etc.

PART III - ADMINISTRATION AND FINANCE

25.(1) On the coming into operation of this Act, the Social Security Fund, established under section 26 of the Social Security Act, 1987, together with the investment portfolio of the Fund, shall be transferred to and vest in the Minister subject to the provisions of this Act.

Transfer of investment portfolio of the Fund

(2) The Minister shall establish a Board of Trustees for the purpose of ensuring the efficient governance of the investment portfolio of the Fund and the preservation of its assets.

(3) The Board of Trustees established pursuant to subsection (2) shall have such powers, composition and duties as the Minister may specify by regulations.

Social
Security
Fund

26.(1) Payments to be made into the Fund shall include —

- (a) all rents, interest on investments and other income derived from the assets of the Fund;
- (b) such sums as may be provided by the Government for the purposes of this Act or as may be received and accepted by the Director on behalf of the Fund.

(2) There shall be paid out of the Fund —

- (a) all benefits;
- (b) such payments to the Unemployment Relief Scheme, established under the Unemployment Relief Scheme Act, as the Minister may from time to time authorise;
- (c) subject to regulations, any compensation awarded by court in respect of an accident arising out of and in the course of employment;
- (d) all costs ordered by the court to be paid out of the Fund;
- (e) all expenses properly incurred in the administration of this Act;
- (e) such amount, as the President may direct, to be paid to the Consolidated Fund; and

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- (f) such other payments for any purpose which is declared by the Minister to be within the spirit of the Act.

27.(1) The Minister shall cause to be kept proper books of account and such other documents or records as are necessary for the proper administration of the Fund.

Accounts
and annual
report

(2) The Minister shall, within three months after the end of each financial year, submit to the President a report on the Fund's operations during the year together with a copy of the Fund's annual accounts audited by the Auditor-General and shall publish the report and accounts in such manner as the President may direct.

28.(1) There shall be a Director of the Fund who shall be appointed by the President on such terms and conditions as the President may think fit.

Director

(2) The Director shall be the chief executive officer of the Fund and subject to the approval of the Minister shall be responsible for the management of the Fund, and in particular for—

- (a) the payment of benefits and other sums specified in section 26;
- (b) accounting for all money received under this Act;
- (c) the investment of surplus money of the Fund; and
- (d) accounting for all money collected, paid or invested under this Act.

29.(1) Subject to subsection (2), an officer of the Fund shall not either directly or indirectly divulge or communicate, otherwise than in the performance of the officer's functions

Observance
of Secrecy

under this Act, any information relating to the Fund acquired in the performance of the functions under the Act.

(2) For the purposes of subsection (1) the obligations and penalties prescribed by section 11 and 12 of the Seychelles Revenue Commission Act, 2009 apply to officers of the Fund and other persons assigned compliance activities pursuant to this Act.

(3) Subsection (1) shall not prevent the divulging or disclosing—

- (a) to the Revenue Commissioner appointed under the Seychelles Revenue Commission Act, 2009 or any person authorised by the Commissioner, of any information needed for the performance of the official duties of the Commissioner or the other person;
- (b) to any court, any information required by the court in relation to any proceedings before the court;
- (c) to any person, if required by or under any written law.

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Medical Board

30.(1) There is established a Medical Board.

(2) The Schedule shall have effect with respect to the Medical Board, its composition, quorum, functions and other connected matters.

PART IV- MISCELLANEOUS

REVIEW OF DECISIONS AND MAKING REGULATIONS

Review of
decisions

31.(1) Decisions of an administrative character taken by the Director under this Act are reviewable decisions for the

purpose of Parts IV and XII of the Revenue Administration Act.

(2) A person aggrieved by a reviewable decision may apply to the Revenue Tribunal for review of that decision within 60 days of receiving notification of the decision.

Regulations

32.(1) The Minister may make regulations for the better carrying out of the provision of this Act and, without prejudice to the generality of the foregoing, may make regulations —

- (a) in respect of any matter for which regulations are required to be made under this Act;
- (b) prescribing the forms for the purposes of this Act;
- (c) for giving effect to any reciprocal arrangement or agreement with a foreign government with respect to any matter under this Act.

(2) Regulations made under subsection (1) (c) may modify or adapt this Act in its application to the matters affected by any agreement or arrangement referred to in that subsection.

(3) The Minister may by regulations amend the Schedule.

Private scheme

33. Nothing in this Act shall prevent an employer from operating, in addition to fulfilling obligation under this Act, a private scheme providing any person in the employment of that person with the same benefits as, or benefits additional to, the benefits under this Act.

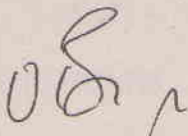
34. The Social Security Act 1987 is repealed.

Repeal of Social
Security Act
1987

SCHEDULE*Section 30***MEDICAL BOARD**

1. The Medical Board shall consist of at least two medical practitioners who shall be appointed by the Minister.
2. The Minister shall appoint a member of the Medical Board to be its Chairperson.
3. The quorum of the Medical Board shall be determined by the Minister.
4. The members of the Medical Board shall hold office on such term and condition as specified in their instrument of appointment.
5. The Medical Board shall consider and decide on all medical matters connected with entitlement to benefits and in particular shall —
 - (a) advise on the cessation or change of medical treatment;
 - (b) advise the Minister on the degree of incapacity and dependence in connection with the widower's pension;
 - (c) advise the Minister on the prescription of occupational accidents and diseases in connection with the injury benefit;
 - (d) assess the degree of invalidity of a person for the purposes of the invalidity benefit; and
 - (e) assess the degree of disability of a person in connection with the disability benefit.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 23rd June, 2010.



Veronique Bresson
Clerk to the National Assembly

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