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GUIDE TO THE UNEMPLOYMENT INSURANCE ACTS

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GUIDE TO THE UNEMPLOYMENT INSURANCE ACTS

BY

H. C. EMMERSON, M.A.

AND

E. C. P. LASCELLES, O.B.E.

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I.—OUTLINE OF UNEMPLOYMENT INSURANCE LEGISLATION, 1911–35

1. The national system of employment exchanges, which provides the administrative machinery of unemployment insurance, was set up under the Labour Exchanges Act, 1909. Compulsory insurance against unemployment was first introduced experimentally, by Part II of the National Insurance Act, 1911, for a few selected trades covering about 2¼ millions out of some 13 millions insured against sickness.

The weekly contributions were 2½d. from the employer, 2½d. from the employed person, and 1⅔d. from the State : the rate of benefit was 7s. per week for persons 18 years and over.

2. During the War unemployment was negligible and few claims for benefit were made. The scheme was extended by the Act of 1916 to cover munitions industries. This brought the number of persons insured to about 4 millions. During the period of demobilization the system of Out-of-Work Donation was introduced which saved the Unemployment Fund from the heavy claims which would otherwise have been made upon it. When the Donation scheme for civilian workers ended in November 1919 the Fund had a balance of £18,900,000. By an Act of 1919 the rates of benefit were raised to 11s. for men and women.

3. The Act of 1920 brought within the scheme practically all persons employed in manual labour, and non-manual workers earning not more than £250 a year, raising the number of persons insured at that time to about 11¾ millions. The main exceptions were, and remain, agriculture, horticulture, private domestic service and certain classes of employment of a permanent nature. The scale of benefit was raised to 15s. od. for men and 12s. od. for women.

4. By the time the 1920 Act came into force, unemployment increased and for the next ten years there was a series of amending Acts relaxing the rules, extending the limits of insurance, and making financial adjustments, as a means of providing for the emergency created by the abnormal state of unemployment. The devices of " uncovenanted," " extended "

and " transitional " benefit were all designed to enable benefit to be paid at fixed rates to persons who, under normal conditions, would have been insured, but owing to the depression in trade, had not enough contributions to their credit to entitle them to ordinary or " standard " benefits, or had exhausted their rights to benefit. Dependants benefit was introduced on a temporary basis at the end of 1921, and made a permanent part of the scheme in 1922.

5. The adjustments made in the financial provisions of the scheme included increases in the rates of contribution, and loans from the Exchequer to the Unemployment Fund (which amounted ultimately to £115,000,000), to enable benefit to be paid. Under the 1920 Act the aggregate weekly contribution in respect of an adult male was 10d. ; by 1931 it had been raised to 2s. 6d. During the same period the rates of benefit varied. In 1921 they were increased to 20s. od. for men and 16s. od. for women, but later in the same year the rates of 1920 were restored. Under the 1924 (No. 2) Act they were raised to 18s. od. for men and 15s. od. for women ; in 1928 the rate for single men was reduced to 17s. od., but at the same time the rate of dependants benefit for an adult was increased by 2s. od. The rates of benefit were reduced by ten per cent. under the economy measures of 1931 but the cut was restored in 1934.

6. By the Act of 1930 the cost of payments of transitional benefit beyond the limits of insurance was met by the Exchequer instead of being met out of the ordinary revenue of the Fund. Even this arrangement did not arrest the growth of the debt and in December, 1930, a Royal Commission was appointed to enquire into the whole position with particular reference to the means by which the scheme might be made solvent and self-supporting ; and the arrangements which should be made outside the scheme for the unemployed. The Commission presented a first report[1] in June, 1931, in which they recommended measures to restore solvency and to deal with certain classes of claims which were creating anomalies. Following these recommendations, the Unemployment Insurance (No. 3) Act, 1931, laid upon the Minister of Labour the duty of making regulations to deal with these anomalies and such regulations[2] were made in October, 1931.

[1] Command Paper 3872 (1931), price 1s. net.
[2] S.R. & O., 1931, No. 818, as amended ; page 265.

7. In October, 1931, Orders were made under the National Economy Act, 1931, increasing the weekly rates of contribution and reducing the rates of benefit, and providing also that persons who did not satisfy the first statutory condition should no longer be entitled to receive benefit as of right. The payment of insurance benefit was limited to 156 days in the twelve months following the date of the claim, and, when this period had been exhausted, the payment of ten contributions was required before benefit could again be drawn in a subsequent benefit year. Persons not entitled to benefit because of failure to satisfy the contributions condition or because they had exhausted the right to draw benefit, were entitled to apply for "transitional payments," payable at rates not exceeding the corresponding rates of insurance benefit, but subject to a test of need applied by the local Public Assistance Authority.

8. The Royal Commission presented its final report[1] in November, 1932, and the main recommendations of the majority report were embodied in the Unemployment Act, 1934. This Act consisted of two parts. Part I dealing with Unemployment Insurance, came into operation generally on the 26th July, 1934. Part II may be cited separately as the Unemployment Assistance Act, 1934. The Act set up the Unemployment Insurance Statutory Committee to watch over the financial position of the Unemployment Fund, and to advise the Minister with regard to Regulations and other matters. The Act also provided for the lowering of the age of entry into insurance to the school-leaving age; a compulsory system of Junior Instruction Centres for unemployed boys and girls; the restoration (as from 1st July, 1934) of the reductions in the rates of unemployment benefit made by the National Economy Order, 1931; an increase in the number of days' insurance benefit which could be drawn in a benefit year by persons with good insurance records, and the restoration to the Insurance Officer, in certain types of cases, of the power to disallow a claim for benefit which he had possessed before 1930.

Administration of Insurance

9. The Unemployment Insurance Scheme is administered by the Minister of Labour through the national system of

[1] Command Paper 4185 (1932), price 7s. 6d. net.

Employment Exchanges. The country is divided into areas for each of which either an Employment Exchange, or a sub-office of an Exchange, or a subsidiary Exchange known as a "Branch Employment Office," is provided. The contributions from employers and employed are paid by means of unemployment insurance stamps purchased by the employer from the Post Office and affixed by him, week by week, to "unemployment books" issued to his workpeople. Benefit is paid weekly to insured persons who furnish evidence of unemployment by attending at the Local Office (Employment Exchange or Branch Employment Office) as required. The Minister has power to make an arrangement with an approved society, or any other association of workpeople, other than an industrial assurance company or collecting society, which makes payments to its members while unemployed, whereby payment in lieu of unemployment benefit is made to the society or association, in respect of members who would have been entitled to receive benefit under the Acts if they had claimed direct.

The Claims and Record Office at Kew keeps an account of the contributions paid, and benefit drawn, by every worker insured under the scheme.

Unemployment Assistance

10. The Unemployment Assistance Act, 1934, set up the Unemployment Assistance Board as a separate department to make payments in accordance with a test of need (to be prescribed by Regulations to be approved by Parliament) and generally "to promote the welfare" of those unemployed persons to whom the Act applied. The Act authorized the establishment of the Unemployment Assistance Fund to be administered by the Board, the fund being made up in the main of a contribution from the Exchequer, though contributions were also required from Local Authorities representing a proportion of the cost of the services of which they were relieved by the setting up of the Board.

The Unemployment Assistance Act applies to persons capable of and available for work, aged 16 or over, but under 65 years, whose normal occupation is employment insurable under the Widows, Orphans and Old Age Contributory Pensions Acts, 1925-32. There is, however, a proviso excluding

from the scope of the scheme persons who have been or would have been disqualified for receiving benefit under the Unemployment Insurance Acts if otherwise entitled to it, by reason of participation in a trade dispute.

11. The Board are required to meet the needs of applicants and their dependants in accordance with the provisions of the Unemployment Assistance (Determination of Need and Assessment of Needs) Regulations, 1934. These regulations were made by the Minister of Labour on the 21st December, 1934, after they had received the affirmative approval of both Houses of Parliament.

12. On 7th January, 1935 (the " First Appointed Day "), the Board began to make payments to persons who would have been entitled to transitional payments, if determinations that they were in need had been in force under the scheme for those payments which was then superseded (see para. 7 above). On the " Second Appointed Day " (which was to have been 1st March, 1935, but was postponed by the Unemployment Assistance (Temporary Provisions) Act, 1935, until such other date as the Minister might appoint) the Board may begin to make payments to all persons within the scope of the scheme whether or not they would have been eligible if in need for transitional payments under the previous scheme. No persons whose application can be considered by the Board prior to the Second Appointed Day may be granted outdoor relief by a Local Authority ; thereafter this prohibition will apply to all persons within the scope of the scheme.

The Unemployment Assistance (Temporary Provisions) Act, 1935, besides postponing the Second Appointed Day, also provided in effect that all applicants for unemployment assistance should receive, while the Act continued in operation, either the payments, if any, provided for under the Unemployment Assistance Regulations (see para. 11 above) or the payments which they would have received by way of transitional payments under the previous scheme, whichever is the higher.

II.—SCOPE

A.—Insurable Employment

13. All persons, whether British subjects or aliens, over the age of legal obligation to attend school (not being less than the age of 14), but under 65, are required to be insured against unemployment, if they are employed in Great Britain under a contract of service, or as apprentices receiving a money payment, unless their employment is one of the excepted employments set out in paragraph 21, and subject to paragraphs 15–19 below.

The scheme is compulsory, and, with certain main exceptions (viz., private domestic service, agriculture and female nurses for the sick), practically all persons who are liable to Health and Pensions Insurance are also liable to Unemployment Insurance.

Outworkers (i.e., persons who take out work to be done in their own homes and not under the control or supervision of the employer) are liable to Health and Pensions Insurance in any event, but are only liable to Unemployment Insurance when they are employed under a contract of service or apprenticeship and, as a rule, outworkers are not so employed.

As from 2nd November, 1931, persons engaged for employment outside the United Kingdom by persons resident in or having their principal place of business in Great Britain are, in certain circumstances, liable to Unemployment Insurance (see para. 20).

Certain persons engaged in work provided by a local authority in co-operation with a poor law authority are not liable to Unemployment Insurance.

There is no provision for the voluntary payment of Unemployment Insurance Contributions.

14. If there is a contract of service, it is immaterial whether the employed person is paid by the employer or by some other person, whether he works for one or more employers, in what way he is paid (e.g., by time or by piece or partly

by time and partly by piece), or whether, except in the case of apprentices, he works without money payment.[1] Apprentices are not insurable unless they work for a money payment.

Mercantile Marine

15. The following are insurable :[2]

the master and any member of the crew—

(*a*) of any ship registered in Great Britain, or

(*b*) of any other British ship or vessel (not being a ship registered in the Irish Free State or in Northern Ireland), of which the owner, or, if there is more than one owner, the managing owner or manager, resides, or has his principal place of business in Great Britain.

The test of insurability as between Great Britain, Northern Ireland and the Irish Free State is the place of registration of the vessel. For example, if a vessel is registered in the Irish Free State the crew are insurable in the Irish Free State, even though the owner may reside in Great Britain.

16. Under Section 98 the Minister has power to make Regulations[3] (after consultation with the Board of Trade) modifying the provisions of the Act in their application to masters, seamen, and apprentices to the sea service and sea fishing service. The Regulations provide that persons who neither are domiciled nor have a place of residence in Great Britain or Northern Ireland shall be excluded from insurance ; but the employer is required to pay his share of the contribution, unless they are employed on a ship engaged in regular trade on foreign stations, or unless they are 65 years of age or over. The employer's share of the contribution is credited to the Royal Seamen's Special Fund.

17. In general, *employment under any public or local authority* is insurable,[4] other than any such employment as may be excluded by regulations.[5] The Minister may, however,

[1] First Schedule, Part I.

[2] First Schedule, Part I (2) S.R. & O., 1921, No. 334 ; 1928, Nos. 1092, 1093.

[3] Under earlier Acts the Minister had power to make Special Orders for this purpose and three such Special Orders were made (S.R. & O., 1921, No. 334 ; S.R. & O., 1928, Nos. 1092, 1093). Under Section 114 (3) these Special Orders have effect as if they were Regulations under Section 98.

[4] First Schedule, Part I (3).

[5] S. R. & O., 339/1921 ; 589/1929 ; 43/1932 (Part II).

grant a certificate of exception in respect of employment of a permanent nature (see para. 39).

18. *Government employment*[1] is insurable if it is of a kind which would be insurable if the employer were a private person. The Acts do not apply however to established Civil Servants or persons serving a probationary period prior to establishment.

19. Persons who are employed partly in an insurable and partly in a non-insurable occupation by one employer in the same week are normally regarded as if the whole of their employment were insurable.[2] In such a case contributions are payable if a " substantial " amount of insurable work has been performed in the week, even though non-insurable work may predominate in that period.

Employment Abroad.[3]

20. Under Section 3 (3) (c) the Minister has power to make Regulations for determining the insurability of persons employed abroad. Employers resident in Great Britain or having their principal place of business in Great Britain are required to pay contributions in respect of persons engaged by them for employment outside the United Kingdom if the employment satisfies the following conditions :—

(*a*) the employment is such that it would be insurable if it were in Great Britain ;

(*b*) the employment is for the purpose of the execution of some *particular* work ;

(*c*) the workman was an insured contributor before leaving Great Britain ;

(*d*) the engagement was made before the insured contributor left Great Britain or Northern Ireland, or was made immediately following on a previous engagement in insurable employment outside the United Kingdom.

The employer must notify a Local Office of the Ministry of Labour and furnish certain particulars when sending any

[1] Section 94.
[2] Section 3 (3) (b), page 204.
[3] Section 3 (3) (c), page 204 ; for Regulations see S.R. & O., 1931, No. 820, page 240.

person to such employment, or engaging or re-engaging him at the end of such employment for further employment covered by these conditions.

B.—Excepted Employment

21. The forms of employment which are excepted from insurance are set out in Part II of the First Schedule to the Act. No contributions are payable by either the employer or the employee in respect of such employments. They are as follows :—

(1) Agriculture, including horticulture and forestry ;

(2) Domestic service, except where the employed person is employed in any trade or business carried on for the purposes of gain ;

(3) Female professional nurse for the sick or a female probationer undergoing training for employment as such a nurse (as from 1st July, 1922) ;

(4) Service in the naval, military, or air service of the Crown, including service in the Officers' Training Corps (except annual training and service in time of emergency of Reserves or Territorials in certain cases) ;

(5) Employment otherwise than in a temporary capacity as a member of any police force to which the Police Act, 1919, applies ;

(6) Employment (as a teacher) of any person who is in contributory service within the meaning of the Teachers (Superannuation) Act, 1925, or in a capacity which, if that person were under the age of 65 years, would be such service, or employment as a teacher to whom the scheme under the Education (Scotland) (Superannuation) Act, 1919, applies, or, in the event of any similar enactment being hereafter passed as respects teachers or any class of teachers, as a teacher to whom such enactment applies ;

(7) Employment as a teacher in a State-aided school in Scotland at any time after the person employed has undergone an examination in order to qualify for the position of a certificated teacher and before the announcement of the result of the examination, and employment as a junior student in such a school, and employment in a

public elementary school in England as a pupil or student teacher;

(8) Agents paid by commission or fees or a share in the profits who are

(*a*) mainly dependent on earnings from some other occupation, or

(*b*) ordinarily employed as agents for more than one employer and not mainly dependent for livelihood on one agency;

(9) Employment otherwise than by way of manual labour at a rate of remuneration exceeding in value £250 a year;

(10) Casual employment, but only if it is otherwise than for the purposes of the employer's trade or business and otherwise than for the purposes of a game or recreation where the employees are engaged or paid through a club;

(11) Part-time employment in certain specified occupations which have been included in a Special Order as being of such a nature that they are ordinarily adopted as subsidiary employment only and not as the principal means of livelihood;

(12) Crews of fishing vessels wholly remunerated by shares of profits or gross earnings;

(13) Employment in the service of the husband or wife of the employee;

(14) Employment in respect of which no wages or other money payment is made where the employee is the child of, or is maintained by, the employer.

The following notes explain how these exceptions operate in certain cases.

Agriculture including horticulture and forestry.[1]

22. Cases of doubt have arisen

(1) where the employment, although ancillary to agriculture or horticulture could not be said to be definitely in agriculture or horticulture; and

[1] First Schedule, Part II (1). The question of the inclusion of agriculture among the insurable employments was referred by the Minister of Labour for consideration by the Unemployment Insurance Statutory Committee, who reported in favour of a scheme of insurance for the industry; see Chapter XX.

(2) where the employment was partly in agriculture or horticulture and partly in an insurable occupation.

In July, 1927, Mr. Justice Roche laid down the following working rule, as applicable to these industries:

"Persons are employed in agriculture and horticulture when employed upon any operations done about the production, preparation, or transfer of the products of farm or garden or orchard in the best saleable condition to a first buyer or to a salesman or agent for sale, if one be employed, or to a distinct business under one proprietorship, as in Daniels' case. But if the industrial status and occupations of the employed persons are such that, though they are working about or in connection with a farm or garden or orchard, they may properly be said to be essentially pursuing their own special occupations, they are not employed in agriculture or horticulture within the meaning of this rule."

In Daniels' case mentioned in the rule, the employers were nurserymen and seed growers, but also had a distinct business as seed merchants.

In later decisions in cases arising out of the latter part of the working rule, Mr. Justice Roche laid down that a man employed on a farm or estate in the exercise of some special craft is insurable. Such a man is also insurable if he is employed partly in the exercise of some special craft and partly as an agricultural labourer unless his duties as an agricultural labourer occupy him for "a very substantial part of his time."

23. The following employments have been held not to be employment in agriculture and are insurable:—

(i) employment on a private estate as a carpenter and general estate and farm repairer;

(ii) employment, in connection with an auction mart, by a firm of livestock auctioneers and appraisers, of

(*a*) a full time yardsman,

(*b*) a man employed regularly on Mondays and Saturdays to tend and drive cattle,

(*c*) a man employed regularly on Mondays to drive cattle round the sale ring.

24. The following have been held to be engaged in agriculture or horticulture, and are *not insurable*:—

Repairers of fences, hedges, etc., on agricultural estate, the greater part of which is let out to tenants.

Carter employed on agricultural estate to haul materials for repairs of agricultural buildings and accommodation roads.

Dairy-maid employed at a dairy farm on private estate.

Persons employed by a farmer to deliver milk produced on the farm, who perform, in addition, a substantial amount of farm work.

Persons employed, whole time or seasonally, by nurserymen in trimming and washing plants, selecting and bunching cut flowers, grading fruit and tomatoes and packing for despatch.

25. *Horticulture* has been held to include employment as a green-keeper by a golf club, and employment as a pea-picker by a nurseryman.

The employment of labourers engaged in excavating ground, levelling ground for gardens, excavating and laying tennis courts, or constructing new golf courses has been held not to be employment in horticulture.

Domestic[1] *service, except where the employed person is employed in any trade or business carried on for the purposes of gain.*

26. The two points to be considered in connection with this exception are :—

(1) whether the work is domestic service ;
(2) whether it is in a trade or business carried on for the purposes of gain

In one of the first decisions of the High Court on this question, domestic servants were described by Mr. Justice Roche as " servants whose main or general function it is to be about their employers' persons or establishments, residential or quasi-residential, for the purpose of ministering to their employers' needs or wants, or to the needs or wants of those who are members of such establishments or of those resorting to such establishments, including guests."

27. The following persons have been held to be domestic servants :—

Chauffeur (private motor-car),

[1] First Schedule, Part II (2).

Servants for sporting purposes (huntsman, whip, hound-man, game-keeper, greyhound-keeper),
Charwomen and office-cleaners,
Caretaker of County Office,
Attendant in University Museum,
Store-keeper of hospital,
Lodge-keeper of hospital,
Library attendant.

28. The following have been held *not* to be domestic servants :—

Secretary employed by land-owner,
Painter and decorator employed at a college,
Cobbler employed in orphan home,
Caddy at golf club (engaged and paid through caddy-master),
Yacht hand working as a seaman,
Cooks and stewards on a pleasure yacht.

29. It has been held that the following persons engaged in domestic service are engaged in a trade or business carried on for the purposes of gain, and are therefore insurable :—

Waitress in hostel provided by firm for staff,
Servants in hotels and boarding-houses, although there may happen from time to time to be no visitors (this does not *necessarily* apply where apartments are let with or without board ; in such cases, domestic servants may be insurable, if at all, only during those seasons of the year when rooms are actually let),
Servants in nursing homes (including doctor's private nursing home),
Chauffeur employed by doctor for professional visiting,
Cleaners in offices and shops, if employed substantially during normal business hours.

30. The following are types of domestic service which fall within the exception, and are therefore *not* insurable :—

Employment in clubs not carried on for gain ; public or preparatory schools ; Universities ; hostels connected with educational institutions ; hospitals ; local government offices.
Office cleaners who are not substantially employed during the normal business hours of the establishment.

Female professional nurse for the sick, or female probationer.

31. This exception includes masseuses and Health Visitors employed by Public Health Authorities, and nurses and probationers employed in the care of mental cases. The exception does not extend to male nurses.

Service in the Armed Forces of the Crown.

32. This exception does not include reservists or territorials during training. Neither does it include reservist or retired officers called out for service with the armed forces of the Crown, or persons given temporary commissions or enlisting in the forces on an occasion of great emergency for service during the emergency. If they were normally "employed persons," before their training, or before being called up for service with the forces, they become during their training, or temporary service during the emergency, insurable as "employed persons" in the service of the Crown.

Permanent members of any police force to which the Police Pensions Act, 1919, applies.

33. This exception includes women. Employment in a temporary capacity as a member of a police force is excepted (by S.R. & O., 1929, No. 589), where the person so employed was not normally an insured person before such employment. Special constables are excepted by the Subsidiary Employments Order.

Employment otherwise than by way of manual labour at a rate of remuneration exceeding £250 a year.

34. The rate of remuneration, and not total annual income is considered, and, in estimating the rate of remuneration, payment in kind, including board and lodging, are taken into account. If the employment is part-time, the remuneration of whole-time employment on the same basis is estimated, but the rates of earnings from two separate part-time occupations are not added together in determining the rate of remuneration; each occupation must be considered separately. Professional footballers and cricketers have been held not to be employed by way of manual work.

Casual employment.

35. The casual employment must be either

(i) not for the employer's trade or business, or
(ii) not for the purposes of a game or recreation where the employees are engaged and paid through a club.

36. It has been held that a man engaged in road-making under a scheme of relief work undertaken by a Local Authority, under the terms of which he is required to remain on the register of the Employment Exchange and available for employment at any time, is a casual employee ; he is not within this exception if road-making is part of the business of the Local Authority. Under the second clause of this exception, golf caddies, who, as stated above, are held not to be domestic servants, will in many cases be insurable.

Subsidiary Occupations.

37. The Minister has power to make Regulations excepting from the provisions of the Act, employment which is *ordinarily* adopted as subsidiary employment only, and not as the principal means of livelihood. Where such an order has been made it applies to all members of the class, and its operation cannot be restricted to persons who, although following the subsidiary employment, follow no other occupation. The Minister may also declare that for this purpose a special order made by the Minister of Health under the Health Insurance Acts shall apply to unemployment insurance.

Under the Unemployment Insurance (Excepted Subsidiary Employments and Inclusion) Special Order, 1931[1], a number of subsidiary employments were excepted. The more important are part time service in connection with religious worship ; certain part time employments under local authorities ; substitute weavers ; certain classes of employment in theatres : certain types of clerical and secretarial work ; employment in the delivery of milk or newspapers where the employment, except on Sunday, does not ordinarily involve service after 9 a.m. In most cases a specified number of hours defines part time employment which may be excepted.

Relief Work.

38. Under Section 3 (4) a person who is engaged on work provided by a local authority under an arrangement whereby a poor law authority makes a contribution towards his re-

[1] Prior to the 1934 Act the power to except subsidiary employments was by Special Order and not by Regulations as it is now.

muneration is not insurable. The provision does not apply if the person employed has previously been in receipt of benefit and is employed in full time work by the local authority (i.e., the same hours in each week as he would normally have worked if he had been employed on the same work otherwise than by arrangement with the poor law authority).

C.—Certificates of Exception[1]

39. The Minister can grant a certificate of exception from unemployment insurance in respect of employment which falls into one or other of the following categories, viz., employment

(i) under any Government Department (including any department or office declared by a Minister of the Crown to be under his ultimate control) or public or local authority ; or

(ii) in the service of any railway company or a joint committee of two or more such companies ; or

(iii) in the service of any public utility company, that is to say, any company carrying on any undertaking for the supply of gas, water, hydraulic power or electricity, any dock or canal undertaking, or any tramway undertaking including a light railway constructed wholly or mainly on a public road ; or

(iv) in which the persons employed are entitled to rights in a superannuation fund established by or in pursuance of an Act of Parliament for the benefit of persons in that employment.[2]

40. *Conditions for exception.*—A certificate is granted in respect of employment with regard to which the Minister is able to certify that—

(i) the employment is permanent in character, having regard to the normal practice of the employer ;

(ii) individual employees have completed three years' continuous service in that employment since the date on which they were definitely appointed to posts on the permanent staff ; and

[1] First Schedule. Part III.

[2] There must be a definite fund in which the employed person is entitled to rights, and this fund must be established either by an Act of Parliament or in pursuance of directions given by an Act of Parliament for the benefit of persons in the employment.

(iii) the other circumstances of the employment make it unnecessary that they should be insured under the Act.

Before a certificate is granted it is necessary to show that it is the normal practice of the employer to retain during good behaviour persons employed in the employment concerned. For this purpose evidence as to the number of and the reasons for dismissals (or suspensions from work without wages), covering a period of fifteen years immediately before the application, is usually required.

41. A certificate applies only to employees who have completed at least three years' continuous service on the permanent staff of the employer who receives the certificate. This condition is qualified by certain provisions for the aggregation of service, under two or more employers.[1] The power of dismissal and suspension without wages must be so regulated as to ensure that it is not exercised except after careful consideration of each individual case.

42. *Identification.*—In order that a certificate of exception when granted, may become operative in the case of an individual employee, it is necessary that, when he satisfies all the conditions attaching to exception, he should be identified by the employer as an excepted employee. The matters which have to be borne in mind when consideration is being given to the identification of employees and the method of identification are set out in a leaflet (U.I.L. 28), which is forwarded to the employer with the forms of application. In no circumstances can identification be retrospective. The records of the employer must be open to inspection at all reasonable times by the inspectors acting on behalf of the Ministry.

43. *Liability for Contributions.*—Contributions are payable in accordance with the general provisions of the Acts in the case of (i) all employees in classes not covered by the certificate, and (ii) employees in classes covered by the certificate, before the date on which they are properly identified.

Contributions properly paid before the date of identification cannot be refunded.

44. *Period of Validity of Certificates.*—A certificate of exception under the foregoing provisions is granted only for a limited period which is specified in the certificate, but on expiry it may, on formal application by the employer, be

[1] First Schedule, Part III (3), (4) and (5).

renewed for a further period, if the employment covered by it still fulfils the statutory conditions.

D.—Employment Excepted by Regulation

45. The Minister has power under Section 3 (3) (a) by regulations to provide that persons who are employed in insurable employment in any week only to a specified extent which in the opinion of the Minister is inconsiderable, shall be treated as though their employment were excepted. This power would, for example, enable the Minister to declare that a person who was employed in insurable employment for a few hours only on one day a week—and was occupied on his own account for the rest of the week—was to be treated as employed in an excepted employment. The Minister can attach such conditions as he thinks fit to any exceptions he makes.

E.—Power to Remove Anomalies[1]

46. By the Act of 1934 the Minister was given a general power to make regulations to provide for either

(*a*) the inclusion among the excepted classes of a class of persons employed in insurable employment

or

(*b*) insuring a class of persons employed in excepted employment.

The object of this provision is not to enable the Minister to make wide changes in the scope of the insurance scheme, but solely to remedy anomalies where it appears to the Minister that difference of treatment under the Act of persons similarly employed gives rise to anomalies. The Royal Commission pointed out for example that the definition of domestic service had resulted in some classes of persons being insured and some excepted, although the terms and conditions of their service and the nature of their work were very similar. The Minister now has power to adjust the matter by regulation, where it appears to him that anomalies arise.

Any regulations must, of course, be submitted to the Statutory Committee in accordance with the usual procedure (Chapter XX).

[1] 1935 Act, Section 3 (2), page 203.

F.—Excluded Persons

Certificates of Exemption.

47. Persons who would otherwise be required to pay contributions under the Act can, subject to certain conditions, obtain a Certificate of Exemption which will relieve them, but not their employer, from this liability. It is for the employed person to decide whether or not he will claim exemption. A claim may only be made where he can prove that he is—

(*a*) in receipt of any pension or income of the annual value of £26 or upwards which does not depend on his personal exertions ; or

(*b*) ordinarily and mainly dependent for his livelihood upon some other person ; or

(*c*) ordinarily and mainly dependent for his livelihood on the earnings derived by him from an occupation which is not insurable employment ; or

(*d*) a person who is employed in an occupation which is of a seasonal nature and does not ordinarily extend over more than eighteen weeks in any year and who is not ordinarily employed in any other occupation which is insurable employment.

48. Persons to whom exemption under the National Health Insurance Act, 1924, has already been granted may apply for that exemption to be made applicable also to Unemployment Insurance. The fact that the certificate granting exemption from Health Insurance is based on the ground that the person has not been employed within the meaning of the National Health Insurance Act, 1924, for the prescribed number of weeks during any prescribed period, does not prevent it being applied to Unemployment Insurance.

49. The fact that the employed person is in receipt of total income from all sources exceeding £250 per annum, is not a ground for exemption. Persons engaged in non-manual employment at a rate of remuneration exceeding £250 per annum are, however, not required to be insured (see para. 34), and no certificates are necessary in their case.

50. Persons entitled to exemption must not be confused with persons in " excepted employments." No contributions are paid in respect of a person in excepted employment. In the case of a person who obtains a personal certificate of exemption on any of the four grounds stated above the

employer is still liable for his contribution at the ordinary rate and a contribution is paid by the State.

While the certificate remains in force the employer may not make any deduction for unemployment insurance from the exempt person's wages.

51. Although an employed person may fulfil the conditions for exemption, contributions at the full rate must be paid in respect of him, until application has been made in the proper form and a certificate of exemption has been granted. Certificates of exemption from National Health Insurance are not valid as certificates of exemption from Unemployment Insurance, until action, as provided by the Regulations,[1] has been taken to render the Health Certificate applicable to Unemployment Insurance.

52. The procedure to be adopted in applying for a certificate of exemption, the duration and renewal of certificates, and the re-insurance of exempt persons will be found in the Exempt Persons Regulations.[2]

53. An exempt person cannot obtain benefit while he continues to hold a certificate of exemption. If he desires to make a claim for benefit he must first return his certificate to the Ministry of Labour Exemptions Branch, Bromyard Avenue, London, W.3., for cancellation, together with his Exempt Persons Book, in exchange for which he will receive a regular unemployment book. He will then be entitled to benefit provided that he can satisfy the statutory conditions.

Persons (excluding Blind Persons) of the age of 65 and over.[3]

54. Persons of the age of 65 and upwards are not insurable, but their employers are required to pay contributions in respect of them at the ordinary rate. Special cards for these contributions are normally issued direct to employed persons. Where an employed person aged 65 or upwards does not receive a special card, he or his employer must obtain a card (Class P (X)) at a Post Office.

Blind Persons.[4]

55. Unemployment Insurance contributions are not payable in respect of persons who are in receipt of pensions under the Blind Persons Act, 1920, and such persons are not entitled to claim unemployment benefit.

[1] Paragraph 4, page 243. [2] Page 241.
[3] Section 5 (3) (*a*), page 205; Section 8 (3), page 206.
[4] Section 5 (3) (*c*), page 205; Section 8 (3), page 206.

III.—CONTRIBUTIONS

A.—RATES

56. The rates of contributions payable weekly by employers and employed persons are set out in the Third Schedule to the 1935 Act.[1] The contribution by the State is fixed at a rate equal to one-half of the aggregate amount of the contributions paid by the employer and the employed person.[2] While the present rates are in force each party pays the same amount (10d. weekly for an adult man), but if the employer's contribution or the worker's contribution were varied by order under Section 59[3] of the 1935 Act, the State's contribution would be adjusted automatically.

57. In the case of an excluded person (see paras. 47–54) the State's contribution is at the rate of one half of the contribution paid by the employer (Section 21 (1)).

B.—PAYMENT OF CONTRIBUTIONS

58. The employer of an insurable person is, in the first instance, liable to pay the joint contribution of himself and the employed person. This is in general to be done before payment of wages by affixing an unemployment insurance stamp to the unemployment book issued in the name of the employed person.

59. It is the duty of any person on entering insurable employment to obtain an unemployment book if he has not already obtained one and to hand the book to his employer. It is the duty of the employer to obtain an unemployment book from the employed person at the commencement of the employment.

60. The procedure regarding the issue, custody and disposal of unemployment books is contained in S.R. & O. 1920, No. 2014.[4] The arrangements for the collection from employers of contributions at the exempt persons' rate for

[1] Page 238.
[2] Page 227; see also Chapter XX.
[3] See Section 21 (1), page 209.
[4] Page 243.

persons 65 years of age and over are set out in S.R. & O. 1928, No. 14. A separate book is used for each class of insured person. Books remain current for a period of one insurance year beginning early in July of each year, and must be surrendered in exchange for new books as their currency expires.

61. Stamps affixed to unemployment books must be date-cancelled by employers, who must not make any other writing or mark upon the book or stamp.

A record of the purchase of insurance stamps can be obtained on request from the Post Office at the time of purchase provided the total value of the stamps required is not less than £1. Post Offices will supply forms for this purpose (P. 325 H.)

62. A contribution is payable by the employer for each calendar week (Sunday midnight to the following Sunday midnight) if during the whole or part of the week an employed contributor has been employed. A contribution is payable even though no services are rendered, if the employer makes to the insured contributor a payment which is either

(1) expressly provided for in the terms of employment ; or

(2) although not so provided for, can be regarded as an understood term of the employment, e.g., owing to the fact that such payment is made in consequence of an established practice, custom or usage, whether of the trade, the district or of the particular employer concerned.

63. A contribution is NOT PAYABLE for any calendar week if an insured contributor NEITHER renders any services to the employer during any part of that week NOR receives any remuneration from him for any part of that week.[1] A contribution is NOT PAYABLE for any calendar week during the whole of which the insured contributor is absent from work owing to holiday or sickness and

(1) receives no payment at all from the employer for that week ; or

(2) receives a purely gratuitous payment from the employer ; or

(3) is absent owing to an accident and receives only the amount of compensation to which he is entitled under the Workmen's Compensation Acts.

[1] Section 8 (4) (b), page 206.

A payment which is paid in accordance with established practice cannot be regarded as gratuitous.

64. Any payment made by the employer in excess of the amount legally payable under the Workmen's Compensation Acts falls under paragraph 62 or paragraph 63 above, according to the circumstances of the case.

65. A contribution is not payable in respect of any period AFTER termination of employment, even though wages are paid in lieu of notice or in lieu of holidays not taken during the period of employment.

66. When once a contribution has been paid in respect of any week, no further contribution is payable by any subsequent employer in that week. When an employed contributor works for more than one employer during the week, the first employer in the week is liable for the contribution.[1] The special provisions contained in the Regulations should be consulted in cases in which the insured contributor is employed as an agent, or is employed by one person for the purpose of the business of another.[2]

67. The employer is liable for payment of the whole contribution, but, in all cases in which the employed contributor receives wages, the employer may recover the amount of the employed contributor's contribution, by deduction from his wages or any other remuneration, but only from wages or remuneration paid for the period to which the deducted contributions apply. The employer cannot recover by deduction from any other payments due to the employed person. Failure to deduct at the proper time entails the loss of the employer's legal right to make the deduction at all. An employer is liable to prosecution if he attempts to deduct the employer's contribution from the wages of an employed person (Section 9 (2)).[3]

68. In general, contributions must be paid before wages are paid. If the employment terminates, contributions must be paid up to date at once. When the unemployment book expires, it must be stamped up to date within six days after expiration. An employer does not comply with the regulations either by giving the stamps to the insured person with instructions to affix them, or by giving money to the insured

[1] Section 11 (1), page 207.
[2] S.R. & O., 1920, No. 2014, page 243.
[3] Page 207.

contributor with instructions to buy and affix stamps. Unless the book is actually stamped the employer remains liable.

69. Subject to certain conditions, the Act and the Regulations[1] enable employers to make special arrangements with the approval of the Ministry of Labour in each case for :—

(*a*) stamping by the Ministry of Labour in respect of persons employed through the Employment Exchange ;

(*b*) stamping by employers in the week following payment of wages ;

(*c*) deferred stamping at half yearly or quarterly intervals where large numbers of insured persons are regularly employed ;

(*d*) the use of machines for franking unemployment books ;[2]

70. Amounts due from a company in respect of contributions are entitled to priority to other debts of the company in cases of winding up (Section 20), and also in cases where a receiver is appointed under Section 78 of the Companies Act, 1929 ; and amounts payable by partnerships or individuals in cases of bankruptcy during 12 months before the date of the receiving order are debts which are entitled to priority.

C.—Return of Contributions Paid in Error[3]

71. When contributions are paid in error (e.g., in respect of a person in an excepted occupation), the employer, and the person in respect of whom contributions were paid, or either of them, may claim from the Minister the return of their respective shares of the contributions. Under the Regulations no contribution can be returned which was paid more than six years before the date on which application for repayment is made. In the case of the employed person's contribution, the amount of repayment is subject to the deduction of the amount of benefit paid to the claimant which he would not have received but for the contributions paid in error within the prescribed period of six years. The form for making application for a return of contributions paid in error can be obtained from the Local Office (U.I., 54 or 56).

[1] Section 13 ; S.R. & O., 1920, No. 2014 (as amended), page 243.
[2] S.R. & O., 1930, No. 569.
[3] Section 14 ; S.R. & O., 1926, No. 437 ; S.R. & O., 1930, No. 181.

D.—Crediting of Contributions

Juveniles.

72. Under Section 75 of the Act the Minister is required to provide by Regulations for crediting with contributions any persons who, after attaining the age at which the period of compulsory elementary instruction ends, have continued to receive whole time education.

This period means, in England and Wales the period during which under any enactments for the time being in force, other than local bye-laws, parents are under an obligation to cause their children to receive efficient elementary instruction, and in Scotland the period during which parents are similarly under an obligation to cause their children to receive efficient education. The object of this provision was to prevent the possibility that the lowering of the age of entry into insurance by the 1934 Act might discourage continued full time education. No Exchequer contribution is payable to the Unemployment Fund in respect of credited contributions for juveniles.

The Crediting of Contributions Regulations (S.R. & O., 1935, No. 841) came into force on 3rd September 1935, but they apply to persons who were continuing to receive whole time education on or after 4th May, 1935.[1]

73. The Regulations provide that contributions shall be credited in respect of attendance at schools which may be broadly described as coming within the public system of education, i.e., Grant-aided Schools, Poor Law Schools, Schools formally recognized by the Education Departments as efficient, Central Institutions in Scotland, and the Greenwich Hospital School which is maintained out of a special fund administered by the Admiralty. Attendance must be between the hours of 9 a.m. and 6 p.m. and for not less than 15 hours per week.

Contributions are not credited for attendance at Approved Schools under the Children and Young Persons Act, 1933, or Section 36 of the Children and Young Persons (Scotland) Act, 1932; at Special Schools for mental and physical defectives; or at Authorised Courses of Instruction provided in pursuance of Section 76 of the Unemployment Insurance Act, 1935.

[1] Unemployment Insurance (Crediting of Contributions) Act, 1935.

In general, the minimum period of such education for which contributions may be credited is 12 full months. Where, however, voluntary whole-time education has been continued for a school year (i.e., from the end of one term to the end of the corresponding term the following year), which owing to the variability of the length of terms does not cover 12 full months, the person may qualify for credit, after a period of continued education (including recognized holidays) of not less than 47 weeks.

74. The number of contributions to be credited is as follows :—

For a period of continued education (after the normal school-leaving age)
of 12 months but less than 18 months, 10 contributions ;
of 18 months but less than 24 months, 15 contributions ;
of 24 months or more, 20 contributions.

It will be noted that even with the maximum number of credited contributions a juvenile still requires ten contributions in respect of insurable employment before he can qualify for benefit—see Chapter VI.

Normally the period of continued education is deemed to commence on the day following the end of the term in which the normal school-leaving age was reached or, if this was reached during holidays, on the first day of such holidays. Special rules are included to avoid anomalies which would otherwise occur in certain areas in Scotland through the incidence of fixed school-leaving dates.

In areas where the normal school-leaving age has been raised by a bye-law, a period of continued education between the normal school-leaving age and that prescribed by bye-law can rank for the purpose of credit.

75. Contributions may be credited only if the period of whole-time education (that is, after the normal school-leaving age) has been continuous. Continuity is broken by absences of a type other than the following :—

(*a*) holidays recognised by the school authority ;
(*b*) absences due to personal sickness or to infectious disease in the home or in the school or elsewhere, provided that any absence longer than two weeks must be certified to be necessary by a doctor ;

(*c*) absences not exceeding, in the aggregate, one month in any one school term, certified by the school authority to be due to good cause ;

(*d*) other absences not exceeding one day on not more than six occasions in any period of 12 months.

Education received after an absence other than those referred to above, does not count for credit.

76. Credited contributions may be reckoned as contributions properly paid for the purpose of satisfying the contributions condition for unemployment benefit, subject to the following provisions :—

(*a*) No stamps affixed in respect of insurable employment for weeks for which contributions have also been credited, may be counted for the purpose of the condition.

(*b*) Stamps affixed in respect of weeks prior to those for which contributions have been credited, may be counted only if the number of stamps affixed before the 16th birthday, or the termination of continued education (whichever is the earlier), is in excess of the number of contributions credited, and in that case only to the extent of the excess.

Credited contributions cannot be counted for the purpose of obtaining additional unemployment benefit beyond the fixed minimum of 156 days in a benefit year (see para. 99).

Claims for credit of contributions must be made on the prescribed form, copies of which can usually be obtained from the Head Master of the school last attended. They may also be obtained from a Juvenile Employment Bureau or from a Local Office of the Ministry of Labour. Claims must normally be made not later than six months after the date on which the pupil ceased to continue to receive whole-time education.

Discharged Members of H.M. Forces.[1]

77. Seamen, marines, soldiers and airmen are entitled (subject to certain exceptions) to receive on discharge a credit of contributions equal to the number of weeks of service after 30th June, 1927, subject to a minimum of 30 contributions. They then have the same benefit rights, including additional days of benefit, as if their service with H.M. Forces had been

[1] Section 96.

insurable employment. To meet the cost of this, payments are made to the Unemployment Fund by the Admiralty, the Army Council and the Air Council.

Short Service Constables (Metropolitan Police).[1]

78. On completion of their fixed period of service (ten years), short service constables of the Metropolitan Police Force are entitled to receive a credit of contributions sufficient to give them the same benefit rights as if their period of service had been insurable employment. Two-thirds of the cost of crediting contributions is payable out of the Metropolitan Police Fund and the remaining third is paid by the Exchequer.

[1] Section 97.

IV.—DETERMINATION OF QUESTIONS AS TO SCOPE AND CONTRIBUTIONS

79. Any question[1] relating to the scope of the Act or liability for contributions is decided by the Minister.

There is a right of appeal by any aggrieved person to the High Court (or, in Scotland, to the Court of Session), and the Minister may himself refer the question for decision to the High Court.[2]

80. An application for a decision on any question must be made in the form prescribed by the Regulations. The procedure regarding decisions by the Minister is set out in the Regulations.[3] If the Minister does not dismiss the application as frivolous he may :—

(1) give his decision, after such time as may be necessary for consideration ; or

(2) refer the question direct to the High Court for decision ; or

(3) reserve his decision and give notice, as prescribed by the Regulations, of the question, and of the date on which his decision will be given. When notice of a reserved decision has been given any interested person or body of persons may make representations in writing on the subject, or may apply to be heard orally.

81. In giving his decision the Minister must take into account any decisions given by the Umpire under repealed Acts.[4] He may revise his decision after the time for appealing has expired if new facts come to his notice, unless an appeal is then pending. Applications for revision must be made by persons who would have been entitled to make the original

[1] Section 4, page 204 ; Section 12, page 208 ; Section 84 (1).
[2] Section 84.
[3] S.R. & O., 1920, No. 1814.
[4] Section 84 (7).—Prior to 1920 the Umpire determined these questions.

application, and must be accompanied by a statement of new facts. Appeals and references to the High Court are regulated by rules of court. An appeal is made to a single judge nominated by the Lord Chancellor. The decision of the High Court is final.

V.—TITLE TO BENEFIT

Statutory Conditions for the Receipt of Benefit.

82. Every claimant for benefit is required to satisfy the statutory conditions :—

(1) that not less than thirty contributions have been paid in respect of him as an insured contributor in respect of the two years immediately preceding the date on which application for benefit is made. A person who was at any time during the two years in receipt of a disability pension for a disability contracted during the late War and whose failure to satisfy this condition was due to his disability, need only prove the payment of 10 contributions instead of 30. If during any period within the two years a person has been unfit for work by reason of sickness, or has been in employment which is excepted from the Unemployment Insurance Scheme, the period of two years may be extended by the period of sickness or of employment in excepted work, up to a maximum of four years.

(2) that he has made application for benefit[1] in the prescribed manner, and proves that since the date of the application he has been continuously unemployed. A period of continuous unemployment is not deemed to commence until the date on which the insured contributor makes application for benefit in the prescribed manner.

(3) that he is capable of and available for work.

(4) that if required to attend at an authorized course

[1] The Act makes a distinction between an " application for benefit " and a " claim for benefit." An " application for benefit " in the prescribed manner is made *at the beginning* of a continuous period of unemployment, whereas a " claim for benefit," while including the application in the prescribed manner, is the application or claim which is made from time to time *during* a continuous period of unemployment.

of training or instruction he proves that he has duly attended or had good cause for not attending.

These conditions are examined in detail in Chapters VI to IX.

Disqualifications for Benefit.

83. A claimant is disqualified for recciving benefit--

(1) if he has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises at which he was employed, except in a case where he has, during the stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows or has become regularly engaged in some other occupation.

(2) if he loses his employment through his misconduct or voluntarily leaves his employment without just cause.

(3) if it is proved by an officer of the Ministry of Labour :

(i) that he has, without good cause, refused or failed to apply for, or refused to accept, a suitable situation notified to him by an Employment Exchange (or other recognized agency or by or on behalf of an employer) as vacant or about to become vacant ; or

(ii) that he has neglected to avail himself of a reasonable opportunity of suitable employment ; or

(iii) that without good cause he has refused or failed to carry out any written directions given to him by an officer of an Employment Exchange with a view to assisting him to find suitable employment. The directions must be reasonable having regard both to the circumstances of the claimant and to the means of obtaining the employment in question usually adopted in the district in which the claimant resides.

(4) while he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds.

(5) while he is resident whether temporarily or permanently outside Great Britain.

(6) while he is in receipt of any sickness or disablement benefit under the National Health Insurance Acts 1924 to 1935.

Duration of Benefit.

84. Benefit may be drawn, subject to the conditions and disqualifications, for 156 days in a benefit year, and if at the beginning of a benefit year five insurance years have elapsed since the beginning of the insurance year in which the contributor first became insured he may be entitled to additional days of benefit. These are calculated at the rate of three days for every five contributions paid in respect of the last five complete insurance years, less one day for every five days of benefit received in respect of the benefit years which ended in the same period.

If five consecutive insurance years elapse without the payment of contributions the contributor is treated for the purposes of this rule as first becoming insured when contributions again begin to be paid.

For the purpose of computing additional days of benefit contributions credited to persons who have continued to receive whole-time education, beyond the age at which the period of compulsory elementary instruction ends, are ignored. Every two contributions paid in respect of a person as an insured contributor under the age of 18 years are reckoned as one contribution.

Waiting Period and Continuity of Unemployment.

85. The first six days of each continuous period of unemployment are a *waiting* period for which no benefit is payable. Once a claimant has completed a waiting period, another waiting period is not required so long as the unemployment is continuous.

The rule regarding continuity of unemployment is as follows :—

(1) any three or more days of unemployment, whether consecutive or not, within a period of six consecutive days are treated as a continuous period of unemployment ; and

(2) any two such continuous periods of three or more

days are treated as continuous with one another if they are separated by not more than ten weeks.

86. For the purpose of these rules Sundays are ignored. As a general rule any time during which a claimant fails to fulfil the statutory conditions (other than the first statutory condition) or is deemed not to be unemployed or is disqualified for receiving benefit, is not taken into account in computing continuous periods of unemployment unless the claimant proves that the failure to fulfil the conditions, or the disqualification, was due to incapacity for work arising from some specific disease or bodily or mental disablement.

Determination of Claims.

87. The procedure for deciding claims for benefit is described in Chapter XVI.

Claims for benefit, including dependants benefit, are examined by an insurance officer, who has authority to allow any claim which he thinks ought to be allowed. If the insurance officer is not satisfied that the claim ought to be allowed he may either refer it for decision to a Court of Referees consisting of an independent Chairman and representatives of employers and insured contributors, or himself disallow the claim. The insurance officer may not, however, disallow certain classes of claims (see para. 396).

If the insurance officer disallows the claim, the claimant has a right of appeal to a Court of Referees within 21 days.

88. An appeal from the decision of a Court of Referees may be made to the Umpire appointed by the Crown, as follows :—

(1) by an insurance officer ; or

(2) by an association of employed persons of which the claimant was a member on the last date on which he was employed before the claim subject to the appeal was made, and has continued to be a member until the date when the appeal is made ; or

(3) by the claimant himself

(*a*) if the decision of the Court of Referees is not unanimous :

(*b*) with the leave of the chairman in any other case. If leave to appeal is not granted by the chairman when the decision is given, an application for such

leave may be made by the claimant on the prescribed form within 14 days of the decision.

An appeal to the Umpire must normally be brought within 6 months. The Umpire's decision is final.

Special Conditions.

89. For the purpose of removing anomalies special conditions are imposed by Order on certain classes of persons, viz., part-time workers ; seasonal workers ; persons normally employed for two days a week or less ; and married women (see Chapter XIX).

Rates of Benefit.

90. Benefit is not payable in respect of any period of less than one day. The weekly rates of benefit are as follows :—

Men aged 21 and under 65	17/-
Young men aged 18 and under 21	14/-
Boys aged 17 and under 18 . .	9/-
Boys aged 16 and under 17 . .	6/-
Women aged 21 and under 65 . .	15/-
Young Women aged 18 and under 21	12/-
Girls aged 17 and under 18 . .	7/6
Girls aged 16 and under 17 . .	5/-

Young men and young women who receive an increase of benefit for a dependant receive the same ordinary rates as men and women aged 21 and under 65.

Persons under 16 years and persons of 65 years and over are not entitled to receive benefit, but dependants benefit may be payable in respect of juveniles under 16 (see paras. 345–353).

An increase in the rate of benefit may be made in respect of certain dependants. This increase forms part of the rate of benefit, but is usually described as " Dependants Benefit." Dependants benefit is payable only to persons who are receiving ordinary benefit. The rates of dependants benefit are :— for an adult dependant, 9/- ; for a dependent child, 3/-.

Umpire's Decisions.

91. The decisions of the Umpire form the case law of unemployment insurance and are of great importance in the

determination of claims for benefit. Selected decisions are published and can be purchased from H.M. Stationery Office. Between November, 1920 and December, 1924 decisions were issued numbered 1 to 9,069. From January, 1925 onwards the decisions have been numbered in annual series. Separate series are maintained for decisions relating to the Insurance Industry and Banking Industry Special Schemes.

92. In the following chapters the benefit conditions and disqualifications are examined in the light of Umpire's decisions. As a result of the consolidation of the Insurance Acts many of the references in decisions of the Umpire given before 1935 refer to provisions of the repealed Acts.

A short index is given on pages 270–271 showing the sections of the Consolidated Act of 1935 corresponding to the more important or most frequently quoted sections of earlier Acts.

VI.—FIRST STATUTORY CONDITION[1]

93. A claimant is required to prove that at least thirty contributions have been paid in respect of him as an insured contributor in respect of the two years immediately preceding the date on which a claim for benefit is made.

94. Under Section 22 (3) of the Act,[2] if the claimant proves to the satisfaction of the statutory authorities that during any periods within the two years immediately preceding the date on which he makes a claim for benefit, he was incapacitated for work by reason of " some specific disease or by bodily or mental disablement," the period to be taken for the purpose of the statutory condition shall be increased beyond two years by the extent of the periods of proved incapacity. The total period taken for the period of the First Statutory Condition must not, however, exceed in any case four years where this provision and the provision in the following paragraph operate.

95. It is also provided that where a claimant has, during the last two years, been employed in excepted (i.e. uninsurable) employment, the period of two years to which the condition is applied may be extended by the period of such employment. The provision thus places a period of uninsurable employment occurring during the last two years on the same basis as a period of sickness occurring during the last two years. It is for the Minister to decide any question that may arise as to whether a person was or was not employed in any excepted employment during the two years period (Section 45), subject to the right of appeal as in the case of other scope questions, i.e., to the High Court or, in Scotland, to the Court of Session. (See Chapter IV.)

The period may be extended by the actual number of days of excepted employment, including odd days or parts of days, but excepted employment in a week during which a contribution has been paid cannot be included (13040/31).

[1] Section 22 (1), page 209 (Section 7 (1) 1920 Act). [2] Page 210.

The Substituted Period Regulations 1930,[1] prescribe the procedure to be followed by a claimant to prove that he was incapacitated or employed in uninsurable employment during the period of two years mentioned in the First Statutory Condition.

Ex-Service Men.

96. In the case of an ex-Service man (or woman) who has less than thirty contributions in the two years preceding the claim, the condition is regarded as fulfilled if the following can be proved :—

(1) that he is, or has been, at any time during the two years immediately preceding the date of claim, in receipt of a pension paid out of monies provided by Parliament in respect of a disability contracted by him during the late War ; and

(2) that the non-fulfilment of the First Statutory Condition is due to that disability ; and

(3) that not less than 10 contributions were paid in respect of him as an insured contributor during the period of two years.

The period of two years mentioned in this provision cannot be increased by any period of incapacity provided for in paragraph 94, and the two provisions cannot be given cumulative effect. One extends the period of two years mentioned in the First Statutory Condition, the other reduces the number of contributions within the two years from 30 to 10.

Fulfilment of the Condition.

97. In common with other conditions for the receipt of benefit the question whether or not the First Statutory Condition is fulfilled, is for determination by the statutory authorities. The number of unemployment insurance stamps affixed to the claimant's unemployment book is usually all the evidence required. Each contribution paid by an employer on his own behalf, and on behalf of the insured contributor, count as one contribution. The record of contributions paid in respect of each insured contributor is kept at the Claims and Record Office, Kew. Contributions paid by an employer in respect of an exempt person cannot be taken into account.

[1] Page 252.

98. There are certain provisions in the Act which apply to the calculation of the number of contributions for the purpose of the First Statutory Condition.

(*a*) Section 22 (2)[1] provides that in calculating the thirty contributions, no account shall be taken of any contributions paid in respect of any period during which the person was not *bona fide* employed. Neither may such contributions be taken into account in calculating the number of additional days of benefit allowable under the ratio rule referred to in Chapter XIV, paragraphs 294–296. (Section 31 (5)).[2]

(*b*) Section 34[3] provides for the case of a person in respect of whom contributions are paid at intervals greater than a week. In that event each contribution is treated as being such number of contributions as there are weeks in the period in respect of which the contribution was paid.

99. For the purpose of determining whether the First Statutory Condition is fulfilled credited contributions in respect of voluntarily continued education (Chapter III, paras. 72–76) are deemed to have been paid at the rate of one contribution per week for a period ending with the week in which a person ceased to receive whole time education or in which he reached the age of 16 years whichever is earlier and for that period the person is deemed to have been *bona fide* employed.

It may happen that a person who is credited with contributions has also had insurable employment during the same period. Contributions actually paid in respect of employment for weeks included in the period of credited contributions cannot be taken into account for the purpose of the condition. Contributions paid in respect of a person for weeks before the beginning of the period of credited contributions can only be taken into account if the number of contributions actually paid is in excess of the number of credited contributions and then only to the extent of the excess. All paid contributions, however, are allowed to count for the purpose of calculating the additional days of benefit referred to in paragraphs 294–296.

[1] Page 209. [2] Page 213. [3] Page 214.

100. As a general rule a claimant cannot satisfy the condition unless and until the necessary contributions have actually been paid. Cases arise where through no fault of the claimant the employer has failed to stamp the unemployment book. In such circumstances the condition may be held to be satisfied if the claimant had made every reasonable effort to secure that the contributions were paid. He may be held to have done this if he presented his book to his employer and had deductions at the appropriate rate made from his wages or had good reason to believe that his employer would pay the full contribution without deduction from wages, provided that in either case he had no reason to doubt that the contributions were in fact being paid (1688/33).

Review of Fulfilment of Condition.

101. The date on which a claimant, having made a claim for benefit, proves that the First Statutory Condition is fulfilled, is the date of commencement of the benefit year in relation to that claim. If the condition is fulfilled at the date of his claim he is regarded as satisfying it for the next twelve months, i.e., for the whole of his benefit year.[1] Thereafter the question whether the First Statutory Condition continues to be fulfilled is reviewed at the beginning of each benefit year.

If a claimant is treated in error as having begun his benefit year, the benefit year is nevertheless deemed to have begun on the date already determined but benefit is not payable during the remainder of that year until all the conditions are fulfilled.[2]

Requalifying Condition

102. In the case of an insured contributor who has exhausted his benefit rights in his last preceding benefit year not only must the First Statutory Condition be fulfilled but in addition the claimant must have had contributions paid in respect of him for ten weeks since the Sunday preceding the last day in respect of which he received benefit in his last benefit year, before he can again establish a claim for benefit.[3] It is not possible for an insured contributor to avoid the operation of this last condition by deliberately refraining from exhausting

[1] Section 22 (5), page 210; and para. 10, Benefit Miscellaneous Provisions Regulations, 1934, page 255.
[2] Section 32 (2), page 214.
[3] Section 31 (4), page 213.

his benefit rights by not claiming benefit for days for which he would be entitled to benefit if he did claim, since such a person may be deemed to have received benefit for those days (Section 32 (3)).[1]

[1] Page 214.

VII.—SECOND STATUTORY CONDITION

103. The Second Statutory Condition is that the applicant proves that he has "made application for benefit in the prescribed manner and that since the date of application he has been continuously unemployed."[1] The condition can be fulfilled only if the claimant

(1) has made application *in the prescribed manner;* and
(2) proves that he is unemployed; and
(3) proves that since the date of his application his unemployment has been *continuous.*

The questions that arise on each of these points are described below. The question whether any earlier date may be substituted for the date of application is dealt with in paragraphs 298–304.

If a claim is disallowed on the ground that the claimant has not made application in the manner prescribed by the Minister, the disallowance remains until the date on which application is made in the prescribed manner. A disallowance on the ground that a claimant has failed to prove unemployment operates in respect of the day or days of such failure.

Prescribed manner.

104. The Minister prescribes by Regulation the manner in which application for benefit is to be made; the details of the procedure are set out in paragraphs 319–323. The sole duty of the statutory authorities is to determine whether the rules laid down by the Minister have been observed; they are not empowered to make or adjust those rules themselves. The condition is not satisfied if the claimant fails to comply with the instructions given to him regarding attendance at the Exchange to sign the Register (1272 and 4019) or to lodge his unemployment book (3372/33).

[1] Section 23, page 210 (Repealed Act of 1920, Section 7 (i) (ii)).

When a claimant makes a claim in the prescribed manner he does so by signing forms containing statements which, by signing, he declares to be true (5830/29). There is nothing in the Act or the Regulations to say that if an applicant gives incorrect information, or information which he knows to be incorrect, the claim shall be void. If an applicant knowingly makes a false statement he can be punished by fine or imprisonment (Section 86), but when the facts are ascertained benefit must be allowed if on the true facts the applicant is entitled to benefit, even though in the first instance he gave incorrect information (959/27; 1046/27) or information on which doubt has been cast (8211/30).

Proof of Unemployment and Continuity.

105. It is for the Insurance Officer, in the first place, to determine whether the claimant has proved unemployment. The method ordinarily followed for proving unemployment is for the claimant to attend a local office of the Department at daily intervals, or as otherwise required, and sign the unemployed register (see paras. 327–337). A claimant is not deemed to have been unemployed on any day in respect of which he has not furnished proof of unemployment as required by the Regulations.

Meaning of "Unemployed"

106. The Act gives no definition of the word "unemployed" for the purpose of this condition, and the Umpire has held that it must be assumed that the legislature intends the word to be given its natural and ordinary meaning (8851). There are, however, two provisions in the Act which lay down special circumstances in which a person cannot be deemed to be unemployed. The first relates to persons who are following any occupation from which they derive remuneration or profit (see paras. 130–136). The second relates to persons who continued to receive wages after the employment has terminated or who receive compensation for the loss of and substantially equivalent to the remuneration they would have received if the employment had not terminated (see paras. 161–168). These provisions do not give a general definition of employment, but determine that a person shall not be deemed to be unemployed, in certain circumstances which

might give rise to doubt in the absence of statutory provisions. Apart from these special provisions, the Umpire has given many decisions which illustrate the application of the condition and the meaning to be attached to the word "unemployed."

No Work Done.

107. Employment may, for the purposes of the Unemployment Insurance Acts, be said not to have commenced until a workman has reached the point at which he is expected to work, and has actually commenced, or has had the opportunity of commencing, work, unless the workman is entitled to receive wages in respect of the day in question (5468/33; 5852/33; 7925/33; 13129/34) or some other payment for performing a service in accordance with a term of the contract of employment (13119/33).

108. The question whether a workman has commenced work (whether remunerative or not) is one of fact: the question whether he is entitled to any wages or payment must depend on the terms, expressed or implied, of his contract. In the case of coal miners it may be inferred, unless there is evidence to the contrary, that when no work has been done the miner has not become entitled to wages under the district rules (8963/33; 12797/33). Attendance *per se* may be a service implied in the contract of service, in which case a workman who attends is not unemployed (7007; 5252/26; 5558/29) but a workman who receives a payment in consideration of his attending to ascertain whether there is work for him to do is not deemed to be "not unemployed" on the day in respect of which such payment is made (1584/27; 404/28; 13119/33).

No Remuneration Received.

109. There is nothing in the Acts to indicate that a person is to be deemed to be unemployed merely because he is not receiving remuneration for the services he renders to his employer or because there is no contract of service. It is clear from the 1935 Act (Section 10 (3) and Schedule I, Part I (1)), that a person may be an "employed person" although he receives no wages or other pecuniary remuneration. It may be part of the contract that he receives no remuneration (8851/20; 566/25). There are many instances of pieceworkers who do unremunerative work on certain days of the

week but are held to be employed on such days (265 ; 1772 ; 7979). On the other hand, where work was not performed in pursuance of any duty arising from a relationship between employer and employee, and another person benefited from the work of preparation, benefit was allowed (83/28 ; 1580/31). The fact that wages due have not been paid by default of the employer is immaterial (610/26).

Payment received but no work done.[1]

110. The mere receipt of a sum of money paid by an employer as a gratuity does not constitute employment, though payment of money by way of a retainer or in consideration of a worker holding himself available for work or attending at the employer's premises to see if there is work to do may be evidence of employment (4940/26). When in accordance with the customary or expressly agreed terms of his employment a workman receives part wages during periods when his services are not required, he is not unemployed. When weekly payments are made to ex-employees entirely as an act of grace on the part of the employer, with the intention of assisting the recipients whilst out of work, the relation of employer and employees no longer subsists and the recipients are properly regarded as being unemployed, and in receipt of charity, not wages (6084 ; see also 15382/30 and 21381/32).

Wages Pooling Schemes.

111. Where a claimant is a member of a gang working under a pooling scheme, whereby each member of the gang is entitled to an equal share of the pool in each week, whether he has been required or has not been required to work with the gang in that week, then it must be inferred (when the share of the pool is substantial) that upon any day when the claimant is not in fact doing any work he is (in consideration of receiving a share of the pool) under obligation to hold himself in readiness to work with the gang if required, and, therefore, he cannot be regarded as unemployed on that day ; and this inference is not negatived by the fact that by express or implied agreement a member of the pool is at liberty (without forfeiting his right to his full share of the pool) to take other

[1] As regards disallowance on the ground that the claimant continued to receive wages or compensation for loss of employment, see paras. 161–168.

employment on a day when he is not working with the gang (135, 18279/31, 22160/31, 2242/35).

Holiday Periods.

112. The rule as to holidays is not expressly provided for by statute, but in a long series of cases, the Umpire has held that persons cannot be regarded as unemployed and qualified for benefit on customary holidays *falling within a period of employment*, although they do no work and get no wages, and, further, that the same principle is applicable to persons whose employment is temporarily suspended on a short time system or otherwise, when a holiday happens to fall in a week or other short period of suspension.

113. The Umpire has laid it down that a recognized holiday is "a defined, certain, recurrent incident of employment which constitutes one of its terms and can only be varied by express or tacit agreement" (2656/27; 2759/27; 52/29; 529/29). The general principles apply equally to holidays whether they are "customary" or "recognized."

114. The questions for decision are (*a*) whether in the establishment in which the applicant is ordinarily employed there was a holiday for employees doing work similar to that usually performed by the applicant, and (*b*) the duration of such holiday. Generally, customary or recognized holidays are those days which the employers and workers have agreed (whether expressly or by implication based on acquiescence) shall be non-working days. Notwithstanding that an express agreement specifies particular days as agreed holidays, this does not preclude a finding, if the evidence warrants it, that in the particular establishment there are other days which have become recognized as holidays. In the absence of an express agreement the existence or duration of a recognized holiday is an issue of fact, the determination of which must depend solely upon the practice and conduct of the parties in past years (18284/32).

115. School teachers have been held to be not unemployed during the usual school holidays (7117); the position is different if the engagement definitely terminated at the end of a term by due notice previously given (2569; 2606/27; 7281/29), or if there is no obligation on the part of the teacher to return or on the part of the principal to allow him to return

at the end of the holidays so as to indicate a continuance of the employment (152/26 ; 3274/30).

116. *Discharged before the holiday.* Days of customary holiday may be counted as days of unemployment for the purposes of benefit if the claimant has, before the holiday, finally left his employment, or been finally discharged or indefinitely suspended for so long that his employment may fairly be regarded as having come to an end (7712/20).

117. *Twelve days' rule.* For the purpose of deciding whether the employment should be regarded as having terminated, the Umpire has decided that a fair test to apply is that which has become known as " the 12 days' rule," namely, that where the total period of suspension amounts to two weeks, or 12 working days, consecutive with but exclusive of the holiday period, it may be generally considered that the employment has come to an end before the holiday ; but that where the period of suspension is less, an applicant may be considered as only temporarily suspended and not finally discharged and therefore not entitled to benefit in respect of holidays. This rule is applied to workers in irregular or intermittent employment, such as ship-repairers (579 and 3599) and to dock labourers (7712), even though they may not hold a dockers' clearing house tally (7988).

118. Although the 12 days' rule has become a recognized practice, it is not a final and conclusive test as to the right to benefit, and it is open to any applicant to show that, notwithstanding that he has been without work for less than 12 days in addition to a holiday period, he had finally left his employment before the holiday period, in which case he is entitled to benefit for the days of holiday (7712). To prove that he was finally discharged the applicant must show that he was " discharged without any intention of resuming the relationship of employer and employee on the next available opportunity " (2876/30 ; 16930/31 ; 20879/31 ; 20923/31). The rule does not apply to casual workers who do not ordinarily apply daily for work to a particular employer or place, or to casual workers who obtain purely temporary and brief employment with an employer for whom they do not ordinarily work (8436 ; 9916/30 ; 20953/31).

119. Days of recognized customary holiday which are held not to be days of unemployment for benefit purposes, may, however, serve as waiting days for the purpose of the waiting

period (7821/29) ; or for the purpose of establishing continuity of unemployment (8943/29) ; but if payment is received in respect of a specified holiday the days so specified are not days of unemployment in any sense (18942/31 ; 6403/32).

Indentured Apprentices.

120. An indentured apprentice is one who is bound to an employer by a legal instrument under seal, the terms of which are binding on a minor and can be enforced at law. Numerous decisions have established the principles (1) that under an indenture of apprenticeship, unless there are express terms to the contrary, the employer remains liable to pay wages to the apprentice so long as the apprenticeship continues ; (2) that such liability remains during such time as the apprentice may be stood off, owing to slackness of trade, and (3) that during this time the apprentice is not unemployed (1011/27).

Exceptions have been made where there has been substantial doubt regarding the applicant's legally enforceable right to demand wages during the period of suspension (1639 ; 2270 ; 3352) ; and where the indenture allowed the employers to suspend the apprentice on such days as they were unable to provide him with work owing to causes beyond their control (1728/30).

Agents and Part-Time Occupations.[1]

121. In Decision No. 6714 the Umpire explained the principles on which he decides whether persons, e.g., insurance or collecting agents, whose work does not occupy their full time, are to be regarded as being employed throughout the week or only on those days on which they are actually at work. In every case regard must be had to the circumstances of the employment, but briefly the general position is as follows :

(1) Where the agency is the sole or principal occupation, the claimant is regarded as employed throughout the week even though owing to slackness of trade he confines his activities to two or three days in each week.

(2) Persons whose work as agents would, or could be done in their spare time, on any or every day in the week, whilst normally following some other part-time employment, are *prima facie* to be regarded as employed throughout the week.

[1] As regards subsidiary employment see para. 149.

(3) Where there is clear evidence that the employment is, with the employer's sanction, limited to certain days of the week only, the persons are regarded as employed on the work of the agency on those days only and benefit is payable on other days.

122. As regards the third principle stated above, if there is no evidence that the work is limited by the terms of the engagement, or by arrangement with the employer, to certain days of the week, the claimant is held to be employed throughout the week. This applies even where it is shown that the work could be done and was done only on certain days of the week (4751 ; 5853 ; 225/25 ; 248/25).

123. *Shift Workers.* Benefit is payable in respect of each calendar week of unemployment and a person is not unemployed in any part of a week in which he has done a full week's work (130/25 ; 3032/31).

A person working on a recognized shift system of less than six shifts a week is not unemployed on any day in a week in which he has done a normal week's work (5990). In general, a week's work is regarded as normal unless the working time has been materially shortened owing to economic causes, and the applicant is entitled to benefit only in so far as his lost time was due to those causes (22217/31). As instances, the week's work was not regarded as normal where the hours worked in each shift were shorter than normal, even though the full number of shifts was worked (1151/25), where one shift was *materially* shortened (10305/30 ; 7103/33), where short time was being worked (3387/29), and where the applicants worked the normal number of shifts only by working at exceptional times (539/28 ; 4229/31).

Where the relationship of employer and employee existed only during part of the week—as, for instance, at the commencement and termination of a spell of employment—that week's work was not regarded as normal, even though the full number of shifts possible had been worked (13614/33 ; 1371/25 ; 17452/31).

124. In the case of persons whose normal working week is ordinarily confined to less than six days, but who through slackness of work do not work the full number of shifts, the Umpire has adopted the principle that, where the normal working week consists of four shifts of 12 hours each, em-

ployees who work only one shift are regarded as unemployed on five days ; those who work two shifts are regarded as unemployed on three days only ; and those who work three shifts are regarded as unemployed on two days only (130/25). The same principle applies where the normal working week consists of eight shifts of six hours each (1398/25 ; 21320/31). If " broken shifts " are included in the week's work the same principle, in a modified form, is applied to determine the number of days in respect of which benefit may be paid (7103/33). The principle is subject to modification in exceptional circumstances, as for example when Sunday is included in the working week (3387/29 ; 7287/31).

125. Where the normal working week consists of five working days, the sixth day may be treated as a day of unemployment for continuity purposes (2076/27 ; 4922/29), or as a waiting day (8943/29).

126. It may be found that a system is in operation whereby, for example, the workmen, in each period of three weeks, work normally six shifts in the first week and (say) five shifts in each of the two following weeks. Benefit is *not* payable in respect of any day of a week during which a claimant has worked the number of shifts allotted to that week in the normal system of working ; " the natural, proper and only reasonable method of determining whether there has been such unemployment as to give a right to benefit is to take each week, and to enquire whether the full number of shifts have been worked in that week " (1509/28). This principle was not affected by the fact that in normal times the earnings of the six-shift men in respect of the sixth shift were pooled for the benefit of all workers (14076/30).

Test Work for Public Assistance Committee.

127. The question may arise whether men, who are required by the Public Assistance Committee to perform work for a Local Authority as a condition for the receipt of out-door relief, can be regarded as unemployed on days on which work is performed. The guiding factor is that benefit is payable only where the real nature of the scheme is not a payment of wages for work done. In Case No. 210/20, the Umpire held that men set to work and kept employed by a Poor Law Authority in their institution did not cease to be " unemployed."

128. Where the test work is performed outside the institution, by arrangement with the Local Authority and there is no wage relationship the following are some of the conditions which must in general be fulfilled if benefit is to be payable (R.137/33):—

(1) The arrangement must be in accordance with paragraph 6 (1) of the Relief Regulation Order, 1930, and one which has been or will be reported as such to the Ministry of Health.

(2) The men must have been selected by the Public Assistance Committee for the purpose of being set to work under paragraph 6 (2) of the Order and not for the purpose of supplying the Authority with labour.

(3) The work must have been put in hand for the express purpose of the arrangement.

(4) The payment of money and the issue of relief in kind must be made to the men by the Public Assistance Committee alone.

(5) The amount of relief by the Public Assistance Committee must be neither less nor more than that given to men not undergoing the labour test.

(6) The Public Assistance Committee alone must have the sole right to say for how many days or hours at a time any of the men are to work.

(7) The number of hours must not be determined on the basis of an hourly rate and the amount of relief.

129. The above considerations indicate how the Umpire has interpreted the word "unemployed" in the absence of a statutory definition. It remains to deal with the two provisions referred to in paragraph 106, which specify circumstances in which a claimant shall not be "deemed to be unemployed."

Following an Occupation from which he derives Remuneration or Profit

130. Section 35 (5) of the Act[1] lays down the general rule that a person shall not be deemed to be unemployed on any day on which he is following any occupation from which he derives remuneration or profit. It prescribes an exception to this rule (paras. 137–154 below).

[1] Page 215.

131. *Following an occupation.* The question whether a claimant is following an occupation arises mainly, though not exclusively, in cases where he is working on his own account. It has then to be considered whether he is following the occupation continuously from day to day, even though he may do no work on certain days, or only when he is actually engaged in executing work he has secured. This question is one of fact to be determined after considering all the circumstances. A person who has set up in business on his own account follows the occupation continuously and cannot claim to be unemployed on days when he happens to be idle (4726 ; 7565) —see also paragraph 135. Setting up in business generally implies continuity or intended continuity of operations which may be shown by the investment of capital, or expenditure on equipment or premises, or by the length of time the occupation has been followed, or by the arrangements made for its continuance, e.g., agents (2677/30). In the absence of some such evidence a claimant is not usually regarded as following an occupation on his own account *continuously* merely because, whilst unemployed, he has undertaken to execute orders or work on his own account (1489 ; 2373 ; 4879), even though he has shown his willingness to undertake such work by exhibiting notices (4934 ; 7732) and he has been regarded as unemployed except when he has obtained an order for work (7732) or is actually executing it (1727).

A proprietary interest in a business is not held to be following an occupation unless the person assists in the business. In that event the question turns on the nature and extent of the assistance afforded (4882 ; 4072/28).

132. The term "any occupation" does not mean "any lawful occupation," though the following of an unlawful occupation does not establish any right under the section to which the claimant would not otherwise be entitled (4474 ; 1404/27).

133. *Remuneration or profit.* A person who is unemployed in the ordinary sense cannot be "deemed to be not unemployed" merely by reason of his following an occupation unless he derives profit or remuneration, either immediate or deferred, from so doing. Nor does the receipt of a payment necessarily render a claim for benefit invalid under Section 35 (5). For example, a person holding the office of mayor and

receiving the usual mayor's salary was not thereby disqualified for benefit (77/25).

The provision refers only to remuneration or profit derived *from an occupation followed by the claimant himself.* The receipt of income derived from sources other than an occupation is not in itself a disqualification for receiving benefit. For example, in Case No. 1121/1925, the Umpire held that a claimant, who owned a tug-boat which was let out for hire (at the rate of £1 per day), but was not following an occupation in connection with it, was qualified for receiving benefit.

134. It has been held in many cases that when a person is following an occupation of a kind which usually yields profit, it lies upon him to show that he does not receive any profit from that occupation. In the case of some occupations, it is impossible to ascertain until a considerable time has elapsed, whether or not the occupation is in fact yielding a profit. When once it is shown that no profit or remuneration is received the applicant may claim to have been unemployed whilst following the occupation (169/27).

135. Persons who embark in an ordinary way on a business undertaking are in general deemed to be following an occupation for remuneration or profit, even though for the time being the business is showing no realized profits. Benefit does not necessarily become retrospectively payable if ultimately the business fails without having made any profits (4226). Benefit has, however, been allowed in certain cases where a claimant proves that a business although not formally closed was a failure and yielded no profit (1224/25; 2285/25).

136. The remuneration received from an occupation need not be in the form of a direct money payment (4281). Tips, although given voluntarily, may be regarded as remuneration, especially if services were rendered in expectation of receiving some reward (229/26). Participation in newspaper competitions may be an occupation from which remuneration or profit is derived (3392/30) but there must be evidence to show that the competitions have been systematically and persistently followed (14760/30, 24552/31).

Where services have been given voluntarily with no expectation of profit or remuneration the receipt of a gratuity or a free meal has not resulted in disallowance (1516; 3360; 76/25; 805/30) but volunteer lifeboatmen and firemen have,

in certain circumstances, been regarded as following profitable occupations (373/25 ; 532/25 ; 8102/33).

Subsidiary Occupations

137. The only exception to the rule in paragraph 130 is that benefit may be payable if

> (i) the occupation from which he derives remuneration or profit could ordinarily have been followed by him in addition to his usual employment and outside the ordinary working hours of that employment ; *and*
>
> (ii) the remuneration or profit received therefrom in respect of that day does not exceed three shillings and fourpence, or, where the remuneration or profit is payable or is earned in respect of a period longer than a day, the remuneration or profit does not on the daily average exceed that amount.[1]

138. This provision does not mean that a claimant can earn up to 3s. 4d. per day without losing his right to benefit. Unless both these conditions are fulfilled benefit cannot be paid for any day on which work is done for remuneration or profit, however small.

139. Before 1928 the claimant had to show that the subsidiary occupation was one that he *had* ordinarily followed in addition to his usual occupation. This meant that a claimant who, while unemployed, took up for the first time work which he could have followed while in employment, was not in a position to satisfy the condition and his claim would be disallowed. The amendment since made is enabling and not restrictive and its main consequence has been to obviate hardship in cases in which claimants could not show that they had followed additional occupations long enough to establish that they had been " ordinarily " followed (4072/28). The majority of the Umpire's decisions under the provision prior to this amendment turned on the question whether or not the subsidiary employment *had been* followed in addition to the usual employment ; many of the considerations that arose in that connection are no longer relevant.

140. Doubt may arise as to what is the claimant's " usual employment," or, indeed, whether he has one, especially in cases of

[1] Section 35 (5) (b), page 215 (Repealed Act of 1920, Section 7 (2)).

incapacity (1541/31; 7502/30), seasonal work (10330/30; 18438/30) or after discharge from H.M. Forces (1206/32). The expression does not include employment in business on the applicant's own account (1300/25). The statutory authorities may have to determine from the claimant's industrial record which is his usual employment if he has followed a number for short periods.

141. The condition does not require that while the claimant is unemployed in his main occupation the subsidiary occupation should be followed outside the working hours of the claimant's usual employment, and the fact that he follows the subsidiary occupation to some extent during his usual working hours does not necessarily result in disallowance of benefit (1635/20; 857/26; 4739/26; 12122/33). He must, however, show that it *could have been* carried on outside the time devoted to his main occupation (14339/33; 9369/30; 10153/33, revised), save on rare occasions (8102/33).

142. The ordinary working hours of the claimant's usual employment relate to "the hours which he ordinarily works in his usual employment," rather than the standard or recognized hours for that employment. The additional occupation may in fact entail longer hours than the usual employment. (1546/25; 184/27).

143. The words "occupation in addition to his usual employment" indicate either employment other than the claimant's usual employment or an occupation (possibly similar to his usual employment) which is not employment (280/31; 14218/30). A dental mechanic who followed an additional occupation as a dentist outside his usual working hours was allowed benefit when he lost his main employment (1306/26). Where a person works for the same employer there must be a clear distinction between the two occupations. It is not enough to show merely that there are two kinds of duties.

144. In general the claimant must show that the two occupations, followed concurrently, are so distinct that the time devoted to the one could be clearly distinguished from the time devoted to the other.

145. In interpreting the word "ordinarily," the question to be considered is whether the additional occupation and the usual employment could have been carried on together by the claimant "as an ordinary practice with a view to

supplementing the wages he obtains when at work and not as an alternative to his usual employment " (494/20 ; 5435/30 ; 19467/30).

146. The circumstances of a claimant may change after a decision has been given in his favour. For example, a claimant may so extend his activities in connection with his additional occupation that he can no longer show that it could ordinarily have been carried on in addition to his usual employment (6872/20 ; 6873/20).

147. Where a person has two part-time employments, either of which might be regarded as part of his usual employment, the Umpire has held that neither can be regarded as an additional occupation for the purpose of the proviso (72/28).

148. A claimant can be held ordinarily to have followed an occupation outside the ordinary working hours of his usual employment if an arrangement has been made that his undertaking to give services whenever required is subject to the condition that if he happens to be at work he is to be relieved of the duties proper to the subsidiary occupation (1391/29 ; 8069/32).

149. *Agencies.*—If a claimant undertakes a whole-time agency it is commonly the case that such an occupation cannot ordinarily be followed outside the ordinary working hours of a main employment (1018/28). Where, however, the agency is specifically a part-time agency, or where the inference may justly be drawn that the employers knew that a claimant was carrying it on whilst otherwise fully employed benefit may be allowed (3134/28). The expressed terms of an agreement, however, cannot be lightly ignored ; and the evidence of an alleged variation by implication must, therefore, be clear and reliable (251/29).

Amount of Remuneration or Profit.

150. The exception relating to an additional occupation applies only if the claimant shows also that the remuneration or profit received does not exceed 3s. 4d. in respect of each day, or a daily average of 3s. 4d. The claimant must produce satisfactory evidence as to the rate of remuneration received from his subsidiary occupation. In determining the daily average of remuneration it is not usual to take account of remuneration for work on a Sunday (447/25), as it is not a

working day. It may be included if the contract of employment stipulates Sunday work (7666).

151. Cases frequently arise in which remuneration is received in respect of a period longer than a day but work is not actually performed throughout the period. In such cases it is necessary to determine whether or not remuneration should be averaged over all the days or certain days within the period. A Trade Union Secretary, for instance, whose duties are not confined to definite days, may, subject to evidence to the contrary, be regarded as continuously unemployed (8342/30; 13415/31). In the case of part-time agents and canvassers remuneration is only averaged over the days on which the claimant is held to be employed (6714). The Umpire has given a comprehensive decision (23024/31) prescribing rules to be applied in the case of professional sport.

152. In the case of persons working on their own account, the period taken for the purpose of determining the daily rate may be longer than a week, e.g., a month, a quarter, or a year. The period is often taken as a year, e.g., in the case of a public-house licensee (2097/27); a small-holder (1158/26) and a bookmaker (203/26). On the other hand, when an applicant does occasional jobs in respect of which he is paid separately, his remuneration or profit is paid in respect of the separate periods for which he has work in hand (168/28), and the amount is averaged over the period occupied by the job and not over the whole year (1309/26).

153. Where a claimant is working on his own account it is not always easy to determine the amount of his profit. The statutory authorities have used different methods. In the case of a small-holder the Umpire estimated profits on the basis used by the Inland Revenue Authorities for assessing Income Tax in the absence of accurate and complete accounts (1158/26). Allowance is of course made for outgoings, such as interest on loan (338/26; 16002/30, amended), or on capital invested (4496/20), or for services of a wife or other person (14798/30; 5755/29), when these were an express or implied term of the contract (3017/31; 4782/33).

154. In the case of persons carrying on a business and living on the premises, e.g., public-house licensees, allowance is made for the cost of accommodation which the claimant would in any case have to meet (3521/29). A claimant may

not reduce his remuneration by donating part of it, e.g., to charity, to avoid disqualification.

155. It follows from the above considerations that there are many things a person can do to occupy his time without ceasing to be "unemployed" for the purpose of claiming benefit. The following illustrates the types of occupations in which a claimant can engage without losing his title to benefit.

156. *Allotments and Small-holdings.* The cultivation of an allotment does not jeopardize a claim for benefit. Furthermore, a man who cultivates a market garden or small-holding is regarded as "unemployed" if

> (*a*) it is of such an extent that the man's own work in it, apart from what his wife or children do, could be done outside his ordinary working hours when he is in his usual employment; and
>
> (*b*) his net profit from it, after allowing for the extent to which the profit may be due to the work done by his wife, does not exceed 3s. 4d. a day on the average over a year.

Persons participating in a subsistence production scheme were held not to be employed under a contract of service, but to be following a subsidiary occupation. The objects of the scheme were: (1) to give unemployed persons an opportunity of occupying themselves during their enforced leisure, without interfering with their desires and efforts to secure employment; and (2) to enable those persons to supplement their means of subsistence by the commodities which they themselves produced, thereby improving their standard of living (5810/35).

157. *Camping out.* Persons do not cease to be "unemployed" merely because they pass the time of their unemployment in a country camp or settlement, doing such work as is ordinarily done by members of a camp; but if they work in the fields, helping with the harvest or doing any other farm work for reward, they are not unemployed if the work is of such a character or of such extent that they could not when following their usual employment have done it outside their ordinary working hours.

158. *Voluntary Labour.* Persons taking part in a voluntary labour scheme (i.e., without remuneration, and not under a contract of service) are regarded as unemployed. Benefit has been allowed for example to unemployed miners

engaged voluntarily and without reward in exploratory work in a mine which has been closed (1772/20 ; 5495/29) ; persons working voluntarily without payment in improving the amenities of a town (805/30). The fact that the work is supervised does not necessarily imply that there is a contract of service (805/30).

159. *Odd Jobs.* A person may do occasional odd jobs such as painting a fence, making a hen-coop, etc., provided it is work other than his usual employment, which he could do outside his ordinary working hours when following his usual employment, and provided he does not get more than 3s. 4d. a day for the work. If when unemployed he in fact does the work during the hours of his usual employment, the arrangements must be such that he could leave the work at once, without prejudice to it, to take up employment if employment became available (see also paras. 137–155).

160. *Trainees.* When an unemployed person occupies himself learning some trade or business, he does not on that account cease to be unemployed, unless the training is given by an employer as part of a contract of service (170/28). But even though no wages are paid during a period of training, the training is held to be employment under a contract of service if there is an understanding that the person trained will, when proficient, be employed for wages or on commission (4833/35) by the person who provides the training (4903 ; 5173 ; 5218). When the training is given by a college or institution which has no intention of itself employing the persons trained, they remain " unemployed " whilst in training (2881/27).

Persons learning weaving by arrangement with a fellow weaver but with no promise of ultimate employment have been allowed benefit (590/26). Benefit is disallowed if the employer is training a weaver for employment in his own special class of work, since this gives rise to the presumption that there is a tacit understanding of future employment.

When a person is in training the question of his availability for work may also arise (see paras. 181–4).

Payment Received after Employment Terminated

161. The second provision in the Acts which determines whether or not a claimant is " unemployed " relates to pay-

ments received after employment has terminated. Under Section 35 (6),[1] a person is not deemed to be unemployed and qualified for benefit "during a period in respect of which (1) he continues to receive wages, or (2) he receives any payment by way of compensation for the loss of, and substantially equivalent to, the remuneration which he would have received if the employment had not terminated." Different considerations arise in each case. In either case the period during which he is to be deemed to be not unemployed is that in respect of which the wages or compensation is paid. The Section does not apply to an advance of pay or to a payment as compensation for the cancellation of an offer of employment (9067; 2730/27).

In all cases where benefit has been disallowed under Section 35 (6), the payment either of wages or compensation has been in accordance with the express or implied terms of the contract of service, or at any rate in accordance with a claim on the part of the employee that he is entitled to be paid in accordance with those terms (2375/25; 50/35) provided the debt has been satisfied (8578/31). Accordingly, benefit will be allowed if it can be shown that any payments made after the termination of employment were in the nature of a gratuity or an act of grace, and were not paid as wages in accordance with the contract of service or by way of compensation for loss of employment (1835/25; 2375/25; 1768/27).

It does not matter if the person is only *entitled* to wages: he must actually be *in receipt* of wages (514/31; 8578/31).

162. If employment is not terminated, but the employee is merely suspended from employment and he continues to receive wages or other monetary payment as a retaining fee, the question that arises is whether he is "unemployed" within the ordinary meaning of the term (see paras. 110–111).

Wages.

163. The most usual type of case is that in which a payment of wages is made on dismissal, in lieu of holidays due but not taken during employment. Unless the payment is specifically appropriated to certain days the claimant is disallowed benefit for the period immediately following discharge equal to the period of accrued holidays for which payment is made (8820; 119/25; 1737/25; 1981/

[1] Page 215 (Repealed Act, 1924 (No. 2), Section 1 (4)).

25; 995/26; 2282/27). Benefit was not disallowed where some time elapsed between the dismissal and the payment (2461/25; 6710/32). Other types of case to which the section may apply are :—

(*a*) a seaman whose employment is terminated through shipwreck and who continues to receive wages (951/26; 6593/34);

(*b*) apprentices in receipt of half their wages in accordance with articles of apprenticeship (4240/26);

(*c*) retaining fees in certain cases (5253/26; 1108/27).

The section does not apply to army pay or bonus in lieu of furlough to a soldier on discharge (1287/26) or to accumulated overtime payment (1672/25).

164. The Act does not provide that the payments received as wages and not as compensation should be full wages. The amount of the *wages* is not a material factor, e.g., there may be an agreement to pay half wages during unemployment (4240/26; 1108/27; 6998/29). In Decision 1108/27 the Umpire said the expression wages in this section " cannot be used in the sense in which it is ordinarily understood, as it is applied to payments in respect of a period after the termination of a contract of employment whereas wages in the ordinary sense are only payable in respect of a period during which a person is employed." Wages must, however, clearly be paid under contract in respect of the period and not *ex gratia* (18055/30) nor as compensation for some previous loss (7406/30; 9721/30).

Compensation.

165. The amount of the payment in this case is a material factor. Benefit is disallowed if it is substantially equivalent to the remuneration he would have received if the employment had not terminated.

166. The Umpire draws a distinction between " loss of employment " and " loss of remuneration." Compensation for loss of remuneration is involved where " a person is dismissed without notice and receives in satisfaction of any claim to damages for wrongful dismissal which he has, or may have, a sum of money as compensation for the loss of remuneration which he would have received if he had not been dismissed. Such a sum is commonly paid when an employee is summarily

dismissed and given a week's or a month's wages in lieu of notice. In that case the claimant is not disqualified for benefit unless the sum he receives as compensation is substantially equivalent, not merely to the money wages, but to the remuneration which he would have received during the period in respect of which it is paid" (93/25; 2437/27; 6151/29). The period in respect of which compensation is paid may be determined by the terms of engagement (2437/27; 7423/34; 8419/34).

167. Benefit was allowed where a payment was made as an act of grace to an employee dismissed as a result of an amalgamation of companies; the Umpire regarded the payment as compensation for loss of employment involving loss of seniority and a secured position (1768/27). Compensation paid in pursuance of the Electricity Supply Acts to persons displaced as a result of schemes adopted under those Acts is not compensation for loss of remuneration (351/28). A compensatory payment to an apprentice whose employment was terminated was held to be compensation for "loss of instruction" and benefit was allowed (2334/29). Where there is an agreement as to the length of notice to be given the compensation is regarded as given for the period of the notice (1225/27; 2543/27). The compensation may be such as is paid by a third party (50/35).

168. With regard to persons receiving payment in lieu of notice, the applicant is not disqualified for benefit unless the sum he receives as compensation is substantially equivalent, not merely to the money wages, but to the remuneration which he would have received during the period in respect of which it is paid (93/25). The Umpire takes into account payments in kind, e.g., free meals, accommodation, etc., in deciding whether the compensation is substantially equivalent to the remuneration received when in employment (8817/20; 440/25). Compensation under the Workmen's Compensation Act, 1925, cannot be "substantially equivalent" to remuneration (14676/30).

VIII.—THIRD STATUTORY CONDITION[1]—"CAPABLE OF AND AVAILABLE FOR WORK"

CAPABLE OF WORK

169. As interpreted by the Umpire, this condition does not imply that a claimant must be capable of work in the particular occupation which he has previously followed, but he must be capable of doing work of a kind such as there may be some reasonable probability of obtaining, and capable of keeping and performing it in the ordinary manner (1404/28). It is not enough for a claimant to show that he would be physically capable of following some employment if he had the necessary skill and training, or that he could do work at home or under special conditions which no employer is likely to provide. He must show that he is actually capable of, and available for, work of such kind as is ordinarily done under contracts of employment, and of doing it under conditions which usually apply to such employment (6979/20; 10910/30).

170. The statutory authorities may call for such medical evidence as they think fit. They are not bound to accept an opinion either of the workman himself or of others that he is capable of work. The question of capability is not settled by the fact alone that the claimant has limited his efforts to find work to the one kind of light work which he considers he is fit to undertake (13775/33). In determining whether a claimant, who is suffering from some permanent disability, is capable of work, consideration must of course be given to his industrial record. If it appears that, in spite of his disability, he has followed insurable employment, and that he has lost his employment for reasons other than his disability, he is capable of work. For example, a claimant who had been blind for 16 years, and had had insurable employment as an instructor at an Institute for the Blind, was allowed benefit.

[1] 1935 Act, Section 24, page 210 (1920 Act, Section 7 (1) (iii)).

He had contributed to the Unemployment Fund as an employed person and there was no evidence that his capacity for work had materially altered for the worse (1571/25).

171. *Disability Pension.* The receipt of a full disability pension raises a strong presumption that the recipient is not capable of work, but it is not in itself a disqualification for benefit, and a man may be found to be " capable of work " though he is in receipt of such an allowance.

Workmen's Compensation.

172. The Act does not preclude the payment of benefit to a person who is in receipt of compensation in respect of either total or partial incapacity under the Workmen's Compensation Acts, 1906–1931. Those Acts provide for the payment of compensation to a person who suffers personal injury by accident arising out of and in the course of his employment. The basis on which compensation is paid is the loss or diminution of wage-earning capacity, and includes inability to get work resulting from the injury. Where compensation for *partial* incapacity is paid, the presumption is that the workman is capable of some work and, subject to the general considerations described above, he satisfies the statutory condition for benefit. The receipt of compensation for total incapacity raises a strong presumption that the workman is not capable of work; but it is no more than a presumption (6029/29; 10803/30), and benefit has been paid where, for example, a person has shown that he is capable of work by following employment after his injury while in receipt of compensation for total incapacity (3400/20).

173. Where weekly compensation payments are reduced on the ground that the recipient has become capable of light work, the person concerned may wish to contest the reduction of compensation, without prejudice to his claim for unemployment benefit, as from the date of the reduction. In such a case, although the claimant may be able to show that he is capable of work, he finds it difficult to show that he was available (11726/30; 2890/31).

It may be noted in this connection that, prior to 1931, where an order was made under Section 9 of the Workmen's Compensation Act, 1925, providing for the payment of compensation on the basis of total incapacity where a workman proved that his failure to obtain employment was a conse-

quence of the injury, the Order ceased to be in force if the injured person was in receipt of unemployment benefit. Since that Act was modified by the Act of 1931, the position has been materially changed (19970/32).

174. A person in receipt of a Blind Person's Pension is not insurable and is not entitled to claim benefit.[1] A blind person who is fifty years of age or over can qualify for such pension as he would be entitled to receive under the Old Age Pensions Acts 1908 to 1924, as extended by Section 1 of the Blind Persons Act, 1920, if he had attained the age of seventy ; it is a condition for receipt of a pension that the person is so blind as to be unable to perform any work for which eyesight is essential. Unless the claimant is actually in receipt of such a pension he is entitled to benefit if he is capable of work. A claimant who has applied for a pension is not disqualified for benefit until the Pension Authorities decide that he is entitled to a pension (689/25). A claimant may be entitled to apply for a pension, but if he has not applied (and there is no obligation on him to do so), benefit will be allowed so long as he satisfies the statutory conditions, including the condition that he is capable of work.

Available for Work.

175. The question whether a claimant is available for work is always a question of fact to be considered in reference to the particular circumstances of each case (1425/28 ; 4929/28). As a general rule a claimant cannot be regarded as available for work unless he is prepared and equipped to accept at once any offer of suitable employment which is brought to his notice (6765 ; 4929/28 ; 6986/30 ; 11161/30 ; 3500/34) ; he must be prepared, if necessary, to relinquish any occupational activities in which he has been engaged during his unemployment. In other words he must show that his personal conditions and circumstances leave him free to accept and undertake some form of work. His availability does not, however, depend upon the willingness of employers to engage him if and when they know the facts concerning him (Case No. 75, Insurance Unemployment Board). For example, an applicant who is free from disease himself, but is living in a house where there is infectious disease, is held to be available

[1] See para. 55.

for work, although many, if not most, employers who knew the circumstances, would not employ him (212 ; 391 ; 14/25). A claimant whose disability made it difficult for prospective employers to obtain cover for liabilities under the Workmen's Compensation Acts was available for work although employers were reluctant to engage him (11829/31).

176. Availability for part-time employment is sufficient to satisfy the condition if the claimant is eligible for work in an occupation where part-time employment prevails to an appreciable extent (8872/30).

177. A claimant may be unemployed throughout the week but available for work only on certain days, for example unemployed women weavers who normally work on alternate days of the week have been allowed benefit for only three days in the week (4220 ; 4436) ; women working alternate weeks have been regarded as available only for alternate weeks (11706/30).

178. *Personal Circumstances.* The most common case of domestic circumstances affecting availability is that of women with family responsibilities. Benefit has been disallowed in respect of women who had made no arrangement for their children to be looked after (6853). In ordinary cases a woman may be held to be not available for work, if she can take work only at a place near enough to return home in the middle of the day to prepare a meal for her family. If she lives in a district where this is usual, or if it is shown that she has worked under such conditions in the past, benefit may be allowed (4357 ; 7067). A married woman in receipt of maternity benefit under the National Health Insurance Acts, is held not to be available for work whether or not she was capable of it (5333/35).

179. *Absence from District.* When a claimant leaves home to take a holiday there is a presumption that he has ceased temporarily to be available for work (16562/30). If, however, he proves conclusively that he is ready and willing to take work (22038/32) and has taken all reasonable steps to secure notification of vacancies (16559/30) the inference of non-availability may be rebutted. In general, the inference is more easily rebutted by those who are on holiday during a definite short period of suspension from work, than by those who have been indefinitely suspended or finally discharged from their last employment. The place at which a

claimant in the latter category is spending a holiday must be only a short distance from the local office which he normally attends (13096/34). When an applicant has temporarily left the district for purposes other than holiday-making the nature of these purposes are taken into account. One who has gone away with a view to making a personal application for work is regarded as available (4119/20; 6315/20; 1991/31) and in certain circumstances claimants have been held to be available when visiting sick relatives (18567/31) or taking a relative to hospital (3800/31) or taking part in a contest (348/31) or speaking in public (1516/20).

180. If a claimant leaves his home area he must first make arrangements to be recalled as soon as there is an opportunity of getting work. In every case he should inform his Employment Exchange of his whereabouts, and if he is a member of a Trade Union which may be able to place him in employment, he should inform his Branch Secretary. If he habitually gets work from a particular employer or is temporarily suspended from work, he should also inform the employer so that he may be recalled if required.

181. *Trainees.* In the case of a person in training the question that usually arises is whether he can be regarded as unemployed—see paragraph 160. There may also be doubt as to his availability, except in cases where the course of instruction is authorized or approved in his case by the Minister of Labour.

182. Section 24 (2) provides that "an insured contributor shall not be deemed to have failed to fulfil the third statutory condition by reason only that he is attending at an authorized course, or at a training course or course of instruction approved by the Minister in his case." Section 36 (2) of the Unemployment Assistance Act, 1934, provides that where such approval has been given by the Minister the applicant is not to be regarded as outside the scope of Unemployment Assistance on the ground of non-availability arising out of the attendance at the course.

183. The definition of "authorized courses" in the Act includes courses for unemployed persons under 18 years of age established by the Local Education Authorities, and courses for persons above the age of 18 provided by the Minister or by the Unemployment Assistance Board with the

approval of the Minister. The provisions apply automatically to claimants attending authorized courses and the availability of such persons cannot be questioned on the ground of their attendance at such courses. The need for approval by the Minister arises only in the case of courses provided by other bodies (either with or without financial assistance from the Minister or the Unemployment Assistance Board).

184. A course is not ordinarily approved if it extends beyond six months. The Umpire has held that approval of attendance at a course cannot be applied retrospectively. In approving courses the Minister has regard to the value of the training in improving the claimant's prospects of obtaining employment.

185. *Students.* Where an applicant is undergoing a course of intensive study which cannot be interrupted without substantial loss or difficulty, there is a presumption that he is not available for work, and that presumption can only be rebutted by affirmative and definite evidence that he is prepared to accept employment whilst taking the course. On the other hand, when an applicant proves that if work is obtainable he is in a position to interrupt his studies in order to undertake employment, and to resume them later, and is prepared to do so, or is prepared to abandon the course of instruction, or to confine his studies to the evenings or his spare time, he is held to be available for work (4929/28).

186. *Prospects of Employment.* A claimant who has prospects of employment or a definite engagement in the near future may still be regarded as available in the meantime (1772, 4362, and 6409). Similarly the receipt of a retaining fee (e.g., "arles money," 21381/32), does not necessarily signify that the claimant is not available (8010). Short-time workers who are suspended from their employment are regarded as available for work. Where, however, coal trimmers under a wages pooling scheme had not taken other work when not engaged in trimming, and the evidence indicated that they were not prepared to do so, they were held to be not available (3883/32).

Period of Disallowance.

187. The disallowance of a claim for unemployment benefit on the ground that the claimant is not capable of work, or

is not available for work, continues until such time as the claimant can show to the satisfaction of the statutory authorities that he is capable of and available for work. If at any time there is a change in his circumstances which affects the question, the fresh facts can be placed before the Insurance Officer and the decision may be revised as from the later date.

IX.—FOURTH STATUTORY CONDITION

188. Under the 1920 Act there were five statutory conditions. The fourth statutory condition as originally enacted required the claimant to prove that he was "available for work but unable to obtain suitable employment." This was amended by the 1927 Act to "genuinely seeking work but unable to obtain suitable employment." The 1930 Act repealed the condition and introduced a new disqualification dealing with cases of refusal of employment (Chapter XII). Under the Consolidated Act of 1935 the former fifth statutory condition became the fourth statutory condition.

189. The fourth statutory condition[1] for the receipt of benefit is that, if the Minister has, for the purpose of giving him an opportunity of becoming or keeping fit for entry into or return to regular employment, required him to attend at an authorized course, the applicant must prove either that he duly attended in accordance with the requirement or that he had good cause for not so attending.

190. For the purpose of this condition an "authorized course" at which a claimant may be required to attend, includes—

(*a*) a course of instruction for persons under 18 years of age, provided by an Education Authority under Section 76.

(*b*) courses of training provided by the Minister for persons over 18 years of age under Section 77.

(*c*) courses of training provided by the Unemployment Assistance Board for persons over 18 years of age under the Unemployment Assistance Act, 1934.

191. In practice the power to require attendance at an authorized course is exercised only in the case of claimants under 18 years of age as part of the general power to require attendance of any unemployed juvenile whether a claimant for

[1] Section 25 (1), page 210.

benefit or not. The procedure for requiring attendance of juveniles is described in Chapter XXIV. It may be noted here that the requirement to attend is issued by the Minister and not by the Insurance Officer. Accordingly there is no right of appeal to a Court of Referees as to the reasonableness of a requirement.

192. The Umpire has held that, when, before the requirement becomes operative, a claimant obtains *bona fide* employment and has no reason to believe it will be only of short duration, the requirement becomes inoperative (11952/30). A claimant, however, who refused to attend a course, and during the currency of the requirement obtained short spells of employment, after the date on which he was required to attend, was not entitled to benefit (18493/30). Disallowance for failure to attend may last until the claimant has proved that he has " duly attended in accordance with the requirement " (7084/30).

193. Although attendance at an authorized course is not required by the Minister in the case of adults, persons over 18 years of age who voluntarily accept a course of training provided by the Minister are after acceptance issued with a formal requirement. In their case misbehaviour during attendance, or refusal to continue attendance, may result in disallowance of benefit.

Misbehaviour.

194. An insured contributor who by reason of his behaviour is required to discontinue his attendance at an authorized course during any period is not deemed to have satisfied the fourth statutory condition during that period, or during such part of it as may be determined on any subsequent claim for benefit (Section 25 (2)).[1] Disallowance of benefit on the ground that the condition is not fulfilled is a question for a Court of Referees to determine, except that the Insurance Officer may disallow a claim in the case of persons under 18 years of age whose attendance at a course is discontinued for not more than one day in consequence of misbehaviour (Section 43 (5)).[2]

195. Gross or repeated breaches of rules at an authorized course amount to misbehaviour (11987/39; 9654/31) as do

[1] Page 210. [2] Page 220.

persistent and deliberate lateness (8014/31). Where a claimant was required to take up his residence in lodgings in the town where the Centre was situated, and was required subsequently to discontinue attendance at the course by reason of drunkenness in that town on a Saturday night, it was held that misbehaviour had occurred " while attending at an authorized course " (12559/34).

X.—TRADE DISPUTE DISQUALIFICATION[1]

Definition of Trade Dispute.

196. Section 113 (1) (*u*) of the Act[2] defines the meaning of the expression Trade Dispute. It is for the Umpire to decide whether or not the stoppage of work was due to a trade dispute. Generally speaking, when notices terminating contracts unconditionally have been given before any proposal for an alteration of wages or conditions has been made, it may safely be assumed that the stoppage of work is due to causes other than a trade dispute; but if notices have been given only after a proposal for alteration of wages or conditions has been made and rejected, or whilst negotiations are in progress, the resulting stoppage of work is presumably by reason of a trade dispute (8730).

If work ceases for economic reasons, any dispute thereafter regarding terms of re-employment is not the cause of the stoppage (16825/30 (amended); 16914/31).

197. *Concerted action* on the part of employees raises a presumption that a trade dispute exists, but is not conclusive evidence (576; 282/25). The absence of concerted action is indicative, though not conclusive, that there is no trade dispute; thus, a dispute between an employee and his employer as to the price to be paid for a particular job was held not to be a trade dispute (1617/27).

198. Where an employer gives notice terminating employment but making an offer of continuing work on new terms, the Umpire is not in ordinary circumstances concerned with the terms of the offer, in deciding whether benefit should be allowed. In special cases it may be necessary to do so. If the proposals would not have resulted in an enforceable contract of employment (if, for example, in the case of the mining industry, they would involve a breach of the Coal Mines (Minimum Wages) Act, 1912), the offer cannot be regarded as being

[1] Section 26, page 211. [2] See page 237.

effective and the Umpire would allow benefit (2358 and 306/29); if the terms of the offer could lawfully be accepted there is a trade dispute (6781/20; 3600/28; 18641/30). A dispute may arise regarding changed conditions of temperature or ventilation, which are "conditions of employment"; if the new conditions are in contravention of Statute or Statutory Regulation there is no effective "offer of employment" (16509/30; 5088/31), but the offer is effective if the only question is whether the conditions are reasonable (15285/33).

199. The fact that one side or the other has not followed the usual methods of negotiation for a new agreement does not affect the question whether there is a trade dispute. Similarly the question whether there is a breach of agreement or of contract by either side is immaterial to the question whether there is a trade dispute. In general a dispute in which one party seeks to induce the other party to abrogate or vary an existing agreement as to wages or working conditions is a trade dispute (6781).

200. A trade dispute may be a dispute between employers and employees, or between groups of employees, but a dispute between employers and employers cannot constitute a trade dispute. The general strike of 1926 was not a trade dispute as defined by the Unemployment Acts. It was in furtherance of the mining dispute, but its immediate cause was a different dispute, which was not a dispute between employers and employees but between the Trade Union Congress General Council and the Government, which was not an employer in so far as the question at issue was concerned (1845/26).

201. A dispute between employees and employees includes a dispute about Trade Union membership, demarcation of duties, an endeavour of employees on strike or locked out to prevent other employees who desire to work from doing so, and a dispute between unemployed workers and those in employment. Thus a dispute between two unions as to the employment of non-members of one of the two unions was held to be a trade dispute, being a dispute between "employees and employees connected with their employment" (214/26; 10287/32); similarly in the case of a dispute regarding the employment of certain persons who accepted a voluntary scheme of share purchase (16768/32).

202. A *sympathetic strike* by employees of one employer

on behalf of employees of another employer is itself a trade dispute, even if the participants in the second dispute are not directly interested in the terms of the original dispute (6584 and 1677/25). Similarly, a sympathetic lock-out by employers either of itself constitutes a fresh dispute or extends the existing dispute (5117/20; 8768/31). The dispute, however, does not necessarily extend to all grades (1764/25; 1370/28).

Stoppage of work.

203. A " stoppage of work " means, not merely a cessation of work, but a cessation of work which is due to the unwillingness of men to work, or of employers to give employment, so long as some matter in dispute is unsettled (4850/26). There need not necessarily be a *general* cessation of operations at the premises but there must be an *appreciable* interruption of work (225 and 637).

204. When a considerable number of men with one accord cease to carry on with their work, there must almost inevitably be a stoppage of work, before the men return to work or their places are filled by other men (1480/27). In a case where only two men ceased work out of a number it was held that there was no stoppage (6324 (O.W.D.)).

205. At a small port, dock workers who ordinarily apply for work daily at a " calling on " station are disqualified for benefit, if there is a stoppage of work due to a trade dispute at the port (1953/25; 9231/30) until they obtain employment elsewhere (6570/20). In a large port, where dockers normally have several places in a long range at which they can present themselves for work, the disqualification extends only to those who can expect to find work at the place at which the stoppage occurs (17993/31; 20135/31). Similarly, ship-repairers who, owing to a trade dispute, failed to apply at yards at which work was available, were held all to have lost employment owing to a trade dispute (7197/32).

206. Where a matter in dispute is in the hands of trade union representatives, it is commonly the case that employers do not take any active steps to offer work to men individually. The fact that it is known that work is available is sufficient to disqualify men not directly asked to work (9982/29; 9231/30).

Loss of Employment due to Stoppage.

207. The disqualification applies to persons who lose their employment owing to the stoppage of work due to the trade dispute. It is irrelevant to show that the claimant would in any event have lost employment at a date subsequent to the date of commencement of the stoppage (1581/26). The disqualification does not apply to a worker who has been discharged for reasons independent of any dispute and is *totally unemployed* before the stoppage began (8529 and 1321/26).

208. A worker indefinitely suspended for economic reasons before the posting of the employers' notice and twelve normal working days or more before the stoppage was presumed to have been finally discharged (7357/29), but a worker suspended between the issue of notices and the beginning of the stoppage was disqualified (7477/29 and 9982/29); also a worker suspended more than twelve days before the stoppage was disqualified from the date of the stoppage, because systematic short-time was being worked and work was due to be resumed during the period of the stoppage (7986/29; 15531/33). The application of this "Twelve Days' Rule" is discussed at length in Case No. 18901/31; the principle applies only when the claimant habitually seeks work at the premises at which the stoppage has occurred (see also 12999/31).

209. In the case of dock workers who are employed on a day-to-day basis the fact that a man was not actually in employment at the time when the dispute commenced is not in itself sufficient to show that he did not suffer loss of employment on account of the stoppage of work due to the dispute. On the other hand, where a dock worker has had no employment at the docks, for an appreciable period before the commencement of the dispute, he is not in general regarded as having lost employment on account of the dispute.

210. The disqualification has been held to apply to claimants who leave their employment immediately prior to the commencement of a trade dispute if, in so acting, they are merely anticipating the general stoppage, but where the applicant left for reasons independent of the trade dispute, loss of employment is not due to the stoppage (3147/26). If a claimant is dismissed for misconduct before the commencement of the stoppage, loss of employment is not due to the

stoppage even though the claimant would otherwise certainly have been involved in the stoppage (5805 and 1401/26).

211. When a worker has been for a considerable time before a stoppage absent from work owing to illness or injury by accident, there is no presumption that he will resume work with the same employer when he is fit to do so, and he cannot be regarded as losing employment by reason of the stoppage (658 and 2539/25). Where, however, it is the general rule to reinstate men when they are again fit for work, they are regarded as having lost employment by reason of the stoppage of work (2405/26; 4688/26). There are exceptions to this rule if the claimant is fit only to resume work in another occupation or if he would not expect to be reinstated by reason of age or other circumstances (No. 4744/26).

212. If a person is engaged at a time when a stoppage of work is imminent, on the understanding that he will be employed only up to the date of the stoppage, the loss of employment is due to the completion of the work for which he was engaged, and the disqualification does not apply. The fact that employment commenced before or after the giving of notices is not conclusive evidence that the loss of employment was or was not by reason of the stoppage (5102/26).

A person who had been suspended for eight months and was re-engaged immediately before the stoppage was regarded as being in the position of a new employee engaged to work only up to the date of the stoppage (8879/31) but a worker who was re-engaged after a temporary suspension of seven weeks was treated as a regular employee at the premises in question (15607/31).

213. In the case of employees suspended at the time of commencement of the stoppage it is necessary to determine whether their loss of employment was due to the stoppage or to economic causes. If the stoppage is of long duration, with consequent dislocation of work, the claimant is unable to escape disqualification, but if the stoppage is short he may be able to show that, for reasons unconnected with the stoppage, his services would not have been required during the period (3210/33; 3211/33). If in a whole department there would have been no work, for economic reasons, employees suspended from that department may avoid disqualification (9485/29 (revised)).

214. The loss of employment due to the dispute does not mean total loss ; an applicant who is put on part-time work owing to a dispute is disqualified for benefit on the days of unemployment resulting from the dispute (2518/26). The claimant cannot escape disqualification by showing that the employment which he had prior to the stoppage was on an illegal basis (2420/31).

215. The onus of showing that employment was lost by reason of a stoppage of work due to a trade dispute, which is *prima facie* on the Insurance Officer, is discharged when it is shown that work at the premises concerned did stop at the date of commencement of the general stoppage, and that the claimant was ordinarily employed at the premises (7477/29). It is for the claimant to show that there are circumstances which rebut the normal inference of disqualification (9982/29).

Relief from Disqualification

216. The Acts provide relief from disqualification for receiving benefit to certain classes of claimants who lose their employment by reason of a stoppage of work due to a trade dispute. These provisions are as follows :—

217. *Separate Departments.*[1] The disqualification does not apply if the claimant can show that the stoppage of work was not due to a trade dispute at the premises at which he was employed. For this purpose, where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department is treated as separate premises. The provision applies even if in the separate department there is also carried on a branch of work which is not commonly carried on as a separate business in separate premises. In order to obtain relief under this proviso the claimant must show :—

(1) that he is engaged in a branch of work which is commonly carried on as a separate business in separate premises ; and

(2) that at the place at which the claimant is employed the work is carried on in a separate department which can be deemed to be a separate factory or workshop or separate premises from the other premises ; and

[1] See Section 26 (2), page 211.

(3) that he is employed in that separate department ; and

(4) that there is no trade dispute in that department.

The principle which has been followed is laid down in Decision 4387/26.

218. Difficulty arises in determining in any particular case what is a separate department and each case is considered on its merits. For example, pattern-making has been held to be a separate branch of work commonly carried on as a separate business in separate premises from coal mining and from foundry work, but not from engineering work (4387/26). Wagon building has been held to be a branch of work which is commonly carried on as a separate business on separate premises from coal mining (1510/26). In the case of worsted manufacture burling and mending and cloth finishing have been treated as commonly carried on as a separate business in separate premises (12505/30 ; 16725/30).

219. The Act also provides that the disqualification shall not apply to a claimant who has during the stoppage of work become (1) *bona fide* employed elsewhere in the occupation which he usually follows, or (2) regularly engaged in some other occupation.[1]

220. *Bona fide employed elsewhere.* There is no provision as to the period of employment elsewhere in a man's usual occupation. In Case No. 1569/26 the Umpire allowed benefit to a locomotive driver who lost his employment as a shifter at a colliery owing to a trade dispute, and subsequently obtained employment lasting five days with a railway company. He was regarded as having become *bona fide* employed elsewhere in his usual occupation. A claimant who takes employment in his usual employment with the same employer but at separate premises (as defined in Section 26 (2), see para. 217) is *bona fide* employed elsewhere (3514/26 ; 9731/33).

221. *Change of occupation.* A distinction is drawn between becoming "employed" in a man's usual occupation and becoming "engaged" in some other occupation. The Umpire has held in many cases that for this purpose "employment" and "employed" refer to employment under a contract of service. In Case No. 5244/26 a motor mechanic who lost his employment by reason of the mining dispute

[1] See Section 26 (1), page 211.

undertook the repair of motor-cars on his own account. The Umpire held that this did not constitute "employment" in his usual occupation; he had become regularly engaged in another occupation if he had set up in business on his own account, but not if he was only looking out for odd jobs.

222. It is not essential to the fulfilment of the condition that the claimant should have relinquished all intention of working in the occupation in which he was engaged when he lost employment by reason of the trade dispute (3876/26); nor is it material that the nature of the occupation in which he becomes regularly employed is casual (3710/26). It is not sufficient, however, to show he has taken up work which is by its nature temporary (4059/26 and 4234/26).

223. *Persons not taking part in the dispute.* The proviso to Section 26 (1) of the Act[1] affords relief to men who become accidentally involved in a dispute in which they have no real concern (1884/26). Sub-sections (1) (*a*) and (*b*) of that Section provide that the trade dispute disqualification shall not apply to a claimant who proves that he is not participating in, or financing, or directly interested in the trade dispute, and that he does not belong to a grade or class of workers of which, immediately before the stoppage began, there were members employed at the premises any of whom were participating in, or financing, or directly interested in the dispute. To be entitled to relief under the provision in Section 26 (1) (*a*) and (*b*) of the Act, an applicant must show that, at the time in respect of which he claims benefit, the conditions of those sub-sections are fulfilled in his case. If they are fulfilled for a time he is entitled to relief so long as they are; and if they cease to be fulfilled he ceases to be entitled to relief (1926/26; 3357/33).

224. *Definition of "participating."* Decisions under what is now Section 26 (1) of the Act have rarely turned only on the question of whether a person is "participating", but the general view taken by the Umpire is that a man who "strikes" or takes an active part in a dispute must be held to be a "participant" (30/26). A man would not be disqualified merely because he is in sympathy with the strikers (2036/25), or belongs to the Union in dispute (2105/25), but membership of the Union in dispute raises a presumption of participation (1461/26 and 3560/29). A man does not necessarily become a participant by his having been prevented from going to

[1] Previously Section 4 (1) of the 1924 (No. 2) Act.

work by force or intimidation on the part of the men on strike (1764/25). A man who is locked out merely because the employer has closed his mill to men of another grade is not involved as a "participant" (1370/28) unless his own grade gave active support to the other grade (8768/31).

225. *Definition of "financing."* The Umpire's definition of the term "financing" is best set out in Case No. 13/25 in which he states that "the Union, to which the applicant belonged, was taking part in the dispute, and paying benefit to certain of its members who were participating in the dispute. Accordingly the Union was financing the dispute, and in my opinion every member of the Union *who ordinarily subscribed to its funds, and thereby had a proprietary interest in those funds,* was financing the dispute." The duration of disqualification is determined not by the amount paid to members but by the date on which, and the circumstances in which, the Association decides to recognize the stoppage (16846/31 ; 4736/35).

226. In general the Umpire is disposed to disallow benefit to all members of Unions which are making any sort of payment (dispute pay, unemployment benefit, etc.) to workers involved in a dispute. Members of a Union (who are not participating in or interested in the dispute in question) are nevertheless financing the dispute if the Union contributes to the funds of a Federation of Trade Unions, which is helping to finance the dispute (1237/25).

227. It does not follow that because a union is not paying dispute pay to the men involved in a trade dispute that the union is not "financing the dispute." Benefit was disallowed in Case No. 4375/26 on the claim of a colliery surface worker affected by the mining dispute, 1926. The man was a member of a miners' union and the Umpire said "although no strike pay was being paid it is difficult to believe that the union had not some funds which were used in some way for payment of salaries and travelling expenses or otherwise in financing the dispute."

228. Making charitable donations to persons in distress by reason of a stoppage of work, or collecting funds from others to distribute in charity is not "financing the dispute" ; but lending money to disputants or procuring credit for them for the purpose of enabling them to hold out against the employer's demands is (514/26).

229. *Definition of term "directly interested in."* The

general principle on the question of whether a person is "directly interested in" a dispute is that claimants are entitled to benefit—so far as this consideration is concerned—unless they have an *immediate* interest in the issue of the dispute (177/26 and 1317/26); it is immaterial that the interest is adverse to that of the strikers (692/25; 6829/30). Benefit would not necessarily be disallowed if it is shown merely that the interest of a claimant in a dispute is so close that the result of the dispute will certainly react on the claimant. Thus a mine surface worker is usually held to be *not* directly interested in a dispute regarding tonnage rates paid to hewers (2105/25), whereas a rivet heater in a plating squad has been held to be directly interested in a riveter's strike, because he shared in the earnings of the squad (678/25).

The fact that the claimant is a member of an Association which is not conducting the dispute is immaterial if he will in fact be affected by the terms of the settlement (9496/31 (amended)). A claimant may still be "directly interested" in the dispute although he is temporarily engaged on work other than that on which he is normally engaged (2852/35).

Grade or Class of Workers.

230. Where a dispute is being financed only by members of some well-defined class, such as those engaged in an industry, or those following some craft, there may be no great difficulty in defining the class and in determining whether an applicant belongs to it. In other cases the inquiry may present considerable difficulty. The proviso to Section 26 (1) of the Act throws on a claimant the burden of proof. In determining whether a claimant belongs to a grade or class of workers involved in a dispute there is no distinction to be drawn between unionists and non-unionists or between members of one union and members of another.

231. In Case No. 10525/31 the Umpire discusses the meaning of the term "grade or class of workers."

> "You must first consider the nature of the dispute in question, and, having determined to what matters the dispute related, if you can find a group of workers who by reason of their particular employment are altogether outside the dispute, in that no member of the group is participating in, financing, or directly interested in the

dispute, you may hold that members of that group are members of 'a class or grade.'"

232. The Umpire regards the expression "grade or class" as implying an element of permanence in the character of the work by which the worker is normally and in practice earning his living. A person does not lose his grade or class by temporarily following some occupation usually followed by workers of another grade or class. The basis of classification in grades or classes is the conditions of employment in the claimant's usual occupation. Thus, surface mine workers, deputies and hewers, have been held to be in different "grades" or "classes"; riveters to be in different "grades" or "classes" from catch boys employed in the same plating squad (8910); "piecers" to be in a different "grade" or "class" from spinners although employed on the same loom (1096/25). Where, however, compensation men were, because of their disability engaged on work other than their normal work, the answer to the question whether they were members of the grade or class engaged in their former normal employment depended on the nature and probable duration of their disability (2852/35).

Period of Disqualification

233. The disqualification lasts for "so long as the stoppage of work continues." Accordingly questions for determination are the dates of the beginning and termination of the stoppage. The date of the beginning of the stoppage is usually clear, but special cases (533; 393/26; and 16848/31) may arise. Where workers on alternating short-time were not due to resume until a date after the general stoppage of work, benefit was disallowed from the date of the general stoppage (9982/29). When, however, the claimant and members of his grade were not parties to the dispute disqualification operated from the date on which he would have resumed work had there been no stoppage (15531/33).

234. The date of the termination of the stoppage is frequently not so easy to determine. The stoppage due to the dispute comes to an end when for any reason (e.g., a decision to close particular premises) the employers no longer have employment to offer on any terms (4850/26); this does not apply if only a section of the premises is closed (489/27).

The stoppage of work is not automatically terminated by the settlement of the dispute. It must be shown that the stoppage of work due to the dispute has ended, i.e., if the stoppage continues, that the dispute is no longer the effective cause of the stoppage. After a prolonged stoppage it is frequently necessary to put the works and machinery in working order and the disqualification lasts until the date at which it is shown that work could be resumed. If the employers have not taken immediate steps to recondition the works and machinery, benefit may be allowed from the date at which they would have been reconditioned if the employers had found it worth their while to push on with the work. If a stoppage is prolonged owing to economic causes, or difficulty in getting new orders and in recovering lost trade, a continuance of shortage of work due to such causes cannot be regarded as a stoppage due to the trade dispute (1409/26). The general position is set out in Case No. 4665/26 (revised).

235. The disqualification is not removed in the case of individual men who come to terms with the employer (4741/26). The fact that a claimant, who loses his employment by reason of a stoppage of work due to a trade dispute, has no intention of returning to the work he has lost does not affect the period of disqualification (3304/26).

XI.—CLAIMANT TO BLAME FOR LOSS OF EMPLOYMENT[1]

236. A claimant who loses employment through his misconduct, or who voluntarily leaves his employment without just cause, is disqualified for receiving benefit for a period of six weeks or such shorter period as may be determined by the Court of Referees or the Umpire, as the case may be, beginning at a date to be determined by them. The provisions are not meant to be punitive, but are designed to protect the Fund against claims by those who have brought about their unemployment through their own wrongful or unreasonable conduct (98/28). The method of ascertaining the circumstances in which a claimant has left his employment is described in paragraphs 325–6.

237. Employment, in the sense in which the word is used in Section 27, includes excepted employment, e.g., domestic or agricultural work, service with a railway company or in H.M. Forces (17808/31), but does not include work under a contract of bailment as in the case of certain taxi-drivers paid on a percentage basis (22255/32).

238. Training at a training centre is not employment (4392/29), but training with an employer under a scheme whereby the trainee received board, lodging and pocket-money was held to be employment (11124/30).

A.—MISCONDUCT

239. The term used in the statute is " misconduct " and not " unsatisfactory conduct " which is a much wider expression in meaning. Misconduct, which must be proved and not assumed, is always a question of fact which depends upon an infinite variety of circumstances including the past record and

[1] Section 27, page 211 ; as regards the period of disqualification see paras. 250–253.

general character of the delinquent (2835/27). The term includes a breach of discipline or works rules, or conduct which is inconsistent with the fulfilment of the conditions of service, or which renders the worker incapable of performing his work efficiently. The main types of cases in which benefit has been disallowed on the ground of misconduct are: absence from work without leave; refusal to do certain work; refusal or failure to comply with shop rules; bad time-keeping; personal conduct resulting in neglect of duty. A worker is not regarded as bringing about his own dismissal if he is discharged on the ground of his unsuitability or insufficient experience for the work. An accumulation of irregularities has, however, been held to be misconduct (3139 and 1117/25). Where a person has been dismissed for alleged misconduct and has taken no steps to inform the employer of his explanation, benefit has been disallowed (2046/20; 2827/20). The fact that dismissal was not summary does not prove that there was no misconduct (10280/30).

240. Refusal to do work which, though outside the claimant's normal duties, was work which, in the circumstances, he could reasonably be asked to do, was held to be misconduct (2962/30), but an 'order' to plead guilty to a charge unconnected with the claimant's employment was one which the employer had no authority to give, and refusal to obey it did not constitute misconduct (16569/30).

241. When an applicant is discharged for misconduct outside working hours and not directly connected with his employment, benefit has usually been allowed if the misconduct is not of such a kind as affects his suitability for the employment which he has lost; but if the misconduct is of a kind which renders him unsuitable for the employment it may well be misconduct within the meaning of the Act. Hence a motor driver, whose driving licence had been suspended on conviction by a Court of Summary Jurisdiction and who had accordingly been dismissed by his employer was held to have lost his employment through his misconduct (5578/35). Many employers object to having in their employment persons whom they cannot trust, and accordingly a conviction for theft may well render a person unsuitable for, and lead to his discharge from his employment (2051/25). Where the conduct which led to the claimant's dismissal was criminal and has resulted in conviction, the conviction is proof of the commission of the

act complained of, but the fact that criminal proceedings have been or could be taken in respect of it has no material bearing on the question whether the act amounts to misconduct within the meaning of the statute.

242. " Interference with the workmen," being action in breach of Section 13 (4) of the Coal Mines Regulation Act, 1887, has been held to be conduct which rendered a check-weighman unsuitable for employment by the colliers, and therefore misconduct (18984/31).

243. Peaceful persuasion of a fellow employee to cease from working is not necessarily misconduct. Intimidation has been held to be misconduct (4569/26). Insistence on membership of a Trade Union against an employer's wishes is not misconduct if it is not a breach of the terms of the contract of employment (5546/35).

B.—EMPLOYMENT LEFT VOLUNTARILY

244. A claimant is disqualified for receiving benefit, for a period not exceeding six weeks from a date to be determined, according to the circumstances of the case, by the Court of Referees or the Umpire, if he left voluntarily without just cause.[1]

The onus of proving that a claimant has voluntarily left his employment lies on the Insurance Officer ; when this has been done it is for the claimant to prove that he had just cause for leaving (6374/29). The main grounds on which a plea of " just cause " may be based are :—a breach of contract of service ; conditions unfavourable (e.g., wages insufficient, excessive overtime, variation in nature of the work, etc.) ; and personal circumstances.

245. Decisions have been given which show that benefit is not allowed to a claimant who, before leaving his employment, makes no effort to remedy grievances through the appropriate channels, e.g., by asking a Trade Board to determine his status (4208), or by reporting the matter to his association with a view to the settlement of the dispute through the recognized machinery (406/25).

246. In considering the question whether a workman has just cause in leaving his employment it is frequently necessary to consider whether the employment may be regarded as

[1] Section 27, page 211.

unsuitable. For example the Umpire has allowed benefit to a person leaving his employment voluntarily because of a modification of rates and hours, which made the conditions of employment less favourable than those he had habitually obtained, and than those obtained by other workmen employed in the district under similar circumstances ; there was no evidence that the change was in accordance with a general alteration (3109 ; 3172 and 2449/27). A claimant who had been reduced from four looms to two, with a corresponding reduction in earnings, and so worked until it was clear that there was little prospect of returning to four looms, was held to have been justified in giving up that employment (22319/31).

247. It is not just cause for leaving employment, which is otherwise suitable, that a member of a union is required to work with men who are not members of that union (198/27), or that the union object to the employer employing women on work regarded by the union as men's work (199/27), or because the claimant thought that other men with whom he was required to work were not qualified tradesmen or *bona fide* apprentices (375/26).

248. Generally speaking, a claimant cannot show ' just cause ' if he throws himself on to the Unemployment Fund when suitable employment is available for him, as when an employee elects to be superannuated rather than continue in secure employment (11760/30). In one case when a claimant formerly employed in a sanatorium had resigned from his post in order that it might be given to a delicate relative who was in receipt of benefit at the time, he was held to have had just cause for leaving his employment (2145/30). A claimant who had left one employment to go to other work, which he believed to be permanent, with a former employer, was held to have had just cause for leaving the first job although the second, contrary to expectation, proved to be short (13733/30).

249. " Absenteeism " is regarded as voluntary leaving of employment (10841/30) ; so also is conduct which, though short of misconduct, will, in the claimant's knowledge, secure his dismissal by the employer (8094/30 ; 9477/30).

Period of Disqualification.

250. Usually the disqualification begins to operate from the day following that on which the employment was lost or left. If, however, this happens on a Saturday, the disqualifi-

cation begins on the following Monday (2457/35 (amended); 4995/35). The period of disqualification must, however, be effective. This applies even if the reason why a claim has not been made immediately after the loss of employment is because the claimant has obtained other employment in the meantime or because he would not be entitled to benefit for some other reason, such as sickness or a disqualification under Sections 26 to 30. Similarly where employment is lost and the claimant is paid, for example, a month's wages in lieu of notice, the disqualification dates from the commencement of the period of unemployment and not from the expiration of the period for which wages were paid in lieu of notice. Where, however, the misconduct, in respect of which disqualification has been incurred, itself consists of absence from work without permission, the period of disqualification does *not* include the period of voluntary absence provided of course that no claim for benefit is made in respect of the period of voluntary absence (11282/34).

251. Where a claim is allowed by the Court of Referees and subsequently reversed by the Umpire, and benefit has been paid in accordance with the Court's decision, the period of disqualification begins from and including the first day of the benefit period immediately following that in which the Umpire gives his decision. If in such a case there has been a period of delay in making the claim after the loss of employment, the Umpire takes that into account in determining the duration of the period of disqualification which he imposes (11282/34; 11237/24; 2457/35).

252. Where persons are under notice to leave owing to reductions in staff or other reasons which do not affect their title to benefit, the disallowance operates only up to the date on which notice would have expired in the case of persons who left employment voluntarily (1379) or were discharged for misconduct (2122/27 and 93/28). Where the "misconduct" is criminal the period of disqualification is not affected by the fact of the claimant having been punished (98/28); it depends not on the moral delinquency of the claimant, but on how far his conduct was wilful or persistent, and was of such a kind as would be likely to lead to loss of employment.

The disqualification is not removed merely because the claimant has resumed work before the period of six weeks, or less, has expired (8326; 5993/29), but if he is reinstated by

the same employer the disqualification may terminate on the date of reinstatement (6279/33).

253. Where there is evidence of mitigating circumstances the period of disqualification for leaving voluntarily may be less than six weeks ; the fact that a claimant has been long in his last employment is not regarded as a ground for reducing the period.

XII.—REFUSAL OF EMPLOYMENT DISQUALIFICATION

254. The 1930 Act repealed the statutory condition that a claimant should be " genuinely seeking work but unable to obtain suitable employment " and introduced a new disqualification. This disqualification, with an addition introduced in the 1934 Act, is embodied in Section 28 of the 1935 Act.[1] Under this section a claimant may be disqualified for benefit for six weeks or less from a date determined by the Court of Referees or the Umpire, in the following circumstances :—

(*a*) if it is proved by an officer of the Ministry of Labour that the claimant has without good cause refused or failed to apply for a situation which has been notified to him by an Employment Exchange or other recognized agency, or by or on behalf of an employer, as vacant or about to become vacant, or

(*b*) if it is proved by an officer of the Ministry of Labour that the claimant has refused to accept such a situation offered to him.

(In either case it must be proved that the situation notified or offered was in employment which was suitable in the claimant's case.)

(*c*) if it is proved by an officer of the Ministry of Labour that the claimant has neglected to avail himself of a reasonable opportunity of suitable employment, or

(*d*) if it is proved by an officer of the Ministry of Labour that the claimant has without good cause refused or failed to carry out any written directions given to him by an Employment Exchange officer with a view to assisting him to find suitable employment.

(The directions must be reasonable, having regard both

[1] Page 211.

to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides.)

255. The situation may be notified by an Employment Exchange or other recognized agency, or it may be a situation notified to the claimant direct by or on behalf of an employer as vacant or about to become vacant. It is for the Ministry of Labour to prove that the notification was in fact made and that the claimant refused or failed to apply for the vacancy.

256. Section 101 places upon the Department the duty of making arrangements with employers, so far as practicable, for them to notify Employment Exchanges of vacant situations in their employment. It is contemplated that for this purpose the Minister should consult associations of employers and employed persons.

Suitable Employment.

257. Section 28 of the 1935 Act refers, as did Section 4 of the 1930 Act, to " employment which is suitable in his (the claimant's) case." The onus of proving the suitability of employment rests upon the Insurance Officer (10352/30). The Statutes do not define " suitable employment," but the 1935 Act re-enacted the provisos of the earlier Acts which indicated circumstances in which employment is " not suitable." These provisos are examined below in the light of Umpire's decisions.

Employment available owing to a trade dispute.[1]

258. The first proviso is that employment is not suitable if it is available owing to a stoppage of work due to a trade dispute. The definition of a stoppage of work and of a trade dispute is considered in Chapter X. Subject to the question as to whether or not a stoppage of work due to a trade dispute exists in a particular case, there is little room for doubt as to the application of this proviso. It may be noted, however, that benefit has been disallowed to claimants leaving employment, which they had accepted knowing that it was available owing to a trade dispute, even where they were compelled to cease work owing to the menacing attitude of the men on

[1] 1935 Act, Section 28 (2) (a), page 212.

strike or lock-out. The Umpire held that they were disqualified under Section 8 (1) of the 1920 Act (1584/25).

Benefit has been allowed to claimants who have accepted employment without being aware that a dispute existed, and left on discovering the true state of things (720 and 787).

259. In Case No. 2527/25 certain claimants had lost their employment by reason of a trade dispute, in circumstances, however, which did not disqualify them for benefit. They were subsequently offered employment by their former employer which they refused. The Umpire decided that the vacancies were caused by a stoppage of work due to a trade dispute and that the claimants were not disentitled to benefit by reason of their refusal.

260. Before it can be said that the proviso applies there must be a stoppage of work (7222/20) which has actually begun (1917/25) and must be of appreciable duration (7157/20) and be still continuing (865/28). The mere fact that a stoppage is *imminent* is not justification for the refusal of work otherwise suitable (4894/20). The vacancy must be directly due to the stoppage (708/20; 20842/31) or in a branch in which the stoppage continues (24360/31).

Wages and Conditions attached to Employment offered.

(*a*) *Employment in the same district.*

261. The second proviso relates to an offer of employment in the same district. The Act provides that "employment shall not be deemed to be suitable employment in relation to any claimant if it is employment in his usual occupation in the district where he was last ordinarily employed at a rate of wage lower, or on conditions less favourable than those *which he might reasonably have expected to obtain having regard to those* which he habitually obtained in his usual occupation in that district, or would have obtained had he continued to be so employed."

262. In general a claimant must be prepared to accept employment under the ordinary conditions prevailing in his usual occupation (2921 O.W.D.; 1403/25; 16914/31). The conditions of the employment offered may not be identical with those ordinarily obtained by the claimant in his usual employment; it must be shown that they are *less favourable to the claimant himself*, before benefit can be allowed (789/25),

unless there are circumstances which make it not reasonable to expect the claimant to give the work a trial (727/25):

(*b*) *Employment in another district.*[1]

263. The third proviso is to the effect that employment *in another district* is not to be deemed suitable for the claimant if it is employment in his usual occupation at a rate of wage lower, or on conditions less favourable, than those generally observed in that district by agreement between associations of employers and of employees, or, failing any such agreement, than those generally recognized in that district by good employers.

264. The Act does not say that employment which satisfies these conditions is necessarily suitable. It will, however, in normal circumstances be suitable where the conditions are complied with. It is not sufficient for the claimant to show that the rates and conditions differ from those fixed by an agreement; he must also show that the agreement is generally observed in the district (754/27). The question whether the conditions are less favourable is one of fact to be determined by the circumstances in each case. The question whether the employment offered is on conditions less favourable than could be obtained in the district is not determined solely with reference to the practice of one employer (4532/20).

The rate of wage and conditions generally recognized by good employers in the district have to be ascertained only where there is no agreement generally observed in that district.

Change of Occupation.

265. Section 28 (3) of the 1935 Act provides that, after a period of unemployment which in the circumstances of the particular case is considered reasonable, employment shall not be deemed to be unsuitable for an unemployed person merely because it is employment in an occupation other than his usual occupation. Such employment must, however, be at a rate of wage not lower and on conditions not less favourable than those generally observed by agreement between associations of employers and of employees, or, failing any such agreement, than those generally recognized by good employers. The

[1] 1935 Act, Section 28 (2) (c), page 212.

statutory authorities determine whether the interval between the date on which the claimant becomes unemployed and the date of the offer of employment in another occupation is reasonable having regard to the circumstances of the particular case. In determining this question regard is paid to the claimant's age, record of employment, degree of skill, and the prospects of obtaining work in his usual occupation (17340/30; 5851/31).

General Considerations as to Suitability of Employment.

266. The Act does not profess to provide a complete test of suitability of employment (754/27) and, where the statutory conditions have been fulfilled, the Umpire has allowed benefit even where the cases are not excepted by the provisos set out above, if the specific reasons for refusal are adequate. The main considerations that may arise are set out below.

267. *Agreements between Organizations.* Employment is not unsuitable *merely because* it is not in accordance with the conditions agreed to by representative bodies of employers and employees (754/27; 927/28).

268. *Basis of Remuneration.* In Decision 5266/20 employment at piecework was held to be unsuitable as it was not in accordance with the conditions generally recognized by employers in the district. Where there was no such general recognition of any rule against piecework, though the trade union concerned was trying to enforce it, employment at piecework was held to be suitable (8511). In general in a trade where both piecework and time rates are in operation applicants who have previously worked on piecework are not entitled to refuse an offer of employment at time rates (1723/27; 10/28; 1838/29); men accustomed to time work are not entitled to refuse employment at piecework (47/26). In Case No. 2808/27 the fact that the method of payment (a bonus system) was different from that generally observed in the district was held not to justify refusal; the remuneration earned under the system in operation would not have been less favourable than that yielded by the system recognized by agreement. When the rate of wages is not regulated by general agreement it is necessary, when the rate offered appears to be low, to take into consideration any counter-balancing conditions of service (1047/31; 14418/31, *with which read* 5451/29).

269. *Employment away from home.* Where employment is offered in another district, the Umpire does not regard such employment as unsuitable merely on the ground that the claimant would have to leave his family and go into lodgings, but he would not disallow the claim of a man who had refused employment where lodgings in the neighbourhood were not available. The Umpire allows benefit where *special* hardship would occur as the result of a man leaving his home, for example, where the wife is an invalid and proper arrangements cannot be made for her care in the husband's absence. In the case of a married woman domestic circumstances may render employment away from home unsuitable (7766/20), but not necessarily so (4702/20 ; 15987/30).

270. Applicants who have been offered employment away from home have in many cases been held to be entitled to a week after registering for employment to find employment in their own district before being expected to go elsewhere. In Case No. 4494/26 the Umpire said " this is a reasonable rule as applied to men who have a house to keep up and who are at a disadvantage if they have either to remove their homes or to go into lodgings and so keep two homes." The rule has no application to persons who ordinarily work away from home. Where the distance the claimant is required to travel is a factor, the Umpire takes all the circumstances into consideration, including the rate of wages offered. If the rate is high he holds that the claimant should be required to take advantage of a shorter spell of work, or travel a longer distance, than if it is low (7616/20). The necessity for making pecuniary arrangements in respect of lodgings does not make work at a distance unsuitable (2906/30) except in special circumstances (1466/29).

271. *Prospects of employment elsewhere.* The Umpire does not disallow benefit in the case of men who refuse work at a distance on the ground that they have early prospect of obtaining local work, provided that the prospect of local work is definite, and is not based merely on a vague hope (5533).

The question whether or not a claimant is justified in refusing permanent employment elsewhere depends upon the circumstances of each case. As a rule, an applicant is justified in refusing an offer of employment, whether at home or at a distance, if he can show that he has reasonable ground for expecting to return to his former employment at an early

date ; but if an applicant cannot be said to have had an immediate prospect of returning to his former employers and would have had regular work in the employment offered benefit is disallowed (169/28 ; 12730/30 ; 13096/34).

272. *Subsidiary Employment.* The refusal of employment which is by its nature subsidiary to a main occupation is not ground for disallowance of benefit (591/25). *Per contra* the fact that acceptance of an offer of full time employment involves the surrender of a subsidiary occupation is not good cause for refusal of the offer.

273. *Personal reasons.* There may be personal reasons which justify the claimant in refusing employment. For example, in general, religious or conscientious convictions, if honestly held, may be regarded as adequate reason for not accepting employment (1790/25). Risk of moral dangers, if substantiated, would make the employment unsuitable for young women, but unreasonable apprehensions do not justify the refusal of employment. Thus, employment in military canteens was held to be not unsuitable for women (8766 and 704/25). Special considerations sometimes arise in the case of old or infirm claimants ; such cases are considered on their merits. The mere fact of parental objection has never been admitted to constitute just cause for leaving employment (5630/20) and does not constitute " good cause " for refusing employment (21325/31).

274. *Trade Union objections.* Unless it is shown that the conditions of the employment offered are unfavourable in any sense directly affecting the applicant, employment would not be regarded as unsuitable merely on the ground that an Association objected to its members working with a particular employer because of certain conditions attached to the employment. In Case No. 509/25 benefit was disallowed to claimants who were offered the standard rate of wages and hours of employment, but refused the employment because other conditions of work, as affecting trade unionists, were not acceptable to the Association of which the claimants were members. In Cases Nos. 4311 and 4893 an offer of employment was held to be suitable though the employer had been blacklisted by the trade union because he refused to conform to recognized district trade customs. Employment with an employer who changed the conditions from those of a " closed shop " to those of an " open shop " was held to be

suitable (2096/26). Employment was suitable even where an Association had an agreement with the employers' federation that its members should not work for an employer outside the federation (4268). Where a trade union is in dispute with an employer on any question, the employment is not unsuitable merely on that account unless, of course, it is shown that the vacancy is due to the dispute (1303/27).

275. *Conditions of employment other than wages and hours.* There may be conditions accompanying the employment, which justify a claimant in refusing it. For example, a requirement by the employer that a workman should belong to a particular trade union, at all events where there is no universal agreement on the subject in the industry, is a circumstance which the workman is entitled to regard as rendering the employment unsuitable (2039 and 2357/25); an objection to work with a non-unionist is not sufficient ground for holding that employment is unsuitable (414/26).

Refusal or failure to apply for Suitable Employment.

276. "Employment," within the meaning of Section 28 of the 1935 Act, is not limited to insurable employment (1239/31; 1195/27). It extends, however, only to employment within Great Britain. It does not include a contract of bailment such as the arrangement under which certain taxi-cab drivers ply for hire (22255/32).

277. When a person makes an application for benefit, he registers for employment in the occupation which he has ordinarily followed, or desires to follow, and gives particulars of his industrial experience. It is the duty of Employment Exchanges, in their capacity as placing agencies, to submit to employers who notify the Exchange of vacancies, persons registered for employment who appear suitable for those vacancies.[1]

278. The officer of the Ministry of Labour discharges the

[1] Regulation No. 4 of the General Regulations of 1910, made under Labour Exchange Act, 1909, provides that the officer in charge of an Exchange, in notifying applications for employment to employers and vacancies to applicants, shall undertake no responsibility with regard to wages, or other conditions, when supplying the employer or applicant, as the case may be, with any information in his possession as to the rate of wages desired or offered. It is for the claimant himself to accept or decline any vacancy notified to him by the Employment Exchange.

onus laid upon him (10352/30) when he shows that the claimant has refused or failed to apply for a situation notified in his usual employment or in employment for which he is registered with his approval at the employment exchange. The shifting of the burden of proof is discussed at length in Case No. 3146/31, which points out that, if the claimant suggests that the employment is unsuitable under Section 28 (2) of the 1935 Act, the officer must be afforded the opportunity of obtaining evidence on this point. If the employment is, in fact, unsuitable under Section 28 (2) (*b*) or (*c*) no disqualification is imposed even though this is not the overt ground of refusal (12133/34).

279. A claimant who refuses to have his particulars submitted in connection with a specific offer of suitable employment because of the absence of detailed information concerning the exact location of the work or the employer, is disallowed benefit ; if, when put into communication with the employer, the claimant has a valid objection to him, the offer can then be refused (6800/20). Where a claimant refused to apply for a vacancy notified to him because the minimum rate quoted was less than his experience entitled him to expect, he should have applied for the post, stating his experience (6871/20).

280. *Refusal to accept suitable employment.* By refusing a specific offer of suitable employment a claimant is disqualified for benefit, but he is entitled to know beforehand whether he will be paid the standard rate. If he enquires and the information is not forthcoming, benefit is not withheld even though it subsequently transpires that the employment would have been suitable (5839/29). A claimant is entitled to rely on the specific terms offered to him and his refusal must be judged by those terms and not by other terms that might have been discovered by enquiry, and while a claimant may refuse an offer of employment for a reason which is not justified it cannot be assumed that he would have persisted in his refusal if he had known the correct terms of the offer (9073/29 ; 12133/34).

281. A claimant who does not definitely refuse a specific offer, but endeavours to impose such conditions or conducts himself in such an obstructive, objectionable, or apathetic manner, that the employer is unwilling to engage him, is disallowed benefit if the employment offered is suitable (419 ;

1769; 1294/25; 19929/31). Tardy acceptance of a definite offer which results in the vacancy being otherwise filled amounts to its refusal (4379 and 6006), except where there are exceptional circumstances (7461).

Notification of a Situation.

282. The disqualification applies whether the situation is definitely offered or merely notified (19407/30). A claimant who had failed to inform the Employment Exchange that he had changed his address was held to have been notified of a situation on the day when particulars were delivered at the address originally given by him and not to have had good cause for his failure to apply (11919/30). A docker who failed to attend the recognized "calls" could not be heard to say that vacant situations had not been notified to him (5562/31) and, in the case of miners, the opening of the pit for an "optional shift," known to all the colliers, constituted notification of employment (7182/31).

Neglect of Reasonable Opportunities (see para. 254 (*c*)).

283. The word "neglect" implies an omission which involves a breach of duty or the lack of reasonable care or conduct. Neglect is not proved until the officer of the Ministry of Labour has shown that (*a*) suitable employment existed, (*b*) the claimant knew, or had means of knowing, how to seek such employment, (*c*) the claimant had a reasonable chance of getting such employment had he taken the opportunity and (*d*) the claimant did not in fact take reasonable steps to take advantage of the opportunity. For instance, a railway company recruited casual men twice a day at an Employment Exchange; a claimant who was late and missed the call, was held to have neglected to avail himself of a reasonable opportunity of suitable employment, and was disqualified for one day (11737/34).

Written Directions (see para. 254 (*d*)).

284. The written direction must in itself be indicative of the fact that it is given for the purpose of assisting a claimant to find employment. A printed form (U.I. 29) summoning a claimant for interview at the Exchange with a view to sub-

mission to a vacancy would be such (21154/31). A telegram in suitable words, is a written direction (10410/31). A claimant who neglected to make arrangements for communications of any sort to be notified to him whilst away from home was held not to have shown just cause for failure to carry out written directions (5860/35).

285. Claimants sent from depressed areas to a situation elsewhere are frequently given in writing a notice that officials at a given Employment Exchange near that situation will, if necessary, find further employment for them and that, if they lose their job, they should not decide to return home without first consulting the Exchange : this notice constitutes a reasonable written direction within the meaning of the Act (14695/31). A similar form of words to assist claimants to find suitable employment after a period on relief work has been held to be written directions (17210/32).

Duration of Disqualification.

286. In general circumstances the date from which a disqualification should run is limited to the date on which the refusal or failure took place, or some date subsequent thereto (6904/30 ; 15293/30). Under the provisions of Section 49 (2) of the 1935 Act,[1] a claimant who was in receipt of, or entitled to, benefit when the question arose, continues to be so treated, if he is otherwise entitled to benefit, until the Court of Referees gives a decision on the matter. In such cases a disqualification does not operate from any date prior to that of the Court's decision (11237/34), and usually runs from the first day of the benefit period following the day of decision (17210/32). The duration of the period of disqualification is " six weeks or such shorter period as may be determined " by the Statutory Authorities. If it is definitely established that the duration of the employment is limited to a period shorter than six weeks the period of disqualification may be, but is not necessarily, similarly limited (1048/31). If the duration of the employment lost is not definitely established, such as in work that is admittedly casual, some regard may be paid to the usual conditions of such work (5562/31).

287. Where two situations are notified and refused practically at the same time the two periods of disqualification may

[1] Page 222.

run concurrently (2092/31). If, during the period of disqualification, other offers are refused fresh disallowances may be imposed subsequent to the first (6904/30 ; 9944/31).

288. If, although the employment was suitable, acceptance of the situation would have involved real hardship, or if the failure to apply promptly was excused by adverse circumstances, the Statutory Authorities may decide to reduce the period of disallowance.

XIII.—OTHER DISQUALIFICATIONS

A.—Inmates of Institutions[1]

289. A claimant is disqualified for receiving benefit while he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds. This disqualification does not apply where the claimant is an inmate of an institution used as a place of residence for workers, and proves that he was an inmate of the institution immediately before he became unemployed, and that during the time when he was employed he paid the whole or a substantial part of the cost of his maintenance as such inmate. A person who is merely taken to a police station and released the same day either on bail or because he is not charged with an offence for which he can be detained in custody, does not become an inmate of a prison or public institution (889/27). A person who was detained in custody was regarded as an inmate (231 (1911 Act); 1849/27). A person living in an institution of his own free will and in respect of whom there is no grant for maintenance from public funds is not regarded as an "inmate" within the meaning of the Act (1898/20). A person who enters a casual ward on one evening and leaves the next morning is not disqualified for more than one of the two days (7816/30; 18565/31).

B.—Claimants in Receipt of Health Insurance Benefits[2]

290. Insured contributors in receipt of any sickness or disablement benefit under the National Health Insurance Acts, 1924 to 1932, are disqualified for receiving unemployment benefit. The fact that an insured contributor is under medical treatment from his panel doctor, but is not in receipt of health benefit, is not in itself a disqualification for unemployment benefit; he must, however, show that he is

[1] Section 29, page 212. [2] Section 30 (1), page 212.

" capable of work." After a period of sickness during which a claimant is in receipt of health benefit, he may be required to furnish to the Local Office a " declaring-off " certificate signed by the panel doctor, or a note from his Approved Society stating that such a certificate has been received and that he is not in receipt of health benefit.

C.—Resident Outside Great Britain[1]

291. Subject to the provisions in the Act relating to reciprocal arrangements with Northern Ireland, the Isle of Man and the Channel Islands, a claimant is disqualified for receiving benefit while he is resident, whether temporarily or permanently, outside Great Britain. " *Is resident* outside Great Britain " is not equivalent to " *is* outside Great Britain," the former involving a definite, even if temporary change of residence (6315). A seaman who, between voyages in a British ship, resided at Antwerp was held to have paid valid contributions and to be entitled to benefit while in England.

292. A seaman employed under a flag other than British is " resident temporarily " outside the United Kingdom until he returns (9520/31). If, however, he sailed from this country on a British ship he cannot be regarded as resident outside the United Kingdom while being cared for or repatriated under the terms of the Merchant Shipping Act (60/32).

[1] Section 30 (2), page 212.

XIV.—BENEFIT: MISCELLANEOUS PROVISIONS

A.—Period for which Benefit may be Received

293. All claimants who have satisfied the conditions for the receipt of benefit and are free from disqualification may receive 156 days (26 weeks) of benefit in the benefit year.[1] Benefit may be paid beyond 26 weeks in the benefit year if at the beginning of the benefit year at least five insurance years[2] have elapsed since the beginning of the insurance year in which he first entered insurable employment and paid contributions. If five consecutive insurance years elapse without the payment of any contributions, a claimant is treated as a new entrant into insurance when contributions again begin to be paid, and past contributions cannot count for additional days of benefit.

294. The number of days of benefit which may be paid to a claimant, in addition to the period of 26 weeks to which he is otherwise entitled, depends upon both the number of contributions paid and the amount of benefit received in the benefit years which ended in the last five complete insurance years. The additional days of benefit are computed by allowing three days for every five contributions paid, less one day for every five days benefit received (Section 31 (2)).[3]

295. A person who has received the maximum number of days benefit in his benefit year may not receive further benefit in a subsequent benefit year until he has requalified by the payment of ten contributions. In later benefit years he may be entitled to 26 weeks of benefit and additional days calculated in accordance with the above rule.

296. A person ceases to be qualified for additional days if no contributions have been paid in respect of him during five consecutive insurance years previous to the beginning of any

[1] For definition of benefit year see Section 32 (1), page 214.
[2] For definition of insurance year see Section 113 (p), page 237.
[3] Page 213.

benefit year. The years in question need not be those *immediately* preceding the beginning of any benefit year. For a person to re-qualify for additional days the payment of contributions must be resumed and from the date of such resumption the person is treated as having first become an insured contributor. He thus cannot qualify till five insurance years have elapsed since the date of the resumption of the payment of contributions (4437/35).

B.—Commencement of Period and Antedating

297. Except as otherwise provided by Regulations a continuous period of unemployment is not deemed to commence until the date on which the insured contributor makes application for benefit in the prescribed manner.[1]

The " prescribed manner " in which an application for benefit must be made is " such manner as the Minister may direct or may for good cause accept as sufficient in any special case " (S.R. & O., 1920, No. 2112, as amended),[2] and application may be made, with the consent of the Minister through his authorized officer, on any day, whether or not the claimant on that day fulfils the conditions for receipt of benefit (4033/35).

A claim for benefit (which includes an application for benefit) subsists for each day, within a continuous period of unemployment, in respect of which the claimant furnishes such evidence of title to benefit as may be required under the Benefit Regulations, 1920, as amended.[3]

Antedating.

298. Regulations[4] have been made for authorizing the substitution of some earlier date for the date on which any claim has been made. Such substitution is commonly referred to as " antedating " the claim.

The question whether a claim shall be antedated is a " question " arising in connection with the claim and is dealt with by the Statutory Authorities under Sections 43–45, 1935 Act, and under the Benefit Miscellaneous Provisions Regulations, 1934 (11116/34).[5] A decision on this question does not decide

[1] Section 35 (4), page 215.
[2] Page 258.
[3] Page 258.
[4] S.R. & O., 1934, No. 1163, paras. 3–6, page 255.
[5] Page 255

the " issue " whether the claimant satisfied all the conditions for the receipt of benefit throughout the whole period between the earlier date and the date of the claim (11241/34).

299. A claimant is entitled to have his claim antedated if he proves, to the satisfaction of the Statutory Authorities,

(*a*) that at the earlier date he was in all respects qualified to make a claim, or in a position to furnish proof of the matter, and

(*b*) that, throughout the whole period between the earlier date and the date of the claim, there was good cause for delay in making the claim or in furnishing such proof.

To show that he is " in all respects qualified " to make the claim a claimant must be in a position to furnish proof of the declarations he makes on the forms on which he is required to sign for the purpose of making his claim in the prescribed manner. He is not required to furnish proof of the fulfilment of ALL the conditions and of the absence of ALL the disqualifications (15158/31).

300. In order that a claim may be antedated to a particular date a claimant need only show that he was in all respects qualified to make the claim on that date (not necessarily on the actual date of claim or on all the intervening days) and that throughout the period between the particular date and the date on which he actually signed there was good cause for delay in making the claim (11116/34; 4033/35).

301. Conditions under which a claimant can show good cause for failing to make his claim are set out in general terms, with particular illustrations, in Decision 788/31. He must show

(*a*) that he was prevented by circumstances over which he had no control from attending at the Employment Exchange to make a claim, or

(*b*) that under the circumstances existing at that time it was reasonable that he should not so attend.

302. A claimant does *not* show good cause (*a*) when he deliberately refrains from the discharge of his statutory duty either for his personal convenience or because he does not anticipate deriving immediate or future advantage from claiming, or because of his own negligence, thoughtlessness or in-

difference (10427/30; 11513/30; 15453/31; 9983/34; 10254/34): (*b*) by alleging his ignorance of his rights or duties (417/29; 1011/28; 1213/29; 1999/33) because if he is in ignorance or doubt, he should make enquiry of those who are competent to give official information: (*c*) by alleging his belief that the necessity of his attendance at the Exchange had been or would be obviated by arrangements made by some other person (18031/30).

Where, however, to the knowledge of the claimant, arrangements had been made for taking informal claims, but a new Trade Union official, through ignorance not due to negligence, had failed to comply with the arrangements, the claimant was held to have shown "good cause" (6216/31, revised).

303. Paragraph 4 of the Regulations provides for the case of the insured contributor who immediately prior to making an application for benefit was unemployed but incapacitated for work by sickness. Such an applicant would not have been "in all respect qualified to make the claim" at an earlier date by reason of the fact that because of his sickness he would have been unable to fulfil the Third Statutory Condition (capable and available for work).

In such a case if the application for benefit is one which would *commence* a continuous period of unemployment the insured contributor is entitled to have some earlier appropriate date substituted for the date of the application if he proves:—

(*a*) that on that earlier date he was unemployed but incapacitated for work by reason of some specific disease or bodily or mental disablement, and

(*b*) that throughout the whole of the period between the earlier date and the actual date of the application there was good cause for delay in making the application.

He would not be qualified for benefit for the earlier period, but, by antedating the claim, the earlier period would serve for the waiting week, see paragraph 305. The earlier period cannot count towards the waiting week if the claimant was also disqualified otherwise than by reason of being incapable of work, e.g., by reason of a stoppage of work due to a trade dispute (9497/31).

304. A further type of case is that of the insured contributor who makes an application for benefit which commences a benefit year and who proves in the manner prescribed that he

has been continuously unemployed since some date earlier than the date on which the application is made and that that period of continuous unemployment is current at the date of such application. By virtue of paragraph 5 of the Benefit Miscellaneous Provisions Regulations an earlier date may be substituted for the actual date of the application for the purpose of computing the first week of a continuous period of unemployment. Regulation 5, however, only affords assistance to claimants who have not, during the relevant period, been "persons desiring to obtain unemployment benefit" within the meaning of the Benefit Regulations, 1920.[1] The type of case the Regulation covers is that of the claimant who has not been able to protect himself and to prove continuous unemployment in the usual way by signing the Unemployed Register, e.g., an insured contributor who has exhausted his benefit rights in a benefit year (5361/35).

C.—Waiting Period

305. Benefit is paid in respect of each week after the first six days of continuous unemployment.[2] The principle of a waiting period has been a permanent feature of the Unemployment Insurance Scheme since its inception in 1912. Days cannot count for the purpose of the waiting period unless they are continuous and unless the claimant fulfils the statutory conditions and is free from disqualification on those days. The only exceptions to this rule are in the cases of physical incapacity for work (see para. 303) and in the making of a claim which commences a benefit year in a case where a continuous period of unemployment is already current. (Regulation 5 of S.R. & O., 1934, No. 1163.)[3]

D.—Continuous Unemployment

306. The rule as to continuity of unemployment is as follows[4]:—

(1) any three or more days of unemployment, whether consecutive or not, within a period of six consecutive

[1] S.R. & O., 1920, No. 2112, page 258.
[2] See Section 31 (6) page 214.
[3] Page 256.
[4] See Section 35 (1) page 215.

days are treated as a continuous period of unemployment; and

(2) any two such continuous periods of three or more days are treated as one continuous period of unemployment if they are separated by not more than ten weeks.

307. The first part of this rule may be referred to as the "Three-in-six" part of the rule. The following points may be noted.

(1) The six continuous days do not include Sundays.

(2) The period of six consecutive days is not confined to the six consecutive days which form a pay week, or a calendar week.

(3) Any three or more days of unemployment occurring within a period of any six consecutive days constitute a continuous period of unemployment, whether the three days are consecutive or not, and *irrespective of the sequence* of the days of unemployment and the days of employment.

(4) Days of unemployment which cannot be linked up with other days of unemployment, either backwards or forwards, so as to form part of a continuous period of three days or more within six consecutive days, do not count either for the waiting period or for benefit. Such days are referred to as "non-effective days."

(5) If a claimant fails to prove unemployment for four or more *consecutive days* it is impossible for days of proved unemployment occurring *before* and *after* the four or more days of employment to be joined together so as to form a continuous period *under the three-in-six part of the rule.* In the case of alternating periods of unemployment and employment, all of which are of equal length, the periods of unemployment will always satisfy the three-in-six part of the rule.

308. Under the second part of the rule, any two periods of "continuous" unemployment (under the three-days-in-six part of the rule) may be linked together, so as to form one continuous period, provided that not more than 60 days of failure to prove unemployment *and* non-effective days come between the two periods.

The points to be noted in this connection are:—

(1) each of the two periods to be linked together must

be in itself a " continuous " period; that is, a period of three or more days of unemployment occurring within six consecutive days;

(2) an interval of more than 60 days of failure to prove unemployment (and non-effective days, if any) between two continuous periods under the three-in-six part of the rule, breaks continuity of unemployment, and a fresh waiting period is thereafter required;

(3) this interval between the two periods is reckoned from the *last* day of the earlier period up to the *first* day of the later period, both days exclusive.

E.—Days of Unemployment

309. The expression " day " is defined[1] for the purpose of unemployment insurance as " a period of 24 hours from midnight to midnight or such other period of 24 hours as the Minister may for any general or special purpose prescribe." Benefit is not payable in respect of any period of less than one day.[2]

310. In computing continuous periods of unemployment, no account is taken of any time during which the insured contributor fails to fulfil the second, third or fourth statutory conditions, or is disqualified for the receipt of benefit under the provisions of the Act, unless he proves that his failure to fulfil the condition, or disqualification, was due to incapacity for work arising from some specific disease or bodily or mental disablement.[3] Thus days of failure to fulfil the statutory conditions (other than the first) or days of disqualification, if not due to incapacity for work, do *not* count as days of unemployment for continuity purposes. But days of failure to fulfil the conditions of the Anomalies Orders do count as days of unemployment for continuity purposes.

311. No account is taken of Sundays for purposes of unemployment benefit.[4]

F.—Effect of Night Work Regulations, 1924

312. The Night Work Regulations, 1924,[5] determine how a period of unemployment begun on one day and extending over midnight into another day shall be treated.

[1] Section 113 (1) (g), page 236.
[2] Section 31 (7), page 214.
[3] Section 35 (3), page 215.
[4] S.R. & O., 1923, No. 533, page 258.
[5] Page 258.

By the direct application of these provisions, a workman may be found to have been unemployed on one or other of two days during the night between which he is employed, and benefit is payable in respect of the day ruled to be of unemployment (6624/29).

313. It has been determined, in connection with the application of these provisions, that where a person is allowed a break in the course of his employment, in order to take his meals on his employer's premises, he remains under the control and direction of the employer, and continues to be employed (5240/29); for it has been adduced that "there may be a break in the course of the employment . . . though the currency of the contract is unbroken and the legal nexus is subsisting" (5629/29). Where, however, a person leaves the premises at which he is employed in order, during a recognized break for meals, to take his meal elsewhere, and is during that break beyond the control of the employer, he ceases to be employed from the time he leaves the premises until he returns thereto; that "absence on leave for the workman's own purposes is an interruption of the employment" (5629/29).

G.—Allowance of Benefit

314. Subject to proof of unemployment and, if necessary, the serving of the waiting period, benefit is payable following a decision of the Insurance Officer or the Court of Referees allowing the claim.[1] The fact that an appeal by the Insurance Officer to the Umpire may be pending does not affect the claimant's right to benefit in the meantime (except in trade dispute cases). The only case in which benefit is not payable immediately following a decision of a Court of Referees to allow, is where an appeal is brought by the Insurance Officer on the ground that the claimant ought to be disqualified under Section 26[2] of the Act and provided the appeal is lodged within twenty-one days of the date of the Court's decision.

315. Where benefit is paid in pursuance of a favourable decision of a Court of Referees it is not recoverable from the claimant even if the Umpire, or the Court on a subsequent re-hearing, reverses the decision.

[1] Section 49 (1) and (4), page 222. [2] See page 211.

In cases where the Court of Referees has allowed the claim and the Umpire subsequently disallows it, benefit is payable for each day up to and including the day before the date of the Umpire's decision.

Suspension of Benefit.

316. When a claim has been allowed by the statutory authorities benefit is paid in respect of all proved days of unemployment. If owing to changed circumstances doubt arises, the claim may be referred again at any time to the Court of Referees.

317. If at any time a question of doubt arises on a current claim requiring reference to a Court of Referees, further payment will ordinarily depend upon the decision of the Court. Section 49 (2) provides, however, that benefit shall be continued if it was paid or was payable in respect of any day or days in the previous pay week *and* if the question of doubt relates to possible disqualification under Section 28 of the Act. Where these conditions obtain benefit is payable up to but not including the date of the Court of Referees' decision, or the date of operation of a decision under Section 28, whichever is the later (11237/34). (See also para. 233.)

Periods of Disallowance and Disqualification.

318. The period for which a claimant is disentitled to benefit by reason of failure to satisfy the statutory requirements is determined by the statutory authorities in the same way as his title to benefit.

There is nothing to prevent the statutory authorities from imposing a further disallowance during the currency of a previously imposed period of disallowance; decisions show that the practice has been followed (5786). Different considerations arise according to the condition which is not satisfied or the disqualification which is incurred. According to circumstances the periods of disallowance or disqualification may be consecutive or concurrent (2092/31; 9944/31).

H.—Benefit Procedure

Application for Benefit.

319. Unemployment benefit is obtainable by insured contributors in one of two ways:—

(1) direct from an Employment Exchange or other Local Office of the Ministry ; or

(2) through an Association which has made an arrangement with the Ministry of Labour.

Where the Local Education Authority administers unemployment benefit for persons under 18, and performs duties in connection with dependants benefit claimed in respect of boys and girls between the ages of 14 and 16, the Juvenile Employment Bureaux of the Local Education Authorities act as Local Offices of the Ministry.

320. In order to claim benefit an insured contributor 18 years of age or over is required to lodge his Unemployment Book at an Employment Exchange or other Local Office of the Ministry, where he will receive in exchange a receipt card U.I.40 ; and to make a claim on the prescribed form. In the case of an insured contributor under the age of 18 the Unemployment Book is returned by the employer direct to a local office of the Ministry. The contributor should ask his employer for the card U.I.40J which is contained in the pouch of the Book, and should present this at a local office.

321. The lodging of the Unemployment Book may be dispensed with by the Minister, where he is satisfied that the insured contributor is unable or has omitted, for good cause, to produce it. Ordinarily the Unemployment Book will have been handed to the insured contributor on termination of employment by his last employer. An arrears book or emergency book cannot be accepted for this purpose. If a claimant cannot produce his unemployment book he is required to show good cause for his failure. If the claimant has not been able to obtain the book from his last employer the Local Office will take steps to obtain it. A claimant may also be required to produce his Health Insurance contribution and record cards, and to furnish evidence that he is not in receipt of sickness or disablement benefit or disablement allowance under the National Health Insurance Act.

322. Certain modifications of this procedure are made where, owing to holidays or the closing down of a large factory, large numbers of workpeople wish to claim benefit, and it is not practicable to arrange at short notice for their attendance at the Local Office on the first day of unemployment.

323. A claimant who has already made a claim for benefit

may be required to renew his claim and to furnish fresh particulars as to his last employment, if he has not attended a Local Office on any day on which his attendance was not excused. This renewed application is known as a "renewal claim."

Application for Dependants Benefit.

324. If a claimant wishes to claim additional benefit for a dependant he must make a separate application and in order to enable the authorities to decide if the person is a dependant the claimant may be required to give full details as to the identity, place or residence, occupation and relationship to the applicant of the dependant; his position under the Unemployment and Health Insurance Acts; his available sources of income and the amounts contributed by any person towards his maintenance.[1] In the case of an adult dependant the applicant must also furnish a declaration, signed by the dependant, stating his date of birth and verifying the particulars given.

Notification to Employers.

325. As soon as an application for benefit is made or renewed, a form (U.I. 85) is addressed to the claimant's last employer, requesting him to confirm the particulars furnished by the claimant when applying for benefit, to give the reasons why the employment terminated, and to state whether wages or any payment by way of compensation for loss of employment were paid in addition to the wages earned up to the date of termination of employment. The Minister has power to make Regulations requiring employers to answer inquiries of this kind. No such Regulations have, however, been made and the Department is dependent on the co-operation of employers in the matter. When workers are discharged in a batch one form (U.I. 85A) may be sent to the employer covering all the men concerned. Special arrangements are made in the case of short-time workers, to avoid the repeated issue of the forms.

Where the employer's reply indicates possible ground for disallowance of the claim, the precise terms of the reply are communicated to the claimant, who is asked to furnish any observations on the employer's statement which he desires to

[1] S.R. & O., 1934, No. 1163, para. 1, page 255.

make. The claim, together with the employer's reply and any counter-statement made by the claimant, is referred to the Court of Referees if the Insurance Officer is not satisfied that it should be allowed.

326. If a false statement is made, either by the claimant or his employer, for the purpose of obtaining or enabling the claimant to obtain unemployment benefit, the person concerned is liable on summary conviction to imprisonment for a term not exceeding three months, with or without hard labour. The Ministry has no power to prosecute an employer who makes a false statement to the prejudice of an applicant's claim for benefit[1]; the claimant's remedy would lie in appropriate cases in an action for libel.

Proof of Unemployment.

327. Benefit is payable only if the claimant proves continuous unemployment, and for that purpose he must attend personally at the Local Office at which his book is lodged, (or in certain cases of indirect claimants at the Branch of the Association), and sign a register.

328. Under Regulations[2] made in 1934, a claimant must attend at the Local Office at which he made his last application for benefit or at such other office as the Minister may approve. This provision enables the Minister to withhold approval where no sufficient reason can be shown for desiring to prove unemployment at an office other than the office of application, or to transfer a claim from one office to another.

For example unemployed men on a "hunger march" or other demonstration might find that they could not prove unemployment merely by attending local offices on the line of the march. Arrangements can, however, be made for the

[1] It was held in Collins *v.* Whiteway: [1927] 2 K.B.378 that communications in writing made by an employer to and at the request of a Court of Referees (acting under the provisions of Section 11 of the principal Act), relating to a person formerly employed by him who is an applicant for benefit, are made upon a privileged occasion. Having regard to the duties of the Court of Referees, such privilege is "qualified." An action for libel brought by such a person against his former employer in respect of these communications will not succeed, unless the plaintiff is able to prove malice on the part of the defendant.

[2] Benefit (Amendment) Regulations, 1934. (S.R. & O., 1934, No. 611).

temporary transfer of a claim from one office to another if adequate grounds are shown.

329. The frequency of attendance depends ordinarily upon the distance of the Local Office from his place of residence. The regulations[1] provide that if he lives not more than two miles away, he must attend on every working day; if more than two but not more than four miles away, on alternate days. In the case of persons living more than four miles away the Minister may direct him to attend at longer intervals, or to furnish such other evidence of being unemployed as may be required. A claimant resident more than four miles but less than six from the nearest Local Office, is required to attend once each week on Friday to sign the Unemployed Register. In addition he is required to furnish proof of unemployment in respect of other days of the week, and for this purpose he is supplied each week with a form, which he is required to complete and return to the Local Office. Payment of benefit is made on the day of attendance.

330. In the case of persons resident more than six miles by ordinary road from the nearest Local Office, attendance at the Local Office, after the first attendance for the purpose of making a claim, is excused, and proof of unemployment is accepted and payment of unemployment benefit is made by post.

331. In ordinary circumstances Local Offices of the Ministry of Labour are open from 9 a.m. to 12 noon from Monday to Saturday, and from 2 p.m. to 4 p.m. from Monday to Friday, for the purpose of taking claims for benefit and proof of unemployment.

332. Congestion and the formation of queues at Local Offices are avoided by dividing the claimants into groups, members of each group being allotted a given interval within the prescribed hours in which to sign the unemployed register. Each applicant is informed on Form U.I. 40, which is handed to him when he makes a claim, of the time of attendance allotted to him. The time of signing for a particular group is changed periodically. The time of attendance is fixed so as to avoid as far as possible interference with the claimant's chances of finding employment. If the time arranged does not avoid such interference the claimant may report the matter to the Local Office.

[1] See S.R. & O., 1920, No. 2112, as amended, Section 4, page 259.

333. Where a claimant fails to attend at a Local Office at the specified time he is allowed to sign when he does attend on the same day, provided it is within the hours during which the office is open for signature and provided he gives a reasonable excuse for his failure to attend at the proper time. Reasonable evidence that the cause of failure to attend was an appointment with a prospective employer would of course be regarded as a satisfactory excuse. If the Exchange Officer is not satisfied, the claimant may be required to make a separate application for benefit for that day (see para 338). The unemployed register forms part of the claim unit, and contains a note of the liabilities implied by signing. The claim unit remains the property of the Department and cannot be taken away by the claimant.

334. Port Transport Workers who are casually employed, are engaged by a system of " calls " which usually take place twice a day. In view of this method of engagement, special arrangements are made whereby they are required to prove unemployment after each of the calls.

335. An unemployed person who is not qualified for benefit may register for employment, and may continue to prove unemployment. It is in the interests of the insured contributor that he should continue to attend a Local Office while unemployed, even during a period for which benefit is not payable, so that

(*a*) he may be informed of any suitable vacancy reported to the Local Office ;

(*b*) his claim for benefit may be automatically reviewed when the period of disallowance or disqualification has expired ; and

(*c*) his title to benefit may not be in doubt if the original decision is reversed on appeal or on new facts being brought to the notice of the statutory authorities.

Excuse of Attendance.

336. The foregoing provisions are the normal requirements. Owing to the exceptional amount of unemployment the Minister has exercised his powers under Section 4 (1) (*d*) of the Benefit Regulations,[1] and has in many instances reduced the number of attendances each week, notably in

[1] Page 260.

large industrial centres. The extent of the modification varies according to local conditions. On each occasion the claimant must sign a declaration that he has fulfilled the conditions since his last attendance.

337. A claimant who wishes to go to another district in search of employment may apply for a special card, known as a "Vacant Ticket," Form U.I. 90. The claimant must say to what district he is going and must satisfy the Local Officer as to his *bona fides*. A claimant with a vacant ticket may attend the Local Office in the district where he is looking for work and present the ticket for endorsement. The ticket must be retained until the claimant returns to the Local Office, where his claim is lodged. It can then be submitted as evidence of unemployment.

Excuse of signature.

338. If a claimant fails to attend and sign the register as directed by the Minister, he may apply for benefit for that day. For this purpose he will be required to complete a special form and return it to the Local Office. The form must be confirmed by two signatories, who are either householders in the district, or employees in the same occupation as the claimant, but who are not themselves applicants for unemployment benefit. A decision as to whether or not the claimant has good cause for failure to attend is given by the statutory authorities[1] in the same way as the question of antedating (paras. 298–304). The function of the Minister is confined to directing at what stated intervals attendance is required; the exercise of this function results in excuse of "attendance" not in excuse of "signature."

Payment of Benefit.

339. Benefit is paid on Friday in each week, and is computed up to and including the previous Wednesday, or to the last day of proved unemployment if earlier. At some Exchanges where there are large number of claimants, payment is made on Thursday as well as Friday. Claimants paid on Thursday receive benefit due up to and including the previous Tuesday. Special arrangements are made for holiday periods.

[1]Benefit (Amendment) Regulations, 1934; see para. 4 (1A), page 260.

340. The claimant is required to sign a form of receipt for benefit paid. The receipt is also a declaration that he fulfils the statutory conditions on the days in respect of which payment is made. The receipt is exempt from stamp duty. Unless there is hardship or other special circumstances, a claimant who fails to attend for payment at the proper time is not paid until the following week. Where a claimant is unable to attend the Local Office for payment, owing to sickness or other unavoidable cause, benefit may be paid to a deputy authorized by the claimant.

341. Regulations[1] have been made for the appointment of a person to receive sums payable in respect of an insured contributor who becomes of unsound mind or dies.

[1] S.R. & O., 1924, No. 1579.

XV.—DEPENDANTS BENEFIT

342. An insured contributor may claim additions to the weekly rate of benefit in respect of certain classes of dependent persons. Dependants benefit is an addition to the ordinary benefit and is not payable unless the claimant is in receipt of ordinary benefit. A separate claim must, however, be made by the insured person in respect of dependants, and it is determined by the statutory authorities in the same manner as an ordinary claim. A claim cannot be made in respect of more than one adult dependant; there is no limit upon the number of dependent children, in respect of whom an additional payment may be made.

343. The rate for an adult dependant is 9/– weekly and for each dependent child 3/–[1] weekly. Young men and young women (18 years of age and under 21) who are in receipt of an increase of benefit in respect of dependants are entitled to ordinary benefit at the same rate as claimants who are 21 years of age or over (Section 36 proviso).[2] Thus a young man of 20 entitled to claim an increase of benefit in respect of a widowed mother, would receive 26/– weekly, although the single benefit rate for his class is 14/– weekly.

344. No increase of benefit is payable for any period before the date on which the insured contributor makes application *in respect of the dependant*, in the prescribed manner (Section 39 (2)). Under the Regulations,[3] however, a claim for dependants benefit may be antedated if good cause is shown for the delay in making the application (see also paras. 298–304).

Dependent Children

345. An insured contributor may claim additional benefit in respect of any dependent child under the age of 14 years

[1] As from 31st. October 1935.
[2] Page 216.
[3] Para. 2 of Benefit Miscellaneous Provisions Regulations, 1934, page 255.

who is maintained wholly or mainly by him. A claim may also be made in respect of a child between the ages of 14 and 16 years—

(*a*) who is maintained wholly or mainly by him and either

(i) is under full time instruction at a day school, or

(ii) is unable to receive such instruction by reason of some physical or mental infirmity, or

(*b*) who is while unemployed, wholly or mainly maintained by him, and satisfies the statutory conditions (except the first statutory condition and that part of the second statutory condition which requires a claimant to make a claim in the prescribed manner).

346. A claim cannot be made in respect of dependent children over 16 years of age, unless the conditions laid down in Section 38 in respect of adult dependants are satisfied. An insured contributor is entitled to claim benefit in his own right at the age of 16, or, if he is not entitled to benefit, to claim unployment assistance.

347. As defined by Section 37[1] a "dependent child" includes any younger brother or younger sister of the claimant. The expression "child" includes a stepchild, adopted child, or illegitimate child. The term "adopted child" is not used as a term of precision and means a child whose parents or parent have expressly or impliedly transferred parental rights and duties in respect of the child to another person who has assumed them (1140/28). The fact that a claimant maintains a child is important in determining whether adoption is established; but adoption cannot be inferred from maintenance alone; it must be established that the claimant has put himself *in loco parentis*, and that the arrangement is not temporary (1151/28). Where a housekeeper and her child have resided continuously with a claimant for not less than five years and, during that period, the child has been maintained by the claimant, an inference may be drawn that the position is established and that the claimant has permanently adopted the child (1189/28; 4910/28). The illegitimate child of a woman, born before her marriage to an applicant, and of which he is not the putative father, is neither the stepchild

[1] Page 216.

nor the illegitimate child of the applicant, although it may, in the circumstances, be his adopted child (950/28).

Maintenance.

348. The onus lies upon an applicant to prove that he is wholly or mainly maintaining his children, and he must prove it affirmatively, and where both the applicant and his wife are earning, he must prove that he, and not his wife, is wholly or mainly maintaining their children (40/29). The cost of maintenance of a child under 1 year of age may be assessed at 1/– per week, between the ages of 1 and 4 at one quarter the sum required for the maintenance of an adult (4274/35), and between the ages of 4 and 14 at one half the sum required for the maintenance of an adult (2091/29). The sum ordered to be paid by a Court of Summary Jurisdiction is no criterion of the cost of maintenance (17616/31).

Children under full time instruction (14–16 *years of age*).

349. In the case of children between 14 and 16 years of age dependants benefit is payable in respect of children maintained wholly or mainly by the claimant, who are "under full time instruction at a day school." Section 37 (4) (*d*)[1] provides that "the expression 'day school' does not include an authorized course, or a training course or course of instruction approved by the Minister in his case." It follows, therefore, that where the Minister has approved attendance of a person between 14 and 16 years of age at a course under Section 24 (2)[2], that person cannot be treated as a dependant except under Section 37 (2) (*c*), as an unemployed child who satisfies the statutory conditions for the receipt of benefit—see paragraph 352 below.

350. The Umpire has held that instruction must be the primary object of the institution attended by the child and if the primary object is not educational the establishment cannot be regarded as a day school for the purpose of the claim (4390/29). Thus the office of a commercial firm which in the ordinary way of business accepted orders for typewriting and undertook the training of a child as a stenographer could not be regarded as a day school because its primary object was not educational (4390/29). The word "instruction" includes

[1] Page 217. [2] Page 210.

vocational training and commercial schools and home training centres have been held to be day schools. The instruction must be in the day time as the term " day school " does not include " evening schools." The unit of time for determining whether a child is under " full time instruction " is not a day. It is necessary to consider the number of days in the week and the number of hours in the day in which the school is open and in which the child is required to attend (19237/31). Attendance at a Day Continuation School for fifteen hours spread over three days in a week, which was the maximum permitted by the Education Authority, has been regarded as full time instruction (12045/30).

Children unable to receive full time instruction by reason of physical or mental infirmity (14–16 *years of age*).

351. This class does not include a child who is unable to attend school by reason of *temporary* illness. The Act (Section 37 (2) (*b*)) contemplates infirmity of more than a transitory nature, which causes the child to be in a condition in which it cannot receive full time instruction in a day school, e.g., a child who by reason of infirmity has never been able to attend school (2188/35).

Unemployed Children (14–16 *years of age*).

352. It must be shown that while unemployed the child is maintained wholly or mainly by the claimant. This means that the child is so maintained outside the period of employment. When a child between the ages of 14 and 16 was in employment for seven months during which he mainly maintained himself, but was before such employment mainly maintained by the claimant, a claim in respect of the child was allowed as from the day following the termination of such employment (1886/35).

353. It should be noted that the unemployed child between 14 and 16 years of age must be a person in whose case the statutory conditions for the receipt of benefit (with the exceptions referred to in para. 345) are fulfilled, or would be fulfilled if he were an insured contributor. This question is determined by the statutory authorities.

The child can satisfy the Second Statutory Condition only by *proving* a continuous period of unemployment, i.e., by signing the unemployed register at a Local Office. No part

of a period of school attendance can be included in a continuous period of unemployment as the child is not then available for work (2370/35).

Classes of Adult Dependants

354. *Wife.* A husband may claim in respect of his lawful wife who is either living with him or is being wholly or mainly maintained by him.

355. *Resident Housekeeper.* A man or woman may claim in respect of a female person residing with the claimant, and wholly or mainly maintained by the claimant and having the care of the claimant's dependent children. The Act does not limit the class of persons who may satisfy the conditions and it may, for example, include a claimant's mother or mother-in-law or his daughter, under 14 years of age, who has been exempted from school attendance to take charge of the claimant's younger children (3326/28 ; 824/29). The housekeeper must have substantial, but not necessarily exclusive, care of the children.

356. *Non-Resident Housekeeper.* A man or woman may claim in respect of a female person who is not residing with the claimant but is employed by the claimant to assist in the care of the claimant's dependent children and to whom the claimant pays not less than nine shillings a week for her services. The housekeeper may be said to " assist in the care " of the children although her services may include some work of personal advantage to the claimant. Remuneration includes any form of remuneration for services, such as board, food, accommodation, etc. (4469/30). The fact that remuneration was increased to satisfy the requirements of the Act does not affect the claimant's right to increase of benefit (9145/31).

357. *Husband.* A wife may claim in respect of her husband if he is prevented by physical or mental infirmity from supporting himself. The infirmity which prevents the husband from supporting himself must be of a permanent nature but need not amount to total incapacity (2004/30 ; 18332/30).

358. *Father or Stepfather.* A man or woman may claim in respect of a father or stepfather who is unable by reason of physical or mental infirmity to support himself and who is residing with and wholly or mainly maintained by the claimant.

359. *Widowed Mother.* A man or woman may claim in respect of a widowed mother, widowed step-mother, mother who has never been married or mother whose husband is permanently disabled and unable to work (if the mother or step-mother is living with and wholly or mainly maintained by the claimant). Widowhood may be presumed if for seven years no news of the husband has been received and if such enquiries as the circumstances naturally suggest have been made (2656/28).

Maintenance of Adult Dependants.

360. When the applicant and his wife live together it is immaterial whether she is being maintained wholly or mainly by the applicant (4010/28). In most other classes of case the claimant is required to show that he is wholly or mainly maintaining the dependant. In order that the question may be determined the applicant is required, by Regulation 1 of the Benefit Miscellaneous Provisions Regulations, 1934,[1] to give details of the available sources of income of the dependant and the amounts contributed by any person towards his maintenance.

361. The circumstances in which a claimant is deemed to be "wholly or mainly maintaining" another person are governed by Section 39 of the Act, the Regulations made thereunder and Umpire's decisions.

The effect of Section 39 (1) is to enable a claimant to be treated as "wholly or mainly maintaining" another person even though, while unemployed, the amount he contributes does not suffice to maintain that other person either wholly or mainly (4661/30). The claimant must, however, contribute when unemployed at least the amount of the increase of benefit received. If there is an addition to the family the increase is not payable unless and until the claimant has actually maintained the new dependant (1936/31; 8030/31; 1315/33).

362. If dependency existed before the claimant became unemployed, he must, when in employment, have contributed not less than half the actual cost of maintenance (Section 39 (1) (*b*)). The claimant must show maintenance for a substantial period to the date when he lost employment. Short or exceptional periods of maintenance do not satisfy the require-

[1] Page 255.

ment (5786/34). A claimant who was working short time must show that the amount contributed, in the week for the maintenance of the person in respect of whom he claims, was not less than half of the actual cost of the maintenance of that person during that part of the week for which he was employed (9611/31 ; 18439/32).

363. *Contribution when unemployed.* Section 39 (1) (*a*)[1] is satisfied if the increase of benefit is paid into a family fund from which the dependant is maintained (7375/30). Failure to contribute the increase during a short period is not necessarily grounds for disallowance (9192/30). If the increase is received in respect of more than one dependant failure to pay over the increase, *if the dependants are living together*, is ground for disallowance of the whole increase, although part of it, equal to the increase in respect of at least one of the dependants, may have been paid over (2011/30). A claimant working short time must show that he contributes an amount not less than the increase of benefit received in respect of days of unemployment. A change of circumstances may transfer maintenance from one member of a family to another (18333/30 ; 9819/30 ; 14394/31).

364. *The family fund.* If a person in respect of whom increase of benefit is claimed is one of a family or household which is maintained by a family fund or pooled income consisting of contributions by more than one person, it is necessary to ascertain how the family fund is constituted when the claimant is in employment and what average share in it must be allocated to each person whom it maintains. It can then be determined by what amounts the contributions of the claimant and of other persons exceed or fall short of the average sum available per head. As an example, we may assume that when the claimant is in employment the weekly income which supports a family of five, including the claimant's mother, is as follows :—

Claimant	£2 5 0
Claimant's sister	19 0
Claimant's brother	18 6
Claimant's younger brother ..	6 3
	£4 8 9

[1] Page 218.

This shows that there was available for the maintenance of each member of the family an average sum of 17/9. The claimant's sister and the elder of his brothers were in a position to contribute 1/3 and 9d. respectively towards the maintenance of their younger brother and mother after deducting the cost of their own maintenance. The claimant's contribution to this fund was £1 7s. 3d. after deducting the cost of his own maintenance and it can, therefore, be said that the mother was mainly maintained by the claimant (1186/28).

365. *Allocation of contributions to fund.* A contribution by a person living in the family cannot be allocated to the maintenance of any one member of the family but a contribution by a person who is not living in the family may be allocated to the maintenance of the person for whom it is subscribed (18886/30).

366. *Ascertainment of contributions of members of the family.* The actual contribution and not the full income of each member of the family is to be taken into account. Where, however, the income of the alleged dependant would not, if contributed to the common fund, at least be equal to his share of maintenance from the fund, it must be shown that any amount he retains is for the purpose of meeting some personal liability, which existed at the date when the claimant became unemployed (18381/31). If a member of the family retains a portion of his income for the purpose of meeting some cost of maintenance (e.g., clothing) which would otherwise be paid out of the common fund, he must be credited with the value of that portion, which must be added to the amount which he has actually paid into the fund (18381/31).

367. *Claimant separated from wife and children.* When, as a permanent arrangement, a claimant is not living with his wife and family, it is necessary to ascertain whether his contributions represent their main maintenance (2091/29). If they reside with friends and are maintained out of a common fund the claimant may be regarded as an external contributor (5489/29).

368. *Maintenance and Residence.* Where it is a condition that the dependant is residing with the claimant, residence for the purpose of a claim is not interrupted by a short temporary absence of the claimant when such absence is necessitated by the nature of his employment ; but a claimant whose

occupation requires him to live away from home (e.g., a hotel worker) cannot satisfy the residential qualification when he is absent (4053/28; 5131/29). A claimant who takes a lodging to be near his work or to look for work when unemployed, and returns to his home at week-ends, may be held to have dependants residing with him, if they are at home (6702/29; 15405/31). The fulfilment of the two requirements, residence and maintenance, must coincide in point of time. The requirement is satisfied when the claimant can prove that the dependant has lived with him for a continuous period of two weeks immediately preceding the date of claim, or immediately preceding some later date in the same period of employment (3548/35).

369. *Maintenance and Residence when Dependant in Hospital or Institution.* In general if the claimant, when unemployed, is not in fact required to contribute to a dependant's maintenance in the hospital he is not deemed to be wholly or mainly maintaining the dependant (4661/30). The sum of £1 may, in the absence of special circumstances, be assumed to represent the cost of maintaining an adult in an institution. In the case of children up to two years of age 10/– and, above that age, 12/–, may be assumed to be the cost of maintenance (4340/29; 3730/29). A claimant may be regarded as mainly maintaining a dependant in hospital if he is a contributor to a voluntary fund out of which is paid on behalf of the contributor such payments as may be agreed upon for the maintenance and treatment of the inmates (3865/29). If the claimant is unemployed during the dependant's residence in the hospital such agreed rates must not be less than the amount of the increase of benefit received in respect of the dependant (15688/31). If the claimant is unemployed when a dependant enters a hospital or institution increase of benefit continues to be payable at least for the periods specified below, although the hospital makes no demand for a contribution towards maintenance, provided that it is not known when the dependant enters the hospital that the period of absence will exceed the appropriate period specified below (1027/29). The periods appropriate to the categories of dependants specified are as follows :—

Wife: 8 weeks (if living with husband before entering hospital (4681/28)).

Housekeeper : 2 weeks (provided the claimant has not engaged a substitute (4733/28)).
Mother or Father : 4 weeks (6828/29 ; 8193/29 ; 10643/33).
Husband : 4 weeks (3111/30).
Child : 4 weeks (1028/29 ; 3730/29).

Joint Maintenance.

370. Proviso (i) to Section 39 empowers the Minister to make Regulations to meet cases where a person is partly maintained by each of two or more claimants who could properly claim dependants benefit if he were wholly or mainly maintaining that person. Regulations made by the Minister[1] determine that the eldest of such claimants shall be treated as wholly or mainly maintaining the dependant, unless the claimants contributing to that person's support elect otherwise. The joint contribution must be sufficient to show that the dependant is wholly or mainly maintained by the insured contributors. A joint application for increase of benefit is not necessary, but apart from the provision with regard to "wholly or mainly maintaining," each of the claimants must be entitled to dependants benefit in respect of the dependant concerned.

Disqualifications of Female Dependant.

371. Under Section 38 (2)[2] no increase in benefit is payable in respect of a wife or other female who (*a*) is herself in receipt of benefit (including benefit under a special scheme) ; (*b*) is in regular wage earning employment otherwise than as having the care of the claimant's dependent children ; or (*c*) is engaged in any occupation ordinarily carried on for profit.

In either case (*b*) or (*c*) the disqualification does not apply if (i) the amount of wage earned or (ii) the payment received for the performance of work, is less than the rate of dependant's benefit (9/- per week). If a person both earns a wage in respect of employment and receives a payment for work done the two amounts received must together be less than 9/- a week before dependants benefit is payable.

[1] Joint Maintenance of Dependants Regulations, 1934, page 261.
[2] Page 217.

Regular wage earning Employment.

372. Unless a contract of service exists there can be no "employment" for the purpose of disqualification (3793/29). The expression regular is taken to include persons who, taken over a period, do an appreciable amount of work for which they are paid wages and to exclude people who work only occasionally (1272/28). The employment must be regular in the sense that a regular source of income in the form of wages is derived from it, although the employer may vary from week to week or even day to day (e.g., in case of a daily waitress). Provided this regular source of income from employment exists, the employment will not cease to be regular wage earning employment because the wages fluctuate in amount from week to week. The intervals of unemployment between the periods of employment are important in considering whether the employment can be described as regular (1272/28). Where, as a general rule, the employment taken over a period does not average five days a month or eight hours a week it can fairly be said not to be regular. In cases in which reasonable doubt arises whether the employment is regular or is exceptional, casual or spasmodic, a period of four consecutive weeks, which need not necessarily be weeks of full employment, should be allowed to elapse before the employment can be said to be regular. Seasonal employment may be regarded as regular employment if it is systematically followed. The "four weeks rule" would not be applied unless, on the first occasion of such employment, it was not known whether the employment would be systematically followed (1272/28).

373. Money must be earned as wages. The expression "wage earning" does not include employment in which the remuneration is wholly in kind (2528/28). Occasional gifts of money, the amount and frequency of which depend on the will of the donor are not to be regarded as wages (3009/28). In ascertaining the amount earned the test to be applied is the amount of wage earned in the claimant's benefit week and not the rate of wage at which the person is employed or the amount paid in the week (7875/30; 5447/31). For this purpose each week must be taken separately, and the weekly wages should not be averaged over a period (5540/30). The amount of wages earned is the amount actually received from

the employer, and it may not be reduced by such expenses as the cost of cleaning materials, travelling expenses between home and place of employment, or sums paid by the wage earner for assistance, unless it be an express or implied term of the contract that assistance should be obtained and paid by the wage earner (18814/30).

Occupation ordinarily carried on for profit.

374. The disqualification applies only if the payment received for the performance of work is more than the rate of dependants benefit. It refers to work which is done otherwise than under a contract of service (2836/28). An "occupation" implies some amount of regularity or continuity and a person who undertook occasional work for friends would not be regarded as engaging in an occupation (9186/29).

The words "performance of work for payment" have been held to include working for an employer as a contractor when there is no contract of service (as is usually the case with home workers), singing professionally for fees for engagement and teaching music at home. The Act refers to payment and not to profit. Thus if a woman does laundry work in her house for which she is paid 10/– a week, the amount cannot be reduced by the cost of soap and other materials; if a woman is engaged on haircutting at home, deductions cannot be made in respect of rent or other outgoings.

375. If the occupation is one which is ordinarily carried on for profit it is immaterial that no profit is being or has been made by the person in respect of whom the claim is made (976/28). The question whether a wife is engaged in an occupation does not depend upon the ownership of the business. If the wife actually participates to a substantial extent in the conduct of the business she is following an occupation in connection with it, and the extent of her participation is the test which determines whether she is engaged in an occupation ordinarily carried on for profit (2836/28; 6308/30).

376. *Termination of the Disqualification.* The disqualification ordinarily lasts while the occupation is in being. The fact that the occupation is carried on on certain days of the week or at regular intervals during the year does not enable increase of benefit to be paid in respect of any day or week in which it was not carried on (1115/28; 2810/28). The disqualifica-

tion ceases immediately the occupation is given up (4008/28). It may cease also if business is temporarily abandoned for such reasons as the illness of the person engaged in it (2024/29). When work is performed for payment the disqualification ceases in respect of any benefit week in which the payment is less in amount than the increase in the weekly rate of benefit.

Boarders or Lodgers.

377. To let a room without rendering services does not as a rule constitute being engaged in an occupation (1138/28), but the letting of accommodation with services and the taking of boarders or lodgers for reward is an occupation ordinarily carried on for profit. The disqualification does not apply, however, if not more than one lodger is provided with board and accommodation as a member of the family. For the purpose of this proviso it is sufficient if board and accommodation provided are in fact the same as are provided for members of the family, even though the lodger may pay more each week than the individual sums contributed by members of the family, and although the board of the family is on a higher scale than it would have been if there had been no lodger. But if the weekly sum paid exceeds 30/– doubt arises whether the board and accommodation provided are the same for the lodger as for members of the family (5019/30).

378. Where husband and wife live together, and boarders or lodgers are taken in such circumstances as amount to the carrying on of an occupation, the wife must be regarded as the person who is engaged in the occupation because she renders the services (1138/28). But the wife will not be so regarded if she is in bad health and all the necessary services are rendered by someone else, either voluntarily or paid for by the husband (3226/29; 440/29).

379. A person is not regarded as being engaged in the "occupation" of taking boarders or lodgers unless that person makes a practice of taking them. There must be some intention of following the business of taking boarders or lodgers, or of endeavouring to obtain them (9186/29). This business intention may be inferred from the circumstances of the case. It may usually be inferred when the premises are taken for the purpose of a boarding house. It may also be inferred if a succession of boarders or lodgers are taken over a long period,

[1] Section 38 (2) proviso iv, page 218.

and a contrary inference may be drawn if they are taken only occasionally or in special circumstances and no steps are taken to obtain them in the intervals (2972/28; 1129/28). When the amounts charged are so small that it cannot be contemplated that any person engaged in the occupation of taking boarders or lodgers for profit would make such low charges, the inference is against business intention. In considering the amount charged, the accommodation provided, the services rendered and the charges prevailing in the district are taken into account. The fact that the contract is not enforced or charges are reduced while lodgers are unemployed does not entitle the claimant's wife to say that she is no longer carrying on the business (1161/28). But after a long period of such unemployment it may be inferred that the original contract has been abandoned and a new one substituted for it (4525/28).

380. As a general rule a person who is in the business of keeping a boarding house may be presumed to carry it on in season and out of season, unless it can be shown that the business is actually suspended during a definite portion of the year, as in the case of residents in seaside resorts who have no opportunity of taking boarders or lodgers out of the season (9186/29). In such cases the claim is disallowed for the whole of the "letting season" and not merely for the portions of it in which lodgers are actually in residence (3980/28; 11363/33).

XVI.—DECISIONS ON CLAIMS FOR BENEFIT

The Statutory Authorities

381. The question whether or not a claimant is entitled to benefit (ordinary or dependants), or any other question arising in connection with a claim for benefit, is determined by independent authorities appointed by virtue of the Unemployment Insurance Acts. These authorities are Insurance Officers, Courts of Referees and the Umpire.

382. The Minister has no power himself to admit or reject a claim. In determining claims for benefit the statutory authorities follow strictly the words of the Acts which must be construed according to their natural and ordinary sense (3369/30). They are bound absolutely by the language of the Legislature, and must abstain from putting upon the Legislature anything that it has not clearly said (754/27).

There is nothing in the Acts to empower the Statutory Authorities to give a provisional decision.

Insurance Officers.

383. Insurance Officers are appointed by the Ministry of Labour, subject to the consent of the Treasury as to number. They consist of Local Insurance Officers appointed for each Exchange area, Divisional Insurance Officers attached to Divisional Offices of the Ministry of Labour, and a Chief Insurance Officer in London. Where the expression "Insurance Officer" is used it indicates any officer authorized to give decisions on claims for benefit.

Courts of Referees.

384. The main functions of a Court of Referees are to give a decision on a claim for benefit or any question arising on a claim, referred to them by an Insurance Officer, and to consider appeals against a decision of an Insurance Officer by a claimant or an association. Courts of Referees also have

certain duties in connection with applications for unemployment assistance by insured persons (see para. 12).

A Court of Referees consists of a Chairman, one member drawn by rota from a panel of persons representing employers, and one member drawn by rota from a panel of persons representing insured contributors. The constitution and procedure of the Courts are set out in detail in the Court of Referees Regulations[1].

385. *Chairman.* The Chairman is an independent person appointed by the Minister, who has regard to his impartiality and knowledge of industrial conditions. He usually possesses legal qualifications but these are not essential. He must not himself be an employer of any considerable number of insured contributors, or have any active connection with an employers' or employees' organization, or a political party. The appointments are reviewed annually.

386. *Constitution of Panels.* The members of the panels of both employers and insured contributors are appointed by the Minister after considering nominations made by the Local Employment Committees.

To qualify for membership :—

(*a*) members of the panel of employers' representatives must be employers of insured contributors, or nominees of associations of such employers or nominees of corporate bodies, such as a limited company or local or other public authority which employ insured contributors ;

(*b*) members of the panel of insured contributors' representatives must themselves be either insured contributors or nominees of associations of insured contributors.

Panels are appointed for three years ; any person appointed to a casual vacancy holds office only until the expiry of the term of office of the panel. The Minister may terminate an appointment at any time. No organization has the right to representation on these panels.

387. Under Regulation 2 (5),[2] a member of a panel is disqualified from sitting as a member of a Court,

(1) if he is himself claiming unemployment benefit or is disqualified for the receipt of benefit, or

[1] Page 261. [2] page 262.

(2) in connection with any case in which he (*a*) is the claimant's representative, or (*b*) is directly affected by the decision, or (*c*) has taken any part as an official of an association, or as an employer or as a witness or otherwise.

Any member known to be disqualified from sitting is not summoned, but it is the duty of any member who finds that he has been summoned through ignorance of his disqualification, or who is disqualified from adjudicating on a particular case because he is in some way an interested party, to withdraw from the sitting, either temporarily or permanently, as the case may require.

Local Referees.

388. Regulations[1] have been made for the appointment of Local Referees in cases where the claimant would have to travel a considerable distance from his home to attend the Court. The Local Referees, two in number, are drawn one from the local panel of employers' representatives and one from the panel of insured contributors' representatives, and their procedure generally follows that of the Courts. They have before them the documentary evidence regarding the case, and the claimant is summoned to appear and the Branch Secretary (if any) notified. The main function of the Local Referees is to furnish findings of fact upon which the Insurance Officer or the Court of Referees may base a decision. The Referees consider their recommendation in private and report to the Insurance Officer who considers it and either gives a decision on the claim or refers it to the Court.

The Umpire.

389. The Umpire is the authority to whom appeals may in certain circumstances be made against decisions of the Court of Referees. The Umpire is appointed by the Crown, and his decisions are final. Decisions given by the Umpire are binding on Courts of Referees in subsequent cases which fall clearly under those precedents. The Act provides for the appointment of Deputy Umpires as may be necessary.

The office of the Umpire is at 5 Old Palace Yard, Westminster, S.W.1.

[1] S.R. & O., 1931, No. 360, page 264.

Matters for Decision by Statutory Authorities

390. The jurisdiction of the statutory authorities is limited to deciding claims for benefit and questions arising in connection with such claims. They have no power, for example, to decide whether or not employment was insurable. They can only give a decision after a claim has been made (16833/32). An application for an increase of benefit in respect of dependants is treated as an independent claim.

391. Under Section 45 a distinction is drawn between claims for benefit and questions arising in connection with such claims. "Claims" and "questions" are both determined by the Statutory Authorities. "Questions" are not issues which may arise directly on the fulfilment of the statutory conditions, but they are matters connected with a claim. The determination of a question arising in connection with a claim does not determine the claim, nor does the determination of the claim determine questions arising in connection with the claim (10368/34).

392. The following types of cases fall within the category of "questions" as distinct from "issues" arising on a claim, and are determined by the Statutory Authorities :—

(1) question as to the rate of benefit payable (Section 36 (page 216).

(2) question whether a claimant is liable to have deductions made from any benefit to which he is or may be entitled. (This question must be referred by the Insurance Officer to the Court of Referees). (Section 45 (*b*), page 221).

(3) question whether a claim should be antedated (Benefit Miscellaneous Provisions Regulations, 1934, page 255).

(4) question whether a claimant should be treated as if he duly attended and signed the register (S.R. & O., 1934, No. 611, page 260).

(5) recovery of dependants benefit from another insured contributor (Section 39 (3), page 218).

(6) recovery of overpayments from Associations (Section 71 (5) (*b*), page 231).

(7) payment of benefit pending determination of claims (Section 49 (2), page 222).

The question whether a Court of Referees was properly constituted when determining a claim is a matter for determination by the Umpire (7217/31).

393. The same facts may have to be considered by the Minister and by the Statutory Authorities for different determinations of questions in connection with claims. The Minister, for example, determines whether a person was an insured person, and whether his employment was insurable, while the Statutory Authorities for the purpose of the First Statutory Condition determine whether any employment was "bona fide"; the Minister determines what rate of contribution is payable in respect of any person, having regard to his age, while the Statutory Authorities determine what evidence is required to establish that a claimant has reached the age of 65; and the Statutory Authorities determine whether contributions, which have not been credited to a claimant, may be regarded as paid. On matters relating to the prescribed manner of claiming, the excuse of signature is a matter for the Minister, but the antedating of a claim (including matters relating to a claimant's failure to attend on the days required for signing) is for the Statutory Authorities.

394. The following are among the questions to be determined by the Minister:—

(1) as to whether any employment or any class of employment is or will be insurable (Section 4, page 204).

(2) as to whether a person is or was an employed person (Section 4, page 204).

(3) as to who is or was the employer of any employed person (Section 12, page 208).

(4) as to the rate of contributions payable in respect of any persons or class of persons (Section 12, page 208).

(5) as to the rates of contribution payable in respect of any employed person by the employer and that person respectively (Section 12, page 208).

(6) as to whether a person was or was not employed in any excepted employment during the period of two years mentioned in the First Statutory Condition (Section 45 (*a*), page 221.)

(7) the issue of a requirement to attend an authorized course for the purpose of the fourth statutory condition (Section 25, page 210).

395. The Statutory Authorities also have certain jurisdiction in connection with payments made by an Association having arrangements under Section 68. The matters they consider include :—

(*a*) the question whether the member of the Association would have been entitled to benefit if no arrangement had been made (Regulation 7)[1] ;
(*b*) the date from which the claimant would have been entitled to receive benefit (2135/35) ;
(*c*) the question of ante-dating (644/35) ;
(*d*) any question whether a sum paid to a member of an association in pursuance of a decision of the Statutory Authorities should be repaid to the Association if the decision is revised on new facts (Section 71 (5)).

Adjudication and Appeals

The Insurance Officer.

396. The duty of the Insurance Officer is to examine each claim for benefit and to allow the claim if he is satisfied that the statutory conditions are fulfilled. If he is not satisfied he may refer the claim or any question arising thereon to the Court of Referees ; so far as practicable the claim must be so referred within fourteen days from the date of its submission to him.[2] In certain cases he may himself disallow the claim. The cases in which the Insurance Officer may not himself disallow the claim are set out in Section 43 (4) and 43 (5).[3] They are

(*a*) the third statutory condition ;
(*b*) disqualification for misconduct or leaving voluntarily ;
(*c*) disqualification for refusing or failing to apply for work ;
(*d*) disallowance or restrictions imposed under the Anomalies Orders ;
(*e*) the fourth statutory condition except in the case of a juvenile whose attendance at an authorized course is suspended for not more than one day for misbehaviour.

[1] Associations Regulations, page 269.
[2] Section 43 (3), page 220. [3] Page 220.

397. The Insurance Officer must also refer to a Court of Referees any question as to whether a claimant is liable to have deductions made from any benefit (Section 45, proviso (*b*)).[1] Having given his decision the Insurance Officer can only revise it on new facts (9843/29). Once the Insurance Officer has referred a claim to the Court of Referees, he is not entitled to refer that claim again to the Court in respect of the same date, whether on the same issue or a different issue (2795/31). If the Insurance Officer has reason to believe that the Court of Referees have omitted to consider a possible ground for disallowance he may appeal to the Umpire against the Court's decision. Where, however, new facts come to his knowledge which appear to justify a revision of the Court's decision he may ask the Court to re-hear the case in the light of the new facts (15468/33), unless an appeal has already been made to the Umpire, in which case the new facts should be referred to the Umpire (9238/31).

Court of Referees.

398. There is no authority given to any person to appeal against an Insurance Officer's decision to *allow* a claim (2489/31). When a claim is disallowed the claimant, or, where the claim is made through an Association having an arrangement under Section 68,[2] the Association[3] has the right to appeal to a Court of Referees. The appeal must be made within 21 days but the Minister may allow an extension of this time limit for special reasons.[4]

Where a claim has been referred to the Court of Referees for determination, the Court are not entitled to consider a claim of an earlier date which has not been so referred to them, but has already been allowed by the Insurance Officer (2489/31 ; 3232/31).

399. Once the Insurance Officer has referred a *claim* to the Court of Referees in accordance with Section 43 (3) the Court have to decide upon the eligibility of the claimant for benefit and the Court are not limited to solving the doubt which prompted the Insurance Officer to refer the claim to the Court (2795/31 ; 6904/30).

[1] Page 221. [2] Page 229 ; Chapter XXII.
[3] See para. 7 of the Associations Regulations, page 269.
[4] Section 43 (6), page 220.

Where, however, the Insurance Officer refers to the Court merely a *question arising in connection with a claim* as distinct from an *issue* arising directly on the claim itself (see para. 391), the decision of the Court must be confined strictly to the question referred (10368/34). Having once referred a question to the Court, the Insurance Officer is not entitled to refer the same matter again (2795/31; 17693/32).

In cases where two or more issues are referred to the Court of Referees the Court is required to give a decision on each point referred to them. The second issue may not be material to the Court's decision but in the event of an appeal against the Court's decision being made to the Umpire, and the appeal succeeding, the second issue becomes material (13081/31).

The Court of Referees must give their decision after a careful consideration of all the evidence and a chairman is justified in refusing to take into account as part of the adjudication of the Court the opinion of a member who has not been present throughout the hearing of the case and so has not heard all the evidence (2141/32).

400. The Act provides that a Court of Referees shall record their decisions in writing, and shall include in the record of every decision a statement of their findings on questions of fact material to the decision.

401. Where the decision is not unanimous the differing views and the reasons for them are recorded.

The decision of a majority of the Court is the decision of the Court, but if owing to the absence of a member of the Court, the opinion of the Court is evenly divided, the Chairman has a second or casting vote. Where a Court consisting of three members decide, by a majority, that a claimant has incurred disqualification, but the two members (of whom one is the Chairman) constituting the majority differ as to the period of disqualification, the Chairman has no casting vote and no determination regarding the period of disqualification can be held to have been given by the Court. The matter should be referred to the Umpire by way of an appeal either by the claimant or by the Insurance Officer (9945/31).

402. Courts of Referees are normally asked to determine eligibility for benefit in respect of a specific date or dates, but where this has not been done, or where there is a disqualification for a period, the Court should specify the dates on which

the claim is disallowed or the date from which the period of disqualification begins. The Court may also decide whether or not the claimant should have leave to appeal to the Umpire (see para. 406 below).

403. Under Section 49[1] if the Court of Referees allow a claim, benefit is payable even though an appeal to the Umpire is pending. The only exception is in trade dispute cases, where benefit may be suspended if an appeal against allowance has been made within 21 days of the Court's decision.

Appeals to the Umpire.

404. An appeal may be made to the Umpire against a decision of a Court of Referees—

(1) by the Insurance Officer (whether for allowance or disallowance) ;

(2) by the Head Office of an association of employed persons of which the claimant was a member on the last date of employment before the claim and has continued to be a member until the date of appeal ;

(3) by the claimant himself—

(*a*) if the decision of the Court is not unanimous, and

(*b*) with the leave of the Chairman in any other case.

405. If the decision of the Court is not unanimous the claimant must be so informed within three days (Section 44 (2)).

An appeal to the Umpire must be brought within six months of the date of the Court's decision, or such longer period as the Umpire may for any special reason allow. The fact that a decision of the Court of Referees was not unanimous or that it appears to be clearly wrong does not, in itself, afford any " special reason " for entertaining an appeal which is brought brought beyond the six months limit. This does not mean, however, that a late appeal will necessarily not be entertained in a case where it is founded on, and is brought shortly after the publication of, an Umpire's decision laying down a new principle or over-ruling an earlier decision (19443/30). A " special reason " for delay in making an appeal was held to have been shown where the claimant had been told not to appeal but to await the result of an appeal by the Insurance Officer which was not, in fact, made (9145/31).

[1] Page 222.

406. It is the duty of the Chairman to grant leave if it appears that there is a principle of importance involved in the case, or any other special circumstance by reason of which leave to appeal should be given. If the Chairman does not grant leave to appeal when the decision of the Court is given, the claimant may apply for leave on the prescribed form, within 21 days after the decision, or such longer period as the Chairman may for special reasons allow. When an application for leave to appeal is made, and the application is refused at the time when the decision of the Court is given, the claimant is not entitled subsequently to make application for such leave to another Chairman of the same Court, as such other Chairman cannot over-rule the refusal pronounced by the first Chairman (10983/34).

If leave is granted the Chairman must record in writing the reasons for granting leave.[1] A special form (U.I. 646) is provided for this purpose. The Chairman cannot grant leave to appeal on the ground that it is a hard case, as the Umpire has no more power than the Court of Referees to allow benefit contrary to the provisions of the Act (12729/34).

407. An appeal to the Umpire may be made on behalf of a claimant by an "Association of Employed Persons." The Umpire has said that an "Association of Employed Persons" is an Association which has as an important and declared part of its functions the furtherance of the interests of the members in relation to their employment and unemployment (5809/30).

In order to appeal the Association must show that the claimant was a member on the last date on which he was employed before the claim for benefit which is the subject of the appeal and that he has continued his membership up to the date of the appeal.[2]

408. The Umpire decides the case on the facts placed before him. The claimant or his Association may attend to give oral evidence with the consent of the Umpire. It is usual, in cases of importance, for the parties concerned to be invited by the Umpire to make an oral statement of the facts of the case. A legal representative may attend if desired by the claimant or his Association. The employer concerned may also be invited to attend, if the question is one on which his oral evidence is desired.

[1] Section 44 (5), page 221.
[2] Section 44 (1) (*b*), page 220.

Re-hearing of Cases.

409. The Insurance Officer and Court of Referees have no power to review or revise their decisions except in cases where new facts are brought to their notice. The new facts must have been in existence at the time of the decision although not known to the Statutory Authorities (8743/29). A re-hearing may however be necessary if the original proceedings were void because of some defect in procedure, and it is the custom for a Court of Referees to re-hear a case if the claimant failed to attend the original hearing and shows good cause for such failure.

410. If the decision has been the subject of an appeal to the Umpire, the Court cannot re-hear the case except by request of the Umpire, who also occasionally requests a Court to hold a supplementary hearing to determine questions of fact material to a decision.

411. A decision of the Umpire laying down a new principle does not enable the Insurance Officer or a Court of Referees to revise earlier decisions inconsistent with that principle. An appeal can, however, be made to the Umpire in such cases subject to the usual conditions. The Umpire has a discretionary power to revise his decisions on new facts being brought to his notice and the power has been freely used in cases in which the decision has resulted in a substantial injustice : but it is not intended that the Umpire should in all cases be bound to revise his decision even when new facts are brought to his notice (1239/26).

Procedure at Courts of Referees

Preparation of evidence.

412. Before reference to a Court of Referees of a case in which the Insurance Officer has doubt whether or not the claim should be allowed, the Insurance Officer obtains all material information which should be taken into account in reaching a decision. This may necessitate enquiries from the employer or his Association, the Trade Union Secretary or a Government Department (e.g., in cases of an alleged breach of an enactment).

The facts of the case and the documentary evidence are set out on a form appropriate to the nature of the case (U.I. 624 series). A copy of the form as presented to the Chairman

and each member of the Court, is supplied beforehand to the claimant and, where appropriate, the Branch Secretary of the Association of which the claimant is a member. The claimant is given full knowledge of all the evidence of whatever kind that is considered by the Court in his case.

Persons entitled to attend hearing.

413. The claimant is always either summoned to attend or notified of the hearing; in the majority of cases he is summoned to attend. If the claimant is a member of an Association of employed persons the Local Official of that Association is also notified.

A claimant is entitled to be represented at the hearing by any person duly authorized to act on his behalf, except a barrister or solicitor (advocate or law agent in Scotland).

414. The employer is summoned if it appears necessary or if he requests it. It is the practice generally to summon the employer to attend (*a*) in trade dispute cases, (*b*) in cases in which it is suggested that the conditions of employment in his business are challenged, (*c*) where there is conflicting evidence as to the reason for terminating employment, (*d*) where there is reason to believe that the claimant has adopted a manner, or advanced objections, before a prospective employer with a view to being considered unsuitable, and (*e*) in cases in which there may be a question of legal liability in connection with a dismissal. Where the claimant's testimony at the hearing is in conflict with the employer's statement it is usual, if the claimant requires it, for the Court to request further evidence from the employer before coming to a decision. The Court may adjourn a case in the absence of evidence which they consider necessary to the proper consideration of the case.

415. In cases of juveniles the appropriate Juvenile Advisory Committee or Juvenile Employment Committee of a Local Education Authority is notified of the hearing and is invited to send a representative to attend. This representative is not a member of the Court, and is therefore not entitled to vote, but he attends in an advisory capacity to give the Court the benefit of his Committee's special knowledge of questions of juvenile employment.

416. The local Insurance Officer has the right to attend the Court, and he attends when the Court desire it, or when he considers that his attendance would assist the Court in reach-

ing a proper decision on the case. When he attends he does not act as an advocate, but he presents the case, explaining why it is considered doubtful, and refers the Court to relevant Umpire's decisions, whether they appear to tell for or against the claimant. An officer of the Ministry of Labour is also entitled to be present, by direction of the Minister.

An officer is appointed to perform the clerical work arising in connection with the Court of Referees. He takes no part in the discussion by the Court of its decision.

417. The sittings of the Court are not open to the general public, but the Court may, in its discretion, allow any person who may be concerned in the case to be present. The presence of press reporters is prohibited by Regulation 5 (3). The Court may order all persons not being members of the Court to withdraw while it is considering its decision.

Conduct of Court.

418. Except on the points specifically dealt with in the Act and Regulations, the procedure of the Court is determined by the Court itself under the direction of the Chairman. A Chairman presides at each sitting of a Court, and the members are summoned in rotation from each of the appropriate panels In the event of one or both of the representative members failing to attend, any case may be decided by a Court consisting of the Chairman and one other member, or of the Chairman alone, provided that the claimant agrees that his case shall be dealt with by a Court so constituted.

419. So far as is practicable the persons drawn from the two panels are men, when men's cases are being considered, and women, when women's cases are being considered. If this is not practicable on any particular occasion and a claimant objects to the case being heard by a Court, containing a member of the opposite sex, it is the custom to give him the option of having his case considered by an incomplete Court, or to have it adjourned.

420. Where a claimant has signed a form of consent for his case to be proceeded with by the Court of Referees in the absence of one or more members of the Court other than the Chairman, and it becomes necessary to adjourn the case, the subsequent hearing by another incomplete Court, presided over by the same Chairman, is held to be valid, even though

the claimant has not signed a second form of consent (21843/31).

If a claimant has waived his right to object to his late employer adjudicating upon his claim as a member of the Court of Referees, he cannot, when he finds the Court's decision is against him, successfully appeal against the decision on the ground that the Court was not properly constituted (4054/34).

421. The decision of the Court is notified to the claimant or his representative by means of a form (U.I. 630) which is signed by the Chairman, and handed to the claimant or his representative, if present. The local official of the claimant's Association (if any) is informed by the clerk of the result of the case, and the result is also communicated to an employer interested in the case, if he so requests. The record of the Court's proceedings and of the decision (including minority opinion, if any, and the Chairman's decision as to leave to appeal) as entered by the Chairman is furnished to the claimant and, in appropriate cases, to the Head Office of his Association.

Test Cases

422. It is usual when a large number of claimants are affected by the same set of circumstances (e.g., customary holidays) for a test case to be selected for decision. The decision on the test case is then applied to other claimants in the same category.

Payment of Expenses.

423. The Chairman of a Court is paid a fee for each sitting; other members are unpaid, but travelling and subsistence expenses may be paid.[1]

The travelling and other expenses of the claimant and of witnesses are paid if they have been summoned to attend the hearing.[2] If the claimant is in employment and has been summoned to the Court, he is entitled to a day allowance if he loses remuneration by attending the hearing. The Chairman may at his discretion authorize the payment of an allowance in respect of lost time in cases where the appellant has attended the sitting though not summoned. There is no payment of expenses to an interested party who attends at his own request.

[1] Section 41 (6), page 219.

[2] Section 47, page 221.

Any person who is affected by a case referred to the Umpire, and is requested by the Umpire to attend before him on the consideration of the case, may, in appropriate cases, claim compensation for loss of remunerative time and travelling and subsistence allowances.

XVII.—RECOVERY OF OVERPAYMENTS OF BENEFIT

When Recoverable.

424. If a person has received any sum as unemployment benefit while the statutory conditions, or any other conditions for the receipt of benefit imposed by any enactment, were not fulfilled, or while he was disqualified for receiving benefit he is liable to repay to the Unemployment Fund any sums so received, *if the sums were received by reason of the non-disclosure or misrepresentation by him of a material fact* (whether the non-disclosure or misrepresentation was or was not fraudulent).[1] The fact that he may honestly have thought that his statements were correct, or honestly have believed that the fact withheld had no bearing on his claim to benefit, does not affect the question.

425. If the payment was made by reason of an act or omission on the part of an official of the Department, e.g., an error in computing the amount of benefit due, the claimant is liable to repay under common law, but no action can be taken to enforce repayment, under the Unemployment Insurance Acts.

Method of Recovery.

426. When a claimant is liable to repay any money to the Unemployment Fund (or to an education authority) the overpayment may be recovered by deductions from any benefit to which he may subsequently become entitled, unless he shows that the payment was received in good faith and without knowledge that he was not entitled thereto.[2] The Minister has power to take other steps to recover the overpayment. The Minister can institute civil proceedings to recover the money (Section 86 (3)), but this course is seldom followed.

[1] Section 51 (1), page 223. [2] Section 51 (2), page 223.

427. The question whether sums which a person is liable to repay may be recovered by deduction from benefit, is determined by the Court of Referees in the same way as a claim for benefit. The Insurance Officer may not himself decide this question, he must refer it to the Court of Referees. The claimant is informed of the decision and, in certain cases, has a right of appeal to the Umpire against the decision. He can appeal on one of two grounds, either (*a*) that he is not liable to repay the money, or (*b*) that he received it in good faith and without knowledge that he was not entitled to it.

428. The Umpire has ruled that when it is sought to establish that a claimant is liable to repay benefit which he has received, it lies with the Department *to prove affirmatively* that the conditions for the receipt of the benefit were not fulfilled and that the claimant is liable to repay the money. If these requirements are satisfied, and if there is any doubt of the claimant's good faith, it is then *for the claimant to prove affirmatively* that he received the money in good faith, and without knowledge that he was not entitled to it.

429. The Umpire holds that it is the duty of a claimant when claiming benefit to enquire into the conditions under which benefit is payable, and if there is a doubt whether he is entitled to benefit for himself or his dependants, to make full disclosure to the Local Office and not to wait until he is questioned. If a claimant has made no enquiry at the Local Office, or has not satisfied himself that his replies represent the full and true facts at the time of his claim, the Umpire is, in general, not satisfied that the claimant believed in good faith that he was entitled to benefit (189 and 196 (Section 9) ; 7834/29 ; 8106/29). A claimant who deliberately rendered himself not available for work, in order to preserve continuity of unemployment, was held not to have received benefit truly in good faith and without knowledge that he was not entitled to it (2521/33).

430. The question of repayment of benefit improperly claimed may arise in cases where the claimant has been prosecuted and convicted of obtaining payment by false representations knowingly made. Though not absolutely bound by a decision of a Court of Summary Jurisdiction, the Statutory Authorities follow such decision, in deciding whether the claimant shows that he received the payment in good faith and without knowledge that he was not entitled

thereto, unless very good reason is shown for not doing so. The fact that a claimant has been punished for his offence by law does not excuse him from repayment ; on the contrary, his conviction makes it more difficult for him to avoid repayment by deductions from benefit subsequently falling due to him. The Umpire has no discretion in these cases to waive repayment.

431. On the other hand it does not necessarily follow from the dismissal of a case by a Court of Summary Jurisdiction that a claimant is not liable to have a deduction made from benefit subsequently falling due. In legal proceedings for obtaining money by knowingly making a false declaration, it is for the prosecution to prove affirmatively beyond reasonable doubt that the claimant had so obtained the money. If the prosecution fails, it still remains for the claimant to prove affirmatively that he received the money in good faith and without knowledge that he was not entitled to it (13680/32).

432. Where it has been decided that benefit may be recovered by deduction from benefit subsequently falling due, the Department may, in its discretion, effect recovery by retaining a proportion of the benefit falling due to the claimant each week until the debt has been cleared. The Umpire has no power under the Acts to decide on compassionate grounds that only part of the amount overpaid should be recovered by deduction. Either a claimant shows good faith or he does not ; if he does not, the whole amount of the overpayment may be recovered by deductions from his future benefit, if it is shown that he is liable to repay it.

433. If the claimant finds employment or for any other reason ceases to qualify for benefit, the amount due to the Unemployment Fund remains outstanding and may be recovered at any subsequent date when he again claims benefit, failing recovery by other means.

434. The foregoing provisions apply to persons claiming unemployment benefit at a Local Office or Juvenile Employment Bureau. In the case of juveniles claiming benefit through a Juvenile Employment Bureau the claimant is liable to repay to the Local Education Authority, if the conditions explained in paragraph 424 above are satisfied (Section 51 (1)). The position of persons claiming payment in lieu of unemployment benefit through an approved society or other

association of employed persons with an arrangement under Section 68 of the Act is explained in paragraph 495.

Recovery of Dependants Benefit

435. Section 39 (3) provides for the case where a claimant has received additional benefit in respect of a dependant and subsequently it is found that benefit is properly payable to the dependant at the ordinary rate. For example a husband may claim dependants benefit in respect of his wife who is herself an insured contributor and entitled to claim at the full rate. Where benefit is found to be payable at the ordinary rate to a person who has already been the subject of a claim for dependants benefit the amount paid is reduced by the amount of any dependants benefit already paid for the same period.

XVIII.—BENEFIT AND POOR LAW RELIEF

436. The rates of outdoor relief granted by Poor Law authorities (i.e., County Councils and County Borough Councils in England and Wales and County Councils and Town Councils in Scotland) are not a matter over which the Ministry of Labour has any control. The Ministry of Health exercises a general supervision over the granting of relief. Poor Law authorities are, however, required by Section 54 (1) of the Act,[1] in considering an application for relief, to take into account the full amount of any unemployment benefit received. Arrangements are in force whereby a Poor Law authority may ascertain from the Local Office whether an applicant for relief is in receipt of, or is entitled to receive benefit, and the rate of benefit payable.

Excess payment to or on behalf of the claimant.

437. It sometimes happens that there is delay in payment of benefit or that the amount paid is less than the full amount to which the insured person is subsequently found to be entitled, e.g., the claim for dependants benefit may be outstanding. In such cases the Poor Law authority may have granted outdoor relief, or the Unemployment Assistance Board an unemployment assistance allowance, to, or on account of, the person concerned during the period in respect of which benefit or a higher rate of benefit is subsequently allowed. If the relief, or the unemployment assistance allowance, granted was in excess of the amount of outdoor relief or assistance which would have been granted if the recipient had been in receipt of benefit (or the full amount of benefit) at the time, the Minister may pay to the Poor Law authority, or to the Unemployment Assistance Board, out of the arrears of benefit due, the amount of relief, or assistance, which the authority, or the Unemployment Assistance Board, certify

[1] Page 223; (Repealed Acts: Section 14 (2), 1922).

to have been paid in excess. The Minister's power to reduce benefit for the purpose of repayment to the Authority is exercised only when there has been delay in payment, i.e., when arrears of benefit have accrued.

438. The amount to be repaid can only be deducted from benefit due for the period in respect of which the excess relief or assistance was granted. The Act gives the Minister no power to recover excess relief or assistance allowance from benefit subsequently falling due, and there can be no claim for excess relief or allowance unless benefit has been granted for the same period.

439. If benefit is paid in full in respect of the period during which the relief or allowance was granted (as, for example, in a case where the Local Office was not notified of the claim for excess relief in time), the excess relief or allowance cannot be recovered from benefit subsequently becoming due.

Excess payment to a person other than the claimant.

440. The Act of 1934 applied these provisions also to cases where the excess outdoor relief has been granted to a person other than the claimant himself.[1] Examples of this type of excess payment are as follows :—

(1) Delay may occur in allowing a claim for dependants benefit made by a husband in respect of his wife *who is living apart* from him. It frequently happens that the wife has been granted out-door relief for herself, on account of children living with her, in excess of the amount which would have been granted if dependants benefit had been allowed and paid to her by her husband. The Public Assistance Authority may claim repayment of excess relief granted to the wife out of the arrears of dependants benefit subsequently allowed to the husband in respect of her and the children (if any).

(2) Delay may occur in allowing a claim for dependants benefit made by a wife in respect of her invalid husband. In the meantime, outdoor relief may have been granted to the husband who is technically the head of the household. In such circumstances the Public Assistance Authority may claim repayment of excess relief granted to the husband on account of himself (from arrears of

[1] 1935 Act, Section 54 (2), page 224.

dependants benefit paid to the wife) as well as on account of his wife (from arrears of benefit paid to her).

441. In no case can the repayment exceed the amount of the dependants benefit which has been allowed for the relevant period in respect of the dependant to whom, or on whose account, outdoor relief has been granted.

XIX.—ANOMALIES ORDERS

442. The Minister has power under Section 55[1] to make Orders imposing special conditions and restrictions for the receipt of benefit by members of the classes specified in the Section. They are :—

(1) part-time workers who receive more than the normal earnings of a full week ;
(2) seasonal workers ;
(3) persons who normally work on not more than two days a week ; and
(4) married women.

The references in Umpire's decisions given before 26th July, 1934, are to the "Anomalies Regulations." The power to prescribe special conditions for these classes was originally conferred by the Unemployment Insurance (No. 3) Act, 1931. Under that Act the Minister made Regulations with the advice of an Advisory Committee on which organizations of insured persons and of employers were represented. The Unemployment Act of 1934 converted this power to make Regulations into a power to make Orders, and provided that Orders must be submitted in draft to the Unemployment Insurance Statutory Committee (see Chapter XXI). The 1935 Act, Section 114 (2), provided that Regulations made under the Act of 1931 shall have effect as if they were orders made under Section 55.

443. When the Statutory Committee has reported upon a draft Order the Minister must consider the Report of the Committee, and he may then lay the draft Order before Parliament, with or without amendments. If the Minister lays a draft Order he must also lay the Committee's Report together with a statement showing what amendments, if any, he has

[1] Page 224.

made in the draft Order following upon the Report. If the Minister has not given effect to any of the Committee's recommendations he must state the reasons for rejection. No Order has effect unless each House of Parliament has passed a resolution approving the draft. This procedure ensures that time is given in both Houses for discussion of the draft, and that the Order is given affirmative approval.

A.—Persons who Habitually Work for less than a full Week and Earn more than the Normal Earnings of a full week[1]

444. The number of cases affected by this Order is negligible and its construction need not be considered.

B.—Seasonal Workers

445. The Seasonal Workers (Anomalies) Regulations, 1931, were revoked and superseded from 29th August, 1935, by the Unemployment Insurance (Anomalies) (Seasonal Workers) Order, 1935.[2] Paragraph 2 of the Order defines the term seasonal worker as "a member of the class of persons whose normal employment is employment for a part or parts of the year only in an occupation or occupations of a seasonal nature." The Umpire has laid down further principles in determining whether or not a claimant is a person to whom the Order applies.

Application of Order and exceptions.

446. Even if the claimant is a "seasonal worker," as defined by the Order, the Order applies only—

(*a*) if he is engaged in an occupation in which during a substantial part of the year no substantial amount of employment is normally available in the district; or

(*b*) if he is engaged in an occupation at a holiday or health resort in which employment is to a substantial extent dependent on the presence of visitors during holiday seasons (para. 5 of the Order).

For the purpose of (*a*) above, a substantial part of the year may be regarded as not less than 25 per cent. (5796/32), but this test is not rigidly applied (8710/34).

[1] For text of Order, see page 265. [2] Page 266.

The Order does *not* apply to a seasonal worker—

(*a*) whose normal seasons of employment extend over 39 weeks in the year, even though employment may be in different districts ; or

(*b*) who has paid at least 150 contributions in any period of four out of any five consecutive insurance years in the last ten complete insurance years (para. 6 of Order).

447. *Occupation of a seasonal nature.* To determine whether a claimant's normal employment is employment in an occupation of a seasonal nature, it is necessary to consider whether the particular occupation which he follows is of a seasonal nature, not whether the occupation in which he is employed generically is seasonal (e.g., occupations of " seasonal tramway men " and " summer season railway traffic clerks "). His occupation may be seasonal, although other people follow it permanently. Before a claimant's occupation is held to be seasonal, evidence is required to establish that in his occupapation employment is afforded year after year only for a definite period, such, for example, as the season at a holiday or health resort ; the salmon fishing season, which is regulated by statute ; the hop-picking or herring-curing seasons, which are controlled by the agencies of nature ; the football season which is controlled by custom (1088/33). Professional footballers who normally receive wages throughout the year are not regarded as seasonal workers (16736/32).

The principal classes of claimants affected by the Order are :

(i) *In holiday resorts :* waitresses, servants in boarding-houses and hotels ; drivers and conductors ; shop assistants ; amusement and entertainment workers ; pier, beach, and swimming attendants ; yacht hands and seamen on pleasure boats.

(ii) *In other localities :* fishermen and fish workers ; ice-cream makers and vendors ; professional footballers ; bookmakers' clerks ; maltsters ; brickyard workers ; beet sugar workers.

A claimant who works on his own account in a seasonal occupation is not within the scope of the Order (4097/32).

The Order does not apply to classes of employment such as the building trades, tailoring, or coal distributing, in which

the numbers employed fluctuate according to seasonal demand.

448. *Normal employment.* Whether or not seasonal employment had become a claimant's normal employment is a question of fact to be determined from all the circumstances. When seasonal employment has been followed for three seasons, and the claimant has had no substantial amount of employment outside his seasonal employment, an inference arises that seasonal employment is his normal employment. (24231/31). But the inference may be negatived, and it will assist the claimant to do this if he has evidence that he took the seasonal work by reason of his failure, after proper efforts, to secure other employment, and that throughout the period under consideration he has consistently tried to obtain regular employment. Other matters to be taken into account are the number of years during which seasonal employment has been followed; the character, regularity and duration of the claimant's non-seasonal employment; the time between losing the non-seasonal and taking up the seasonal employment; whether the claimant was a skilled worker in non-seasonal employment (if so, he can more easily negative the inference); the suitability of seasonal employment (in view of the claimant's age, disabilities, etc.) (88/33; 8763/34). If a claimant has had no employment beyond one spell of seasonal employment, the inference arises that seasonal employment is his normal employment. A claimant who voluntarily leaves non-seasonal (or seasonal) employment cannot, in the absence of special circumstances, negative the inference that seasonal employment is his normal employment (1035/32; 15695/33).

449. The expression "normal employment" does not exclude uninsurable employment. When it is alleged that seasonal employment is no longer a claimant's normal employment, the onus of proof rests upon the claimant, and he must show that he has in fact abandoned seasonal employment. Failure to obtain an engagement on a seasonal basis (for example, in the case of a football player), will not in itself justify such an assumption; but abandonment may be established by evidence that he is compelled to give up the seasonal employment owing to advanced age or permanent disability. It is not necessary to demonstrate abandonment by the adoption of some other form of employment (16737/34; 8763/34).

Benefit conditions for seasonal workers.

450. If it is established that the claimant is a seasonal worker within the meaning of paragraph 2 of the Order, and if he is not taken out of its application under paragraph 6, he is required to satisfy the special conditions prescribed in paragraph 4 of the Order.[1] These conditions apply during the off-season ; his position is not affected if he claims benefit while unemployed during the season.[2]

451. He is required to satisfy three conditions (*a*) (i) or (*a*) (ii), (*a*) (iii) and (*b*) of paragraph 4. Broadly speaking, benefit is not payable during the off-season unless he can show that he has had other employment for at least 25 per cent. of the last two off-seasons and can reasonably expect to obtain employment during a substantial period of the off-season. For the purpose of determining whether the minimum required in the off-season has been obtained :—

(i) employment of any kind, whether insurable or not, can be taken into account ;

(ii) work done in different off-seasons can be aggregated ;

(iii) periods of proved sickness are excluded in reckoning the extent of off-season ;

(iv) all periods of off-season falling within an insurance year are regarded as one off-season.

The " Off-season " is defined in paragraphs 2 and 3 of the Order. The duration of the off-season is an issue of fact for the Court of Referees to determine. The Umpire has given decisions prescribing the period of the season or off-season in particular cases.

452. *Holiday or Health Resort.* In the case of employment at a health resort the off-season consists of those parts of the year other than holiday seasons. It is not legitimate to consider the seasons of a particular hotel at the resort ; the season is determined by the presence of visitors at the resort as a whole (1464/33). Where insured persons are engaged some time before the season starts, to assist in preparations for the arrival of visitors, or are kept on after the season closes, to clear up after the departure of visitors, the whole

[1] Page 267.

[2] As explained in paras. 47–53 seasonal workers are in certain circumstances entitled to claim exemption from insurance.

period of employment may, nevertheless, be "an occupation of a seasonal nature." In such a case the periods of employment must be divided into those parts which fall within and those which fall outside the season, and the latter, if the employment is insurable, may be credited to the applicant as periods during which he has been " employed " in insurable employment during the off-season (3312/32).

C.—Persons whose Normal Employment is for not more than two Days a Week[1]

453. The Order applies only to those who, either from the beginning of their industrial careers, if they have not been long in employment, or by long continued practice, have worked on not more than two days a week (25005/31). What is a claimant's " normal employment " is a question of fact, and employment on not more than two days a week which has been followed for a considerable time through force of circumstances, may be the normal employment notwithstanding the hopes and desires of the claimant for full time employment. The period during which a claimant must follow such employment before it can be regarded as his normal employment cannot be defined by the calendar, but must depend upon the reasonable and proper inference to be drawn from the known facts and circumstances of each case (5529/32). When it has been found that a claimant's normal employment is such as is described in the Act, that must be regarded as his normal employment until he has actually adopted and followed some other and fuller employment (7678/32).

454. Employment for varying periods in alternate weeks cannot be averaged over the two weeks for the purpose of the Order (2988/32). When Sunday is one of the days of normal employment in the week, it cannot be excluded in computing the number of days on which a claimant's services are normally required (9821/32). A claimant who starts work in the evening of one day and leaves in the morning of the next is not to be regarded as employed on both days; the appropriate day of employment is determined by the Night Work Regulations (22001/32) (see paras. 312–313).

[1] For text of Order, see page 265.

455. *Extent of Disallowance.* This is determined by the number of days in the week on which the claimant normally works. If he is normally employed on not more than two days in alternate weeks, the disallowance operates on every day of the week in which he does not normally work, as well as on the appropriate number of days of the week in which he does normally work (10124/32). If he is normally employed on one day in one week and two days in the week following, the disallowance operates on all days except on one day and two days respectively in alternate weeks (8811/32).

D.—Married Women[1]

456. The Act excludes from the operation of the Order a married woman who proves that she has been deserted by, or permanently separated from, her husband, or that her husband is incapacitated for work, and has been so for at least six weeks (Section 55 (2) (*d*)).[2] If a woman is separated from her husband and says that she does not intend to return to him or that she does not expect that he will return to her, the separation may, as a rule, be regarded as permanent, although they may not have been separated for long, and the separation may be by informal arrangement between them. In addition to the classes excluded by the Act, a wider class is excluded by the Order itself which was made before the amendments contained in the 1934 Act. That wider class includes married women whose husbands are incapacitated for work (although not incapacitated for six weeks) and married women whose husbands are unemployed and not in receipt of unemployment benefit. In the case of the wider class, not comprised in the exclusion of the present Act, the onus of proving that a claim falls to be decided under the Order is upon the Insurance Officer (para. 1 of 14966/32). A husband is regarded as being incapacitated for work although he may receive full pay during incapacity. The word "unemployed" in regard to the husband is construed as if for the purpose of the Second Statutory Condition. A man who was in business on his own account as a boot repairer was held to be following it continuously and not only on the days when he received and executed orders.

[1] For text of Order, see pages 265-6. [2] Page 225.

457. If the claimant is a married woman to whom the Order applies, certain additional conditions must be satisfied before benefit is payable. The conditions are briefly as follow :—

458. *Prescribed number of contributions.* If the claimant has at the material date been married for six months or less, it is necessary only that, since her marriage, not less than 15 contributions should have been paid ; but, if she has been married more than six months, not less than 15 contributions should have been paid since her marriage *and* not less than 8 in the three months preceding the beginning of the benefit quarter. It is immaterial that sufficient time may not have elapsed since marriage, to make it possible for 15 contributions to have been paid.

459. *Condition* (1).[1] This condition is identical with the former conditions for Transitional Payments and should be construed in the manner indicated in 17963/32. The onus of proof is on the claimant. The fact that a woman has left or has lost her employment on marriage does not, in itself, raise an inference that she has abandoned insurable employment. Such an inference arises only if, during a period of some months since marriage or since the loss of her employment, she has neither registered for employment nor made any effort to obtain it. The question whether a woman who has been engaged on home duties ceases to be " normally employed in insurable employment " depends on the circumstances of the case. If she has undertaken the duties of housekeeper instead of going out to work, she has ceased to be normally employed in insurable employment ; but, if she has stayed at home to nurse or take charge of a sick or infirm relative to whom she may be said, in all the circumstances, to owe a duty, she has not necessarily ceased to be normally employed in insurable employment (paras. 28 and 29 of 17963/32). If her record is a poor one, it becomes necessary to consider whether it is poor despite her having made or because she has failed to make reasonable efforts to obtain employment. The question what efforts are " reasonable " depends on the circumstances of the neighbourhood and her occupation. If those circumstances are such that she could expect to obtain work by applying for it, it is necessary for her to show that she has made reasonable

[1] Page 266.

applications, but she should not be expected to make applications for work " day in and day out without regard to the utility or futility " of doing so (paras. 9 and 11 of 17963/32). If the claimant has been in both insurable and uninsurable occupations, it is necessary to consider whether insurable employment has been abandoned, and, if so, whether she has again established herself in insurable employment (paras. 12 to 15 of 17963/32).

460. *Condition 2 (a).*[1] The onus of proof is on the claimant, but she is not required to prove that she has a definite offer or an immediate prospect of employment. She need only show such a prospect as can fairly be considered a reasonable expectation. But her prospective employment must be substantial in amount ; it is not enough to show prospects of occasional employment during " rush periods." All material circumstances should be taken into account, including the claimant's experience, her record, her health and age (as affecting her chances of work), and the practice of employers in the neighbourhood regarding the employment of married women. The fact that pending confinement she cannot expect employment, or the fact that employers during a time of trade depression may not employ married women is no ground for holding that the condition is not satisfied, if, after confinement, a claimant might expect to be employed, or if on an improvement in trade employers might be expected again to employ married women. Unemployment due only to temporary trade depresdion is not a ground for disallowance (Sections 7 to 11 of 14966/32).

461. *Condition 2 (b).*[2] In determining what is a claimant's " usual occupation " it may be necessary to consider whether she is fit for work in her former occupation. If the disability which prevents her from working in that occupation is of a temporary nature, and she may expect to recover sufficiently to resume employment in that occupation, it is held that the occupation in question has not ceased to be her " usual occupation " ; but if she is permanently unable to work in the occupation, it can no longer be regarded as her " usual occupation ", and she is as a rule unable to take advantage of Condition 2 (*b*). On the same principle, if a woman leaves a district where her occupation is carried on and goes to live

[1] Page 266.
[2] Page 266. This condition is alternative to condition 2 (*a*).

permanently in a district where it is not carried on at all, her former occupation can no longer be said to be her usual occupation.

It is necessary to consider what is " her expectation " and not what is the expectation of married women as a class, and to take into account " all the circumstances of her case." In an occupation in which a married woman was retained after marriage but could not expect re-engagement by her former employer after confinement, her confinement was regarded as one of the " circumstances of her case " as a married woman, and it was held that she failed to satisfy the condition.

If the chances of employment are not, in fact, appreciably reduced by marriage, the condition is satisfied, although some employers in the neighbourhood may tend to give preference to unmarried women in her occupation (3220/34). The application of the Order to married women in the cotton textile industry is explained in Decision No. 15980/32.

XX.—UNEMPLOYMENT INSURANCE STATUTORY COMMITTEE

Constitution.

462. The Unemployment Insurance Statutory Committee was established by the 1934 Act. The constitution and powers of the Committee are specified in Sections 56, 57, and 59.[1]

The Committee consists of a Chairman and not less than four nor more than six other members, of whom at least one must be a woman, appointed by the Minister. One of the members is appointed after consultation with organizations representative of employers, one after consultation with organizations representative of workpeople, and one after consultation with the Minister of Labour for Northern Ireland. No serving member of the Committee is eligible for election to, or sitting in, the House of Commons. Except in the case of members first appointed, and of members appointed to fill casual vacancies, the appointments of the members and of the Chairman are for a fixed period of five years. The first members of the Committee were appointed for varying periods up to five years in order to secure a system of retirement by rota. The expenses of the Committee, including salaries and allowances paid to the Committee or their staff, are paid out of moneys provided by Parliament.

FUNCTIONS

463. The functions of the Statutory Committee are defined generally as being " to give advice and assistance to the Minister in connection with the discharge of his functions under the Unemployment Insurance Acts and to perform the duties specified in the Act." The Minister is required to furnish the Committee with such information as they may reasonably require to discharge their functions. It is not within the

[1] Pages 226-7.

powers of the Committee to tender advice and assistance at large. The circumstances under which they can act, apart from their specific functions in connection with the finances of the Unemployment Fund, are set out in Sections 55 (7) and (8), 57 (1) and 104 (2), (5), and (6) of the Act.[1]

Regulations and Orders.

464. Before any Regulations under Section 104 of the Act (except Regulations made under the provisions relating to instruction and training of young persons and the notification of young persons' leaving employment) are made by the Minister, and before the draft of any Order as to anomalies, made under Section 55 of the Act, is laid before Parliament, a draft must be submitted to the Statutory Committee who must at once consider the draft and make a report thereon to the Minister.

465. Before reporting to the Minister on draft Regulations the Committee must publish notice of the fact that the draft Regulations have been submitted to them for consideration. The published notice must also say where copies of the draft Regulations may be obtained by any interested party and state the time limit, which must not be less than 14 nor more than 28 days, within which any objection must be sent to the Committee.[2]

Any objections received within the required time from any person affected must be considered by the Committee. The objection must be in writing and must state the portions of the draft which are objected to, the specific grounds of the objection and any suggested amendments.[3]

466. The report of the Committee is considered by the Minister who then makes the Regulations, either in the form of the draft or with such amendments as he thinks proper.[4] All reports of the Committee on draft regulations or draft orders must be laid before Parliament at the same time as the regulations or draft Order together with a statement by the Minister showing what amendments (if any) have been made since the report of the Committee and what effect (if any)

[1] Page 225, 227.
[2] Section 104 (3).
[3] Section 104 (4) and (5).
[4] Section 104 (5) and (6).

has been given to any recommendations of the Committee. If effect has not been given to the recommendations contained in the Committee's report the Minister's statement must give reasons why the report has not been adopted.[1] The further provisions as to Regulations and Orders are described in paragraph 535.

Duties in connection with the Finances of the Fund.

467. As part of the arrangements for ensuring that the Fund is kept on a solvent basis the Statutory Committee are charged with certain specific duties. By the end of February in each year the Committee must examine the finances of the Unemployment Insurance Scheme and make a report to the Minister on the financial condition of the Unemployment Fund as at the preceding 31st December. The Committee must also report at any other time if they consider that the Fund is, or is likely to become, and is likely to continue to be, insufficient to discharge its liabilities. The Committee may also report on the financial condition of the Fund at such other times as they think fit.[2] The Committee are required to give public notice of their intention to make a report and to consider any representations they may receive on the subject.[3]

468. If at any time the report of the Committee indicates that " the Fund is (or is likely to become and is likely to continue to be), insufficient to discharge its liabilities, or is, *and* is likely to continue to be, more than reasonably sufficient to discharge its liabilities " the report must contain recommendations for such amendments of the provisions of the Act set out in the Fifth Schedule, as will in the opinion of the Committee have the effect of making the Fund sufficient (or " no more than reasonably sufficient ") to discharge its liabilities.[4]

469. The wording of the Act reads, " is or is likely to become and is likely to continue to be insufficient." The Committee are not, therefore, required to make recommendations for amendment of the scheme merely because the Fund is *temporarily* insufficient to discharge its immediate liabilities.

[1] Section 104 (5) and (6).
[2] Section 59 (1), page 227.
[3] Section 59 (3), page 228.
[4] Section 59 (2), page 227.

It is only if the deficiency is likely to be a continuing one that they are required to report and make recommendations. Similarly the effect of the words "more than reasonably sufficient" is that the Committee need not make a report recommending amendments of the scheme merely because the Fund has a modest balance at any time; the Fund must of necessity have a reasonable working balance.

470. Recommendations made by the Committee with the object of restoring the balance of income and expenditure may be of a general nature, or may be in relation to particular classes of insured contributors, but their recommendations may only be for amendment of those sections of the Act specified in the Fifth Schedule.[1] They can, for example, recommend amendments of such matters as the statutory conditions, the rates of benefit or the rates of contribution by employers or employed persons, but they are not entitled to make recommendations on such matters, as for example, the classes of persons to be insured (except as specified in para. 46), the minimum and maximum age for insurance, the rate of contribution by the Exchequer, or the arrangement for the adjudication on claims.

471. In making their recommendations the Committee must give an estimate of the effect on the financial condition of the Fund of any amendments they recommend.[2] If the report shows that there is a disposable surplus in the Fund the Committee may recommend the application of any sum towards the discharge of the existing liabilities in respect of the debt of the Fund which has been funded.[3]

Within two months after the receipt by the Minister of any report on the financial condition of the Fund, or, if Parliament is not then sitting, as soon after the two months as Parliament again sits, the Minister is required to lay the Committee's report before Parliament. If the report contains recommendations for adjusting the finances, he is also required, after consultation with the Treasury, to lay before Parliament the draft of an Order making either the amendments recommended by the Committee or other amendments which in his opinion will have substantially the same effect on the financial condition of the Fund. If the amendments proposed by the

[1] Page 239.
[2] Section 59 (2), page 227.
[3] See Chapter XXI, para. 480.

draft Order differ from the amendments recommended by the Committee, the Minister must give reasons for the proposed variations.[1]

472. The Minister is bound to accept the Committee's findings as to the financial condition of the Fund, and to take steps to deal with a reported surplus or deficiency. He is not bound, however, to accept the Committee's recommendations as to how the situation should be dealt with.

473. The report and the draft Order are considered by both Houses of Parliament, and, before the Order becomes law both Houses must pass resolutions approving the proposed amendments. An Order is then made in terms of the draft and thereupon becomes law.[2]

Notification of Loans.

474. Any advances made to the Fund under the borrowing powers provided for in Section 60 (3), (4) and (5) of the Act must be immediately reported to the Statutory Committee by the Minister.[3]

Duty of the Committee as regards Agriculture.

475. Section 20 of the Act of 1934 laid a definite duty on the Statutory Committee in regard to agriculture. The Committee were required as a matter of urgency to make such proposals as seemed to them practicable for the insurance against unemployment of persons employed in agriculture (including horticulture and forestry). The Committee held their enquiry and their proposals were included in a report to the Minister, who, as required by Section 20 of the Act, laid the report before Parliament. Further legislation is, however, necessary before a scheme of insurance for agriculture can be introduced.

Other Duties.

476. Beyond the matters referred to above the Minister may refer to the Committee for consideration and advice such questions as to the operation of the Unemployment

[1] Section 59 (4), page 228.
[2] Section 59 (5), page 228.
[3] See para. 482.

Insurance Acts, including questions as to the advisability of amending the Acts, as he thinks fit.[1] Such matters may include the question of insuring classes of persons, e.g., domestic servants, not now included in the scope of insurance, as well as amendments within the limits of the existing scheme.

[1] Section 57 (1), page 227.

XXI.—FINANCE

A.—Unemployment Fund

Establishment of Fund.

477. All contributions payable under the Act are paid into the Unemployment Fund[1] out of which benefit is paid. The Fund is under the control of the Minister of Labour. In addition to the ordinary Exchequer contributions the Exchequer, under Article 8 (1) of the Unemployment Insurance (National Economy) No. 2 Order, 1931, has also made grants covering the cost of transitional payments and the administrative expenses properly attributable to those payments. These special grants were provided for on the Vote for the Ministry of Labour.

478. The transitional payments scheme was superseded by the arrangements made under the Unemployment Assistance Act, 1934, whereby persons to whom that scheme had hitherto applied are now dealt with by the Unemployment Assistance Board. Payments of unemployment assistance allowances are, however, to be made out of the Unemployment Fund up to the Second Appointed Day, to be fixed under that Act and Section 63 of the Unemployment Act, 1934. The cost of these allowances and the relative cost to the Ministry of Labour of administration is refunded to the Unemployment Fund out of the money voted by Parliament for unemployment assistance allowances.

Investment of Fund and Audit.[2]

479. The Unemployment Fund may be invested by the National Debt Commissioners in securities which are for the time being authorized by Parliament as investments for savings banks funds. The National Debt Commissioners are required

[1] The employer's contribution in respect of certain classes of seamen is paid into the Seamen's Special Fund. See para. 16.

[2] Section 58 (2), (3) and (4), page 227.

to present to Parliament annually an account of the securities in which moneys belonging to the Fund are invested.

The accounts of the Fund are examined by the Comptroller and Auditor General and, together with his report, are laid before Parliament. The financial year for the Unemployment Fund ends on the 31st March.

B.—Debt of the Fund

480. From 1921 to 1931 amending Acts were passed giving authority to the Treasury to advance sums required for the purpose of discharging the liabilities of the Unemployment Fund. The debt incurred in this manner amounted to £115,000,000 in 1932. Interest on advances was paid out of the Fund and sums advanced were repaid from time to time.

In accordance with provision made in the Act of 1934[1] the debt of the Unemployment Fund existing on 1st July, 1934, has been funded and has to be repaid by means of half-yearly instalments of £2,500,000 to cover both principal and interest. The instalments have to be paid to the National Debt Commissioners on the 30th September and 31st March in each year, and the payments commenced on 30th September, 1934. The amount of the debt outstanding at 1st July, 1934, was £105,780,000, and the present rate of repayment will ensure the debt being cleared in 1971. The Unemployment Insurance Statutory Committee have power to recommend the disposal of any surplus in the Fund from time to time towards the reduction of the debt.

481. Section 18 (2) of the 1934 Act[2] fixed the rate of interest, viz., 3⅛%, at which the debt has been funded, but also provided that the advances outstanding at 1st July, 1934, carry the rates of interest at which they were made until the period of each loan expires: the latest date at which outstanding advances expire is October, 1938.

C.—Borrowing Powers[3]

482. The former borrowing powers under the Act of 1921, Section 5, were repealed by the 1934 Act and replaced, as part of the arrangements for making the Fund self-supporting and

[1] Section 60 of 1935 Act.
[2] Section 60 (2) of 1935 Act.
[3] Section 60 (3), (4), (5), (6) and (7) of 1935 Act.

solvent, by provisions enabling the Treasury to authorize advances as follows—

(*a*) Payment to the National Debt Commissioners out of the Consolidated Fund of the sum required to make good the deficiency, if the Unemployment Insurance Fund is unable to meet any instalment of the debt due under the " Funding " arrangement. Such payments must be treated as temporary advances to the Fund and must be repaid within six months from the date of payment to the National Debt Commissioners :

(*b*) Out of the Consolidated Fund, to meet payments properly due, other than debt instalments and for the repayment of any advance under (*a*). Any amount so borrowed is repayable before the end of the financial year in which the advance was made :

(*c*) Out of moneys voted by Parliament, such sums as appear to the Minister, after consultation with the Treasury, to be required to enable the Fund to discharge its liabilities (including the repayment, as due, of any advances made under (*a*) and (*b*)). One third of advances out of Voted moneys must be repaid by the end of the financial year following the year in which the advance was made and the remaining two-thirds by the end of the second financial year following.

Any advances made to the Unemployment Fund must be immediately reported to the Unemployment Insurance Statutory Committee. The duties of that Committee and of the Minister regarding the Unemployment Fund are dealt with in paragraphs 467–473.

D.—Cost of Administration

483. The cost of administration of unemployment insurance is paid out of moneys provided by Parliament, but a sum not exceeding one-eighth of the income of the Unemployment Fund is applied as an appropriation-in-aid of the moneys provided by Parliament for the cost of administering the Unemployment Insurance Scheme.[1] In calculating one-eighth of the income of the Unemployment Fund the Exchequer Grants in respect of " transitional " payments and unemploy-

[1] Section 62.

ment assistance allowances are excluded as also are any sums refunded in respect of contributions paid in error.

484. In arriving at the cost of administration of unemployment insurance, account is taken of such of the expenses of any Government Department as are attributable to carrying the Act relating to Unemployment Insurance into effect. These expenses include the cost of providing for superannuation allowances or other payments to any persons employed for the purpose of the Unemployment Insurance Act; any capital expenditure incurred for the purposes of the Act, and an amount in lieu of rent, determined by the Treasury with the consent of the Minister, in respect of the use of certain Crown premises.

E.—Grants

485. Under Section 80 of the Act the Minister may, with the consent of the Treasury, make grants out of the Unemployment Fund towards expenses incurred in respect of—

(*a*) attendance of juveniles (under 18) at authorized courses of instruction;

(*b*) attendance of persons in receipt of benefit at authorized training courses.

The rates of grant must not exceed 50 per cent. for (*a*) and 75 per cent for (*b*), of the cost borne by the Exchequer in respect of such attendances.

XXII.—ARRANGEMENTS WITH ASSOCIATIONS

A.—Nature of Arrangements

486. Under Section 68 of the 1935 Act any Association of employed persons, which provides in its rules for the payment of benefit to members or any class of members during unemployment and complies with certain conditions, may make an arrangement under which the Association pays to its members from its own funds the State unemployment benefit to which they would otherwise be entitled, and claims a refund of an equivalent amount from the Unemployment Fund. The Associations which may make such arrangements include[1] Trade Unions and Approved Societies under the Health Insurance Acts, although the membership may include persons who are not insured contributors under the Unemployment Insurance Act ; but industrial assurance companies, collecting societies, and societies organized by or connected with such societies, even when organized as separate sections, are excluded and may not enter into an arrangement.

487. The Association may claim a grant in aid[2] of administrative expenses, which may be withheld or reduced for a breach of the conditions of the arrangement. The present rate of grant which was fixed in December, 1931, is 5d. for each week of State benefit repaid to the association in respect of claims by adult members and 2½d. in respect of claims by juvenile members. Associations may treat contributions under the Insurance Act as subscriptions to their funds, and may reduce their rates of contributions accordingly.[3] They have also power to alter their constitutions to enable them to make an arrangement under the Act.[4] The membership of Associations having arrangements under Section 68 is about 730,000.

[1] Section 68 (2), page 229.
[2] Section 71 (2), page 231.
[3] Section 71 (1), page 230.
[4] Section 69 (1), page 229.

B.—Conditions under which Arrangements are allowed

488. The Association's rules must provide for payment of benefit to its unemployed members from its own private funds under the following conditions :—

(*a*) The rates must be not less than the following amounts :—

	Per week. s.	d.
In the case of men aged 21 or over	3	0
In the case of women aged 21 or over	2	6
In the case of young men and boys	1	6
In the case of young women and girls	1	3

(*b*) The aggregate amount of benefit payable in a year must be not less than the following amounts :—

	s.	d.
In the case of men aged 21 or over	75	0
In the case of women aged 21 or over	60	0
In the case of young men and boys	37	6
In the case of young women and girls	30	0

(*c*) The benefit must be payable in at least 10 weeks in a year.

It should be noted that the benefit referred to above is over and above the State unemployment benefit.

489. The Association must have reasonably effective machinery for ascertaining wages and conditions in the trade and notifying opportunities of employment.[1] For this purpose, the Association must maintain in each district a register of unemployed members, in charge of a properly qualified official, who must be in direct communication with employers in the district. The membership to be covered by the register must not exceed a reasonable maximum. In other words the Association must be able in each district to fulfil the functions of an Employment Exchange as regards obtaining notification of vacancies and keeping a register of unemployed members.

490. Evidence of unemployment may be obtained by means of either of the following alternative methods :—

[1] Section 70 (2), page 230.

(1) Unemployed members may be required to attend daily, or at the same intervals as direct claimants, at the Local Office to sign an unemployed register or to have a vacant ticket endorsed. Under this system the responsibility for proof of unemployment rests with the Ministry of Labour ; or

(2) the Association may in each district require unemployed members to sign a vacant book daily or at prescribed intervals. In this case the responsibility for proof of unemployment rests with the Association.

491. The Association must furnish the Ministry with any information required with regard to the working of an arrangement, and must allow the Minister's officers to inspect books of accounts, vouchers, and other documents relating to payments by or to the Association in connection with unemployment benefit.

C.—Procedure

492. The Ministry of Labour issues an explanatory memorandum (U.I.L. 14) for the guidance of Branch Secretaries of Associations having arrangements under Section 68 of the Act. The procedure is set out in detail therein, and copies may be obtained at any Local Office.

The procedure requires branches to be connected with the Local Office. A member of the Association who applies for benefit through his Association ("indirect claim"), must attend on the first day of unemployment at the Local Office for the district in which he lives, and lodge his unemployment book. When his application is made, the Association is notified and, if the arrangement so provides, the claimant may thereafter sign the Vacant Book at the Association's Office, instead of attending at the Local Office. A weekly record of days of proved unemployment by members claiming benefit is sent to the Local Office, and the Association is informed of the amount repayable from the Unemployment Fund.

Determination of Questions.

493. Questions as to the amount of benefit which a member would be entitled to receive if no arrangement

existed are determined by the Statutory Authorities in the same way as similar questions arising on direct claims (see Chapter XVI). The right of appeal to the Court of Referees and to the Umpire lies with the Association and not with the member.

D.—Payments to the Association

494. The Ministry of Labour repay periodically to the Association out of the Unemployment Fund the amount of benefit which each insured person covered by the arrangement *would have been entitled to receive* if he had claimed direct through the Local Office (Section 68 (1)). If any question arises as to the benefit which a person would have been so entitled to receive, the question is decided by the Statutory Authorities in the same way as a claim for benefit, but the Minister or the Association may require the question to be referred to the Umpire for final adjudication.

The jurisdiction of the Statutory Authorities to determine questions arising between the Minister and the Association, which is derived from Regulation 7 of the Associations Regulations,[1] is limited to determining questions whether a member of the Association "would have been entitled to unemployment benefit," or "as to the rate to which he would have been entitled" (4738/35).

495. Section 71 (5) (*a*) of the Act[2] provides that, where an overpayment of benefit has been made by an Association to one of its members, the amount of the overpayment may be recovered from the member by means of deductions from any benefit, or any payment from the Association, to which he subsequently becomes entitled, unless he shows that the sum was received by him in good faith and without knowledge that he was not entitled thereto; this power of recovery of the Association is without prejudice to any other remedy. The question whether a claimant is liable to have deductions made under this section is decided by the Court of Referees, and not by the Insurance Officer (Section 45).[3]

496. Where benefit has been paid to a claimant in consequence of the decision of an Insurance Officer, Court of Referees or the Umpire, and the decision is subsequently revised in the light of new facts, the Association is entitled to

[1] Page 269. [2] Page 231. [3] Page 221.

repayment, if it can be shown that no-one concerned with the case on behalf of the Association could reasonably have been expected to ascertain the facts on which the decision was revised, and that recovery of the amount paid has not been practicable (Section 71 (5) (*b*)).[1]

[1] Page 231.

XXIII.—POWERS OF EDUCATION AUTHORITIES

A.—Authorized Courses of Instruction for Unemployed Boys and Girls

497. It is one of the statutory duties of Local Education Authorities to provide Courses of Instruction for unemployed boys and girls, and the Minister of Labour has power to require the attendance at such Courses of *all* unemployed juveniles under the age of 18 whose attendance can reasonably be required. The Minister of Labour is centrally responsible for the administration of the scheme.

The requirement to attend a Course.

498. The responsibility for requiring attendance rests with the Minister of Labour, but in areas where Local Education Authorities exercise their Choice of Employment powers (see para. 510) the requirement is issued by the Juvenile Employment Bureau. Under the Regulations[1] a formal notice requiring attendance at an Authorized Course must be issued to the juvenile of sixteen years of age or over or to the parent or guardian of a juvenile under sixteen. Before issuing a requirement the Minister must take all the circumstances of the case into account, including the distance from the place where the Course is held, the travelling arrangements, and the payment of fares. A boy or girl who has just left school is not required to attend until one month has elapsed. Others are not required to attend until they have been out of work for a week. The position of short-time workers, those temporarily stopped from employment, and those in casual work are dealt with in the light of local circumstances.

Boards of Assessors.

499. If there is any doubt about the issue of a require-

[1] S.R. & O., 1934, No. 847, page 253.

ment to attend, or if a juvenile or the parent objects to attendance, the case is referred to a Board of Assessors for advice. A Board may also be asked to consider cases of misbehaviour.

Boards of Assessors are appointed by the Minister in accordance with the Regulations[1] made under Section 14 of the 1934 Act (Section 78 (1) of the 1935 Act). In accordance with the Regulations a Board must consist of not less than two or more than three persons, selected from panels of suitable persons appointed by the Minister. A Board shall, if possible, always include a representative of the Local Education Authority. It is also considered desirable that each Board should, where possible, contain a representative of industrial interests, and that a woman should be included when cases of girls are being considered.

500. The function of the Board is to consider each case referred to them and to report whether it is advisable to require attendance. The juvenile, or, if the juvenile is under 16, the parent, is invited to be present at the sitting or to make written representations to the Board. During the consideration of any case, any officer of the Ministry of Labour or of a Local Education Authority exercising powers in respect of choice of employment, and, if necessary, an Insurance Officer, are entitled to be present. The press and the public are not admitted. For the purpose of discussing its report the Board may order all persons not being members to withdraw.

501. The Board selects one of its members to act as Chairman. The Ministry of Labour has no power to pay expenses or allowances to members of the Board, or to persons attending.

Enforcement of attendance.

502. Where it is considered reasonable to require a boy or girl to attend an Authorized Course, refusal to comply with a requirement will normally lead to disallowance of benefit (Fourth Statutory Condition, Chapter IX) or of dependants benefit (para. 345 (*b*)). Apart, however, from possible disallowance of benefit the Minister has general power to enforce attendance by the application of the sanctions provided in the Education Act, 1921, and the Education Act (Scotland), 1918, in respect of elementary and primary schools, up to 16 years of age, and, in respect of Continuation Schools, from 16 to

[1] Attendance at Authorized Courses Regulations, 1934, page 253.

18 years. This power applies both in respect of claimants and of non-claimants. Proceedings may be taken before a Court of Summary Jurisdiction by or on behalf of the Minister against the parent or guardian in respect of children under 16 years of age, and against young persons themselves who have attained that age. Proceedings may also be taken against a boy or girl who by reason of misbehaviour while attending a Course has been required to discontinue attendance for a period; under Section 78 (3)[1] he is deemed to have failed to attend without unavoidable cause.

503. The responsibility for proving non-attendance rests with the Superintendent of the Course in the first instance. In the case of boys and girls, to whom the insurance sanctions (i.e., disallowance of benefit and dependants benefit) do not apply, the initiation of legal proceedings is usually left to the discretion of the Education Authority. Where it is desired to take legal proceedings after disallowance of benefit or dependants benefit has been imposed, the Authority is required to obtain the assent of the Ministry of Labour to proceedings. The Authorities are reimbursed in full in respect of expenditure on legal proceedings.

504. In the case of juveniles under 16 years of age, a Court of Summary Jurisdiction may impose a fine upon the parent not exceeding, with costs, £1. The Court also has power to order the child to be sent to an approved school or to the care of a fit person, but this power is not considered appropriate for the normal case of failure to attend. Where proceedings are taken against a boy or girl of 16 years of age or over he is liable to a fine not exceeding 5/- for a first, or £1 for a second or subsequent offence.

Types of Courses.

505. There are three main types of Authorized Courses. (i) self-contained Junior Instruction Centres in areas where the numbers of unemployed juveniles are substantial; (ii) Junior Instruction Classes, normally in connection with an existing institution for higher education, in areas where the numbers are not large enough to justify the establishment of self-contained Centres, but are sufficient to form a separate class; (iii) in other areas, where the numbers are insufficient

[1] Page 233.

to form either a Centre or a separate Class, suitable existing day-time or evening Classes conducted by the Local Education Authority. Attendance at an evening course is not required on more than four evenings a week.

506. The instruction which is given to unemployed juveniles at Junior Instruction Centres and Classes is not vocational, but is designed to raise their standard of employability to facilitate their re-absorption in employment, and, by providing them with interests of a formative character, to avert the deterioration which so easily sets in when young people are without occupation. The training includes, in addition to general educational subjects, a substantial proportion of handicrafts and practical work such as woodwork, metalwork, etc., for the boys, and cookery, needlework, etc., for the girls, as well as physical training and organized games.

507. With few exceptions these Centres and Classes are all conducted in the daytime. Generally speaking, boys and girls attend for fifteen hours a week, but in a few cases, whole-time instruction for about twenty-five hours a week is provided. Except during short holiday periods Junior Instruction Centres are open all the year round.

Further information on the subject is contained in the "Memorandum on the Establishment and Conduct of Courses of Instruction for Unemployed Boys and Girls," published for the Minister of Labour by H. M. Stationery Office, price 9d. net (A.C.M.1).

Finance.

508. The normal rate of grant paid by the Ministry to Local Education Authorities in respect of Junior Instruction Centres and Classes is 75 per cent. of approved expenditure.

Where unemployed boys and girls residing beyond walking distance of an Authorized Course can without hardship be conveyed to the Course, fares may be paid for them by the Education Authority subject to certain limitations, and the expenditure involved is admitted for grant from the Ministry of Labour.

Under Section 80 of the Act half the cost of Authorized Courses may be borne by the Unemployment Fund (see para. 485).

B.—Choice of Employment

509. Under Section 107 of the Education Act, 1921, Local Education Authorities could, with the approval of the Board of Education, make arrangements for giving to boys and girls under the age of 18 years, assistance in respect of choice of suitable employment. Grants were payable by the Board of Education to the Local Education Authorities in respect of such arrangements. Central responsibility was transferred from the Board of Education to the Ministry of Labour under the Ministry of Labour (Transfer of Powers) Order, 1927.

510. The powers of Education Authorities to undertake this work are now contained in Section 81 of the 1935 Act. Where an Authority undertake Choice of Employment duties they also undertake duties in connection with the administration of unemployment insurance in respect of juveniles and in relation to the issue of unemployment assistance allowances. A grant of 75 per cent. is paid on the net approved expenditure of an Authority on the combined duties of Choice of Employment[1] and administration of insurance and unemployment assistance.[2]

[1] Local Education Authorities (Choice of Employment Grant) Regulations (S.R. & O., 1928, No. 327; 1934, No. 1442).

[2] Unemployment Insurance (Education Authorities Administrative Expenses) Regulations, 1934 (S.R. & O., 1934, No. 1443).

XXIV. MISCELLANEOUS

A.—Legal Proceedings

511. In any proceedings for an offence under the Act, or involving any question as to payment of contributions, or for the recovery of any sums due to the Unemployment Fund, the decision of the Minister as to whether any person is an employed person, or as to who was the employer of any person is conclusive for the purpose of the proceedings, unless an appeal against the decision is pending, or the time for appealing has not expired. If such a decision has not been obtained and it is necessary for the determination of the proceedings, the question must be referred to the Minister for decision (Section 85).

512. The Act lays down the penalty for certain offences in connection with contributions :—

(*a*) failure or neglect to pay any contributions which any employer or employed person is liable to pay—fine not exceeding £10 (Section 8 (5)).

(*b*) purchase, sale, exchange, or pawn of any employment card or used insurance stamp—fine not exceeding £20, or imprisonment not exceeding three months, or both fine and imprisonment (Section 17 (1)).

(*c*) false representation as to the person to whom an unemployment book or card was issued—fine not exceeding £10 (Section 17 (3)).

513. If an employer has been convicted of the offence at (*a*) above, or has been charged with such an offence and an order has been made under Section 1 (1) of the Probation of Offenders Act, 1907, he is liable to pay to the Fund a sum equal to the amount which he has failed or neglected to pay (Section 18 (1)). A similar provision applies in respect of convictions, or Probation Act orders, for offences under the Stamp Duties Management Act, 1891, as applied by Regulations made by the

Postmaster General under Section 16 of the 1935 Act, where the evidence on which the offender is convicted, or the order is made, shows that the employer has used a cancelled or defaced stamp for the purpose of discharging his liability to pay contributions.

On any such conviction, or on the making of any such order, if notice of the intention to do so has been served with the summons or warrant, evidence may be given of the failure or neglect of the employer to pay contributions in respect of the same person during the two years preceding the date of the offence. On proof of such failure or neglect the employer may be ordered to pay to the Unemployment Fund a sum equal to the total of all the contributions which he is so proved to have failed or neglected to pay (Section 18 (3)). Any sum so ordered to be repaid is recoverable as a penalty (Section 18 (4)).

514. Where the employer makes a payment into the Unemployment Fund under these provisions the amount paid is treated as a payment in satisfaction of the unpaid contributions, and the insured person's contribution is not recoverable by the employer from the employed person (Section 18 (5)).

515. If the employer is a company and fails to pay to the Unemployment Fund any sum which it has been so ordered to pay, any directors of the company are jointly and severally liable to pay the arrears, who knew, or could reasonably be expected to have known, of the failure or neglect to pay the contributions in question (Section 18 (6)).

516. Any person who knowingly makes any false statement or false representation, for the purpose of obtaining benefit or other payment either for himself or any other person, or for avoiding any payment due to be made, is liable on summary conviction to imprisonment for a term not exceeding three months (Section 86 (1)).

517. Any person who is guilty of any contravention of or non-compliance with any of the requirements of the Act or Regulations, in respect of which no special penalty is provided, is liable on summary conviction to a fine not exceeding £10 for each offence (Section 86 (2)).

518. Proceedings for an offence under the Act cannot be instituted (*a*) in England except by or with the consent of the Minister, or (*b*) in Scotland except by the Minister, or the Procurator Fiscal. In either country an inspector or officer

appointed for the purpose of the Act may act with the authority of the Minister or the Procurator Fiscal, and, although not a counsel or solicitor, may prosecute or conduct proceedings before a court of summary jurisdiction. Proceedings for an offence may be commenced at any time within the period of three months from the date certified by or on behalf of the Minister as the date on which evidence sufficient to justify a prosecution comes to the Minister's knowledge, or within 12 months after the commission of the offence (Section 87).

519. The wife or husband of a person charged with an offence may be called as a witness either for the prosecution or defence and without the consent of the person charged (Section 89).

Civil Proceedings.

520. Nothing in Sections 17, 18, and 86, referred to in the paragraphs above, prevents the Minister from recovering any sums due to the Unemployment Fund by means of civil proceedings.[1] Section 88 of the Act provides that all sums due to the Fund shall be recoverable as debts due to the Crown and, without prejudice to any other remedy, may be recovered by the Minister summarily as a civil debt. Proceedings may be brought at any time within three years from the time when the matter complained of arose. Proceedings may be instituted and conducted by an inspector or other officer appointed and authorized by the Minister (Section 88).

521. If a person has lost any unemployment benefit, to which he would have been entitled but for the failure or neglect of his employer to pay contributions or to comply with the requirements of the Regulations, that person is entitled to recover summarily from the employer as a civil debt the amount of the benefit so lost. Proceedings may be brought for this purpose at any time within one year after the date on which the employed person would have been entitled to receive the benefit (Section 19).

B.—Powers of Inspectors

522. Inspectors are supplied with a certificate of appointment which they may be required to produce when applying for admission to an employer's premises. The powers of

[1] A. G. V. Paine: [1928] 1 K.B.9.

inspectors are defined in Section 65. Their main duty is to ascertain whether contributions have been duly paid in respect of insured persons. They have the right of entry to premises, other than a private dwelling-house not being a workshop, and the right to examine records and to question persons. Any person who wilfully delays or obstructs an inspector or fails to give information is liable on summary conviction to a fine not exceeding £5. No one is required to answer any question or to give any evidence tending to incriminate himself.

Inspection is ordinarily undertaken on behalf of the Ministry of Labour by inspectors of the Ministry of Health.

C.—Supplementary Schemes

523. Section 72 of the 1935 Act re-enacts a provision contained in Section 20 of the 1920 Act, enabling the Minister to approve any scheme of supplementary payments to persons insured under the State scheme. Thus a supplementary scheme may provide insurance against partial unemployment (i.e., if the employment available is not such as to enable the insured person to earn on any day the full rate of wages): or against unemployment of a type for which payment of State benefit is not made (e.g., where the period of unemployment is less than three days out of six). Again a supplementary scheme may provide for unemployment payments additional to insurance benefit.

524. A supplementary scheme may be submitted to the Minister by—

(*a*) a joint industrial council; or

(*b*) an association of employers and employees; or

(*c*) any organizations which appear to the Minister to represent a majority of organized employers and of organized employees.

The third category (*c*) was added by the Act of 1934, as it was considered that the previous provision was unduly restrictive. In the case of (*c*) the Minister is required to ascertain the views of other employers and employees in the industry who may not be members of the organizations submitting the scheme.

525. If the Minister is satisfied that the scheme should come into operation he may make a Special Order approving

it. In the case of Special Orders the Minister is not required to refer the draft to the Statutory Committee. The procedure is described in paragraphs 543–6.

526. The Minister may participate in the administration of a supplementary scheme, but no part of the cost of the scheme can be derived from moneys provided by Parliament.

Although the provision has been in force since 1920 no supplementary scheme has been approved by the Minister.

D.—Special Schemes

527. Under Section 18 of the 1920 Act, separate industries were allowed, under certain conditions, to contract out of the general scheme and to set up special schemes of their own. The power to set up such schemes was suspended by the 1921 Act ; it was finally abolished by the 1927 Act without prejudice to the schemes which had already been approved. Only two industries submitted schemes fulfilling the statutory requirements before the power to approve special schemes was suspended : the Insurance Industry Special Scheme which now covers about 116,000 employees came into operation on 4th July, 1921 ; the Banking Industry Special Scheme which covers about 38,000 employees came into operation on 14th July, 1924. The special schemes have effect as if enacted in the 1935 Act. They apply only to persons who would otherwise be covered by the Act ; persons insured under them are not at the same time insured under the general provisions of the Act.

528. The Minister has power under Section 73 to vary or amend the provisions of the scheme. On the application of the administering authority the Minister may

(*a*) by *Special Order* vary or amend the rates of contribution or rates or duration of benefit or the constitution of the administering body and

(*b*) by *Order* amend other provisions of the Scheme.

In the latter case the order must be laid before both Houses of Parliament in the same manner as regulations made under the general scheme.[1] The procedure for making a Special Order is laid down in Section 106.[2]

[1] Section 73 (7).

[2] See paras. 543-6.

529. In addition to these powers the Minister may *by order* vary or amend the provisions of the scheme without awaiting an application from the Special Scheme Authority, if it is for the purpose of ensuring that the benefits under the special scheme are not less favourable than those of the general scheme (Section 73 (6)). The Minister also has power to make regulations for regulating the position of persons who pass from one scheme to another, so that a person who has acquired rights under the general scheme or a special scheme may not lose those rights on transfer (Section 73 (8)). No such regulations have been made.

530. *Insurance Industry.* The scheme of unemployment insurance for the Insurance Industry applies with certain exceptions to all insurable persons employed in Great Britain in the Insurance Industry. The scheme is administered by the Insurance Unemployment Board, 13-15 Great Scotland Yard, S.W.1. Funds required for unemployment benefit and other payments under the scheme are derived from contributions by all employers of persons coming under the scheme. The details of the scheme are laid down in the Insurance Industry Special Scheme (Variation and Amendment) Special Order, 1935 (S.R. and O., 1935, No. 97).

531. *Banking Industry.* With certain minor exceptions, all persons employed in undertakings engaged in England or Wales in carrying on as their principal business a banking, financial or other similar business, of which a substantial part consists of the receipt of money on current account to be drawn upon by cheques, are covered in the special scheme of unemployment insurance for the Banking Industry. The scheme is administered by the Banking Unemployment Insurance Board, 5 Laurence Pountney Hill, E.C.4. The details of the scheme are laid down in the Banking Industry Special Scheme Orders 1930 to 1934.

532. *Determination of questions.* In the case of both schemes the conditions for the receipt of benefit are in general similar to those operating under the general provisions of the Act. All claims for benefit and all questions arising in connection with such claims are determined by claims officers appointed by the Boards, or by special Committees constituted in accordance with the schemes. In general, the decision of these authorities are final and conclusive, but there is an appeal to the Umpire, as follows :—

(i) by the claims officer in any case ;

(ii) by an association of employed persons of which the claimant is a member in any case ;

(iii) by the claimant

(*a*) with the leave of the appeal committee, or Court of Referees ; or

(*b*) where the decision is not unanimous ;

(iv) by the Minister in any case in which he is of opinion that a principle of importance is involved or there are other special circumstances.

Under Section 74 (1) the question whether a claimant is a person to whom a special scheme applies or applied, is decided by the Minister, from whose decision an appeal lies to the High Court. Where it has been determined in accordance with this Section that a claimant is within the scope of one or other of the special schemes, a Court of Referees under the general scheme has no jurisdiction to give a decision on a benefit application made by such a claimant under the general scheme (12697/30).

E.—Regulations, Orders and Special Orders

533. The Act of 1934 made important changes in the procedure for making Regulations and Orders. Broadly speaking a distinction was drawn between the power to make (*a*) Regulations to carry into effect the administrative provisions of the scheme (*b*) Orders making amendments to the scheme for removing anomalies or for adjusting the finances of the Fund and (*c*) Special Orders amending the two Special Schemes or setting up or amending a supplementary Scheme. Consequentially the 1934 Act (Section 114) provided that certain Orders and Special Orders made under previous Acts should have effect as if they were Regulations, and certain Regulations as if they were Orders. Reference is made to these changes in the appropriate place in the Text and in Appendix II.

Regulations.

534. The Minister has certain specific powers to make Regulations as well as a general power for carrying the Act into effect.[1] As explained in paragraph 464, all Regulations

[1] Section 104 (1).

must be laid in draft before the Unemployment Insurance Statutory Committee. The only exceptions are Regulations made under Section 78 (requiring attendance at courses of instruction) and under Section 82 (notification when persons under 18 leave employment). The procedure is described in paragraphs 465–6.

535. Regulations must be laid before each House of Parliament as soon as they are made. They come into force at once, but if an address is presented to His Majesty by either House of Parliament within the next 20 days on which that House is sitting, praying that they may be annulled, they become void, without prejudice to the validity of any action already taken upon them or to the making of any new Regulation.[1]

Provisional Regulations.

536. If on account of urgency or any special reason it is necessary to proceed to make Regulations before receiving or considering the report of the Statutory Committee, the Minister may make provisional Regulations which have temporary effect as if they were Regulations. No provisional Regulations can continue in force for longer than three months after the Minister has received the Committee's report.[2]

If, in their report on the draft Regulations, the Committee suggest no amendment, the Minister makes substantive the provisional Regulations by following the normal procedure.

Orders.

537. The Act prescribes special forms of procedure for making Orders for removing anomalies in connection with special classes of persons[3] or for dealing with a deficiency or surplus in the Unemployment Fund to which the Statutory Committee have called attention.[4]

538. When making Orders to remove anomalies with respect to benefit in the case of special classes of persons, the Minister must submit the draft to the Statutory Committee to consider and report upon the draft as in the case of Regulations. The draft Order and the report of the Committee must be laid before Parliament together with a statement by the Minister of any amendments made and the action taken on the

[1] Section 105.
[2] Section 55, page 224.
[3] Section 104 (5) proviso.
[4] Section 59 (4), page 228.

Committee's recommendations. Before an Order can have effect each House of Parliament must pass a resolution approving the Order.[1]

539. As explained in paragraph 471 the Minister is required by Order to deal with any deficiency or disposable surplus reported by the Statutory Committee under Section 59.[2] A draft Order must be submitted to Parliament within two months after the Minister has received the Committee's Report or as soon after that time as Parliament sits.[3] The draft Order itself is not submitted to the Committee, as it deals with the situation on which the Committee has already reported. The draft Order is laid before each House of Parliament. If each House resolves that the draft Order be approved, the Minister is required to make an Order in the terms of the draft. The Order does not take effect until the draft has been approved and then from such date as may be specified in the Order.

540. It should be noted that the Minister has no power by Order to extend or restrict the classes of insured persons as part of the financial adjustment of the scheme. There are, however, certain powers to make *Regulations* to deal with anomalies arising from the scope of the scheme[4] and to modify the provisions of the scheme in its application to the mercantile marine.[5]

541. The Minister also has power to make Orders varying or amending the provisions of the special schemes[6] (see paras. 528–9). The Minister is not required to submit the draft to the Statutory Committee. The Order comes into force when made but must be laid before both Houses of Parliament.

542. The Minister has power to make an Order compelling a Local Education Authority to provide a course of instruction under Section 76 (see para. 497), and such Order may in England be enforced by mandamus.

Special Orders.

543. The power to make Special Orders relates to Supple-

[1] Section 55 (6), (7), (8), page 225.
[2] Page 227.
[3] Section 59 (4), page 228.
[4] Section 3 (2), 3 (3), page 203; see also para. 46.
[5] Section 98; see also para. 16.
[6] Section 73 (6).

mentary Schemes and to amendments of Special Schemes varying the rates of contribution or rates or duration of benefit. Before making a Special Order the Minister must give public notice of his proposal to make the Order and of the place where copies of the draft Order may be obtained and of the time (which must not be less than 21 days) within which any objection by or on behalf of any persons affected must be sent to him.

544. Every objection must be in writing, and must state the draft Order or the portions of the draft Order which are objected to, the specific grounds of the objection, and the omissions, additions, or modifications asked for.

Any objections made to the Minister within the required time by persons appearing to him to be affected must be considered by the Minister, and he may if he thinks fit, amend the draft Order, but in that case the procedure must be recommenced at the beginning.

545. When the Minister does not amend or withdraw the draft Order to which any objection has been made, then, unless the objection is withdrawn or appears to be frivolous, he must before making the Order direct an enquiry to be held. For this purpose he may appoint an impartial person to hold a public enquiry and to report upon the draft Special Order. Any person affected by the draft Order may appear, either in person, or by counsel, solicitor or agent. The enquiry is conducted in accordance with rules made by the Minister, and, if the Minister or the person conducting the enquiry thinks fit, witnesses may be examined on oath. The Minister, after considering the report of the person who held the enquiry, may make the Order either with or without modification, or may refuse to make the Order.

546. Before a Special Order comes into force it must be laid before each House of Parliament for a period of not less than 20 days during which the House is sitting. If either House within those 20 days presents an address to His Majesty against the order or any part thereof, no further proceedings are taken thereon.

547. *Power to revoke or vary orders.* Any Order or Special Order made under any of the provisions of the Acts may be revoked, varied or amended, by an Order or Special Order made in like manner.

F.—Ireland

548. The Governments of the Irish Free State and Northern Ireland have since 1st April, 1922 and 1st January, 1922, respectively, been responsible for unemployment insurance in their respective areas. Each Government has its own insurance scheme.

The effect of the Irish Free State (Constitution) Act, 1922, was to create an entirely independent system of unemployment insurance in that country. Under Article 73 of the Constitution the Unemployment Insurance Act of 1920 remained in force and became the basis of the Free State Insurance Scheme, and the administration of the Act in the Free State was handed over to the Free State Government without any restrictions. The responsible Department is the Ministry of Industry and Commerce, Lord Edward Street, Dublin. Power is contained in the Irish Free State (Consequential Provisions) Act, 1922, to give effect to reciprocal arrangements on unemployment insurance, by Order in Council, but no such arrangements are in force.

549. With regard to Northern Ireland, the administration of the Unemployment Insurance Act, 1920, was by virtue of the Government of Ireland Act, 1920, and Orders in Council made thereunder, handed over to the Ministry of Labour for that country (Ministry of Labour, Stormont, Belfast). Since 1921 the Parliament of Northern Ireland has passed a series of Acts amending the Unemployment Insurance Act, 1920, with the result that the law in force in Northern Ireland, though it corresponds generally with that of Great Britain, is by no means the same in every detail. There is a separate Umpire for Northern Ireland, who determines claims for benefit arising under the Acts which apply in that country, and he is not bound by the decisions of the Umpire for Great Britain.

550. Section 108 provides for reciprocal arrangements with Northern Ireland, whereby the Minister may enter into agreements with the Ministry of Labour for Northern Ireland for enabling contributions and benefit paid in Great Britain or Northern Ireland to be taken into account in the other country for any purpose for which they would have been taken into account, if they had been paid in that country. Reciprocal arrangements were confirmed by an agreement

made in 1928. Section 96, relating to the credit of contributions to discharged seamen, marines, soldiers and airmen, applies to the Northern Ireland scheme, and the apportionment of moneys provided by Parliament between the Unemployment Funds of Great Britain and Northern Ireland is determined by the Joint Exchequer Board. Section 95, which provides that persons serving temporarily in H.M. Forces, should be deemed to be employed persons in the service of the Crown, has effect for the purpose of unemployment insurance in Northern Ireland.

G.—Miscellaneous Powers of the Minister of Labour

551. The Insurance Act contains a number of provisions enabling the Minister to take measures for promoting employment and otherwise. In the order in which they appear in the Act they are as follows :—

Provision of Training Courses.

552. Section 77[1] gives the Minister authority to provide training courses for persons of 18 years of age and over, who are capable of and available for work but have no work or only part time or intermittent work. Under these powers the Ministry of Labour has established

(*a*) Government Training Centres, in which men receive a six months' course in a skilled trade with a view to placing them at the termination of the course as "improvers," and

(*b*) Instructional Centres, in which men receive a short course on unskilled work with the intention of keeping them in the physical condition necessary to obtain and hold a job.

553. The Minister has no power to provide training courses for persons under 18 years of age, but as explained in Chapter XXIII, he may require the attendance of such persons at authorized courses (Section 78).

In addition, under Section 79 (1)[2], the Minister has a general power to pay or contribute towards the cost of courses of training, instruction or occupation provided by arrangement with any public authority, or other body, for unemployed persons.

[1] Page 232. [2] Page 234.

Under these powers grants are paid to a number of outside bodies in respect of the training of both juveniles and adults.

554. The training of unemployed women and girls is carried on by the Central Committee for Women's Training and Employment on behalf of, and financed by a grant from, the Ministry of Labour. The central Committee was originally appointed to administer the Queen's Work for Women Fund and was re-appointed by the Minister of Labour in January, 1920. For the most part the training given by the Central Committee has been directed towards fitting unemployed women and girls for domestic employment.

555. Under Section 79 (2) the Minister may defray or contribute towards the travelling expenses of juveniles or adults proceeding to a training course, and may pay allowances to persons in training, if the course is one that is not restricted to persons over 18 years of age. There is no power to pay allowances to persons under 18 years of age if the course they are attending is not open to persons over 18.

Juveniles leaving employment.

556. The Minister may make Regulations requiring employers to give notice to the Ministry of Labour when any person under 18 years of age, whether insured or not, leaves their employment (Section 82).[1] Any such regulations must be submitted in draft to the Unemployment Insurance Statutory Committee (Section 104 (1)). No such regulations have been made. It should, however, be noted that in the case of insured juveniles the employer is required to send the unemployment book to the Local Office when a juvenile leaves employment.

Schemes for promoting greater regularity of employment.

557. Section 100 gives power to the Minister to approve a scheme for promoting greater regularity of employment in any industry on the joint application of organizations representing employers and workpeople in the industry, and to assist such a scheme by attaching officers to help in its administration and by issuing on behalf of employers sums by way of wages, additional benefits, or compensation for loss of employment. In any scheme providing for such payments

[1] Page 234.

the sums paid and the expenses attributable to the scheme must be refunded to the Minister. The only scheme of this kind in operation is the Liverpool Docks Scheme. In that case, benefit and wages are paid weekly by the Ministry of Labour to registered casual workers employed by a group of employers in the docks.

558. Section 101 declares that the Minister shall, so far as practicable, make arrangements with employers for the notification by them to employment exchanges of situations in their employments which are vacant or about to become vacant, and for that purpose the Minister shall consult associations of employers and employees, as the circumstances of the case may require.

Grants towards removal expenses.

559. Section 102 gives authority for payments by grant or loan to facilitate the removal of workers, and their dependants, from one place to another, and, if both places are within the United Kingdom, towards the cost of their re-settlement. These grants or loans include the cost of removal and travelling. Under these powers advances and grants are made to unemployed workers to assist them to transfer from certain areas of heavy unemployment to more prosperous areas. Details of the facilities available may be obtained on application at any Local Office of the Ministry of Labour.

Travelling expenses.

560. Under Section 103 where any grant or advance has been made to an insured contributor in whose case the First Statutory Condition is fulfilled, towards the *travelling expenses* to a place of employment, the Minister may repay to the Exchequer out of the Unemployment Fund a part of the advance or grant as may be prescribed. The amount to be paid out of the Fund has been prescribed by the Payment of Travelling Expenses Regulations (S.R. & O., 1930, No. 179), as one-half of the amount (if any) by which the grant or advance exceeds 4s. This payment out of the Fund may be made whether employment has, or has not, been found for the claimant at the place to which he is travelling. If employment is found for him, and either he fails without reasonable cause to accept it, or he leaves the employment within seven days of taking it up, the sum paid out of the Fund may be

recovered from him, or deducted from any benefit to which he is subsequently entitled. The questions (*a*) whether the insured person had reasonable excuse, and (*b*) whether recovery should be made by deduction from benefit, are considered when that person makes a claim for benefit. The questions are determined in the same way as any other question arising in connection with a claim for benefit.

H.—Local Employment Committees

561. In general, there is one Local Employment Committee for each Exchange area. The Committee is set up under Regulations (the Employment Exchanges (Advisory Committee) Regulations dated 19th June, 1917, made under Section 2 (5) of the Labour Exchanges Act, 1909). The Committee consists of two industrial panels composed of equal numbers of representatives of employers and workpeople appointed by the Minister from among persons nominated, as a rule, by associations of employers and workpeople in the various industries carried on in the Exchange area, together with an additional panel (not exceeding a third of the total membership) to which may be appointed representatives of Local Authorities, ex-Service Men's Associations, and Juvenile Advisory Committees. There may also be appointed persons not necessarily connected with industry, who, on the ground of their special knowledge or experience, have been specially recommended by the Committee concerned for appointment in an individual capacity. The Chairman is nominated and appointed by the Minister. The Committee is normally appointed for a period of three years.

562. The Local Employment Committees are not concerned with employment questions relating to boys and girls under 18 years, in areas where Juvenile Advisory Committees are established, or where Local Education Authorities have assumed responsibility for the administration of juvenile work under Section 81 and have appointed Juvenile Employment Committees.

Among the duties entrusted to Local Employment Committees are general advisory functions; development of the work of placing workpeople in employment; employment for disabled ex-Service men; the selection of persons suitable for appointment to panels of Courts of Referees.

Service on these Committees is voluntary and unpaid, but allowances for necessary travelling and subsistence and compensation for actual loss of wages may be paid to members attending meetings of a Committee.

I.—Committees for Juvenile Employment

563. The Minister has appointed Juvenile Advisory Committees in most areas where the Ministry of Labour is responsible for giving advice on choice of employment. The Committees are constituted of representatives of Education Authorities, teachers (elementary and secondary schools), employers, workers, and other persons interested in juvenile employment and welfare. The general scope of the work of Advisory Committees is to give advice on the opportunities and choice of employment suited to the boy or girl. For this purpose the Committees obtain school reports, school medical reports, and the Head Teacher's recommendation. They are responsible for organizing school conferences, and personal interviews with parents and children. They are also responsible for the industrial supervision of young persons placed in employment, and the supervision of the welfare of juveniles transferred to employment from other areas.

564. In areas where Local Education Authorities exercise powers under Section 81, this work is carried out by Juvenile Employment Committees which are appointed as a sub-committee of the Education Committee of the Authority.

565. The facilities afforded by the Committees for Juvenile Employment are available for pupils from secondary schools. In some areas special Secondary Schools Employment Committees have been appointed to assist boys and girls who have continued to receive full time education up to 16 years of age.

566. Two National Advisory Councils for Juvenile Employment, (one for England and Wales and one for Scotland), act as advisory bodies to the Minister of Labour on any general questions which may be referred to them.

APPENDIX I

The following are extracts from the Unemployment Insurance Act, 1935. Sections which are not reproduced in full are indicated in square brackets.

PART I. INSURED PERSONS

Text: Chapter II

1. Subject to the provisions of this Act, all persons of either sex, whether British subjects or not, being persons who have attained the minimum age for entry into insurance under this Act and are employed in insurable employment, shall be insured against unemployment in manner provided by this Act.

2. The minimum age for entry into insurance under this Act shall be the age (not being less than 14 years) when a person attains the age at which, under the law for the time being in force, his parents cease to be under an obligation to cause him to attend school, or, in Scotland, to receive efficient education, unless there is some reasonable excuse.

3.—(1) For the purposes of this Act every employment specified in Part I of the First Schedule to this Act is an insurable employment, unless it is an excepted employment, that is to say, either—

(*a*) an employment specified in Part II of that Schedule; or

(*b*) an employment to which Part III of that Schedule applies and which is certified by the Minister under that Part of that Schedule; or

(*c*) an employment included among or added to the excepted employments by regulations made under this section.

(2) Where it appears to the Minister that the terms and conditions of service of, and the nature of the work performed by, any class of persons employed in an excepted employment are so similar to the terms and conditions of service of, and the nature of the work performed by, a class of persons employed in an insurable employment as to result in anomalies in the operation of this Act, the Minister may, by regulations made with the consent of the Treasury, either unconditionally or subject to such conditions as may be specified in the regulations, either—

(*a*) provide for including the class of persons employed in insurable employment among the classes of persons employed in excepted employment; or

(*b*) provide for including the class of persons employed in excepted employment among the classes of persons employed in insurable employment.

(3) The Minister may by regulations provide—

(*a*) for adding, subject to such exceptions and conditions as he thinks fit, any class of employment to the excepted employments only as respects persons who are in any week employed in that class of employment to such extent (being in the opinion of the Minister inconsiderable) as may be specified in the regulations; and

(*b*) for permitting persons who are employed under the same employer partly in insurable employment and partly in some other employment, to be treated for the purposes of this Act with the consent of the employer as if they were wholly employed in insurable employment; and

(*c*) that, subject to any prescribed conditions, where persons in the employment of a person resident or having his principal place of business in Great Britain are employed outside the United Kingdom, for the purpose of the execution of some particular work, in employment which, if it were employment in Great Britain would be insurable employment, they shall, if they were immediately before leaving Great Britain insured contributors, be deemed for the purposes of this Act to be, subject to any prescribed modifications or exceptions, employed in insurable employment.

(4) Where in consequence of an arrangement made by a poor law authority a person is engaged in work provided by a local authority, he shall not, if a contribution towards his remuneration is made by the poor law authority, be deemed to be employed in insurable employment:

Provided that this subsection shall not apply in the case of any person who has previously been in receipt of benefit and is employed in full-time work provided by the local authority, but, for the purpose of this proviso, a person shall not be deemed to have been employed in full-time work unless he has worked for such number of hours in each week as would normally have been worked by him if he had been employed on the same work otherwise than under such an arrangement as aforesaid.

Determination of questions as to insurability

4.—(1) If any question arises—

(*a*) as to whether any employment or any class of employment is or will be insurable employment; or

(*b*) as to whether a person is or was an employed person;

that question shall be decided by the Minister subject to the provisions of Section 84 of this Act.

(2) In determining any question as to whether any occupation in which a person is or has been employed is or was insurable employment, regard shall be had to the nature of the work on which he is or was employed rather than to the business of the person by whom he is or was employed.

Excluded Persons

5.—(1) Where any employed person proves that he is either—

(*a*) in receipt of any pension or income of the annual value of £26 or upwards which does not depend on his personal exertions; or

(*b*) ordinarily and mainly dependent for his livelihood upon some other person; or

(*c*) ordinarily and mainly dependent for his livelihood on the earnings derived by him from an occupation which is not insurable employment; or

(*d*) a person employed in an occupation which is of a seasonal nature and does not ordinarily extend over more than 18 weeks in any year and who is not ordinarily employed in any other occupation which is insurable employment;

he shall be entitled to a certificate exempting him from liability to become or to continue to be insured under this Act and while holding such a certificate shall not be insured under this Act.

(2) All claims for certificates under this section shall be made to, and all such certificates shall be granted by, the Minister in the prescribed manner and subject to the prescribed conditions:

Provided that the Minister may by regulations provide that any certificates of exemption granted under Section 2 of the National Health Insurance Act, 1924, or any class of such certificates shall have effect as if they had been granted under this section as well as under that section.

(3) The following persons shall not be insured under this Act, that is to say—

(*a*) persons who have attained the age of 65 years;

(*b*) persons under the age of 65 years to whom the second Schedule to this Act applies;

(*c*) blind persons in receipt of a pension under the Old Age Pensions Acts, 1908 to 1924, as extended by Section 1 of the Blind Persons Act, 1920.

(4) Section 89 of the National Health Insurance Act, 1924 (which provides for the determination by the Minister of Health of questions relating to employment) shall apply for the purposes of this Act to any question—

(*a*) whether any employment or class of employment was such an employment as is mentioned in sub-paragraph (*a*) of paragraph 1 or sub-paragraph (*a*) of paragraph 2 of the said Second Schedule or any particular class of such an employment; and

(*b*) whether a person has been a person employed in such an employment; and

(*c*) as to who was the employer of a person employed in such an employment,

in like manner as if the question related to an employment within the meaning of that Act.

PART II. CONTRIBUTIONS

Text: Chapter III

6. Subject to the provisions of this Act, the funds required for providing benefit, and for making any other payments which under this

Act are to be made out of the Unemployment Fund established under this Act, shall be derived partly from contributions by employed persons, partly from contributions by the employers of those persons, and partly from moneys provided by Parliament.

7. The provisions of this Act relating to the payment of contributions shall, in the case of contributions payable in respect of persons who have attained the age of 65 years or to whom the Second Schedule to this Act applies, have effect subject to such modifications and adaptations as may be prescribed by the Minister after consultation as respects England with the Minister of Health and as respects Scotland with the Department of Health for Scotland, so however that all sums collected on account of contributions so payable shall be paid into the Unemployment Fund.

Contributions of Employers and Employed Persons

8.—(1) Subject to the provisions of this Act, every employed person (other than an excluded person) of the classes set out in the first column of the Third Schedule[1] to this Act, and every employer of any such person, shall be liable to pay weekly contributions at the respective rates set out in the second and third columns of that Schedule.

(2) Except where regulations under this Act otherwise prescribe, the employer shall, in the first instance, be liable to pay both the contribution payable by himself and also, on behalf of and to the exclusion of the employed person, the contribution payable by that person, and for the purposes of this Act contributions paid by an employer on behalf of an employed person shall be deemed to be contributions by the employed person.

(3) The employer of an excluded person shall be liable to pay the like contributions as would have been payable by him as employer's contributions if that person had not been excluded:

Provided that no contributions shall be payable in respect of a blind person in receipt of a pension under the Old Age Pensions Acts, 1908 to 1924, as extended by Section 1 of the Blind Persons Act, 1920.

(4) A weekly contribution shall be payable for each calendar week[2] during the whole or any part of which an employed person has been employed:

Provided that—

(*a*) where one weekly contribution has been paid in respect of an employed person for any week, no further contribution shall be payable in respect of him for the same week; and

(*b*) where no services have been rendered by an employed person during any week and no remuneration is paid in respect of that week, the employer shall not be liable to pay any contribution either on his own behalf, or on behalf of the employed person in respect of that week.

(5) If any employer or employed person fails or neglects to pay any contribution which he is liable under this Act to pay, he shall for each offence be liable on summary conviction to a fine not exceeding £10.

[1] Page 238.

[2] For definition see Section 113 (1) (e) page 236.

9.—(1) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of, or otherwise to recover from, the employed person the employer's contribution.

(2) If an employer deducts or attempts to deduct from the wages or other remuneration of an employed person the whole or any part of the employer's contribution, he shall for each offence be liable on summary conviction to a fine not exceeding £10.

10.—(1) Subject to the provisions of this section, and subject to any regulations[1] made by the Minister under this Act, the employer shall be entitled to recover from the employed person in accordance with the provisions of this section the amount of any contributions paid by him on behalf of that person.

(2) Where the employed person receives any wages or other pecuniary remuneration from the employer, the amount of any contribution paid by the employer on behalf of the employed person shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages of that person or from any other remuneration due from the employer to that person and not otherwise:

Provided that no such deduction may be made—

(*a*) from any wages or remuneration other than such as are paid in respect of the period or part of the period for which the contribution is payable; or

(*b*) in excess of the sum which represents the amount of the contributions for the period (if that period is longer than a week) in respect of which the wages or other remuneration are paid.

(3) Where the employed person does not receive any wages or other pecuniary remuneration from the employer, but receives such remuneration from some other person, the amount of any contribution paid by the employer on behalf of the employed person shall (without prejudice to any other means of recovery) be recoverable summarily as a civil debt, if proceedings for the purpose are instituted within three months from the date on which the contribution was payable.

(4) Where the employed person does not receive wages or other pecuniary remuneration either from his employer or from any other person the employer shall be liable to pay the contribution payable both by himself and the employed person and shall not be entitled to recover any part thereof from the employed person.

(5) Any sum deducted by an employer from wages or other remuneration under this section shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

11.—(1) Where the employed person is employed by more than one person in any calendar week, the first person employing him in that week or such other employer or employers as may be prescribed shall be deemed to be the employer for the purposes of the provisions of this Act relating to the payment of contributions.

(2) The Minister may by regulations provide—

(*a*) that in any cases or any classes of cases where employed persons work under the general control and management of some

[1] See page 243.

person other than their immediate employer, such as the owner, agent or manager of a mine or quarry, or the occupier of a factory or workshop, that other person shall, for the purposes of the provisions of this Act relating to the payment of contributions, be treated as the employer; and

(*b*) for allowing that other person to deduct the amount of any contributions (other than employer's contributions) which he may become liable to pay from any sums payable by him to the immediate employer, and for enabling the immediate employer to recover from the employed persons the like sums and in the like manner as if he were liable to pay the contributions.

Decision of Questions as to Contributions

Text: Chapter IV

12.—(1) If any question arises—

(*a*) as to who is or was the employer of any employed person; or

(*b*) as to the rate of contribution payable under or in pursuance of this Act by or in respect of any person or class of persons; or

(*c*) as to the rates of contribution payable in respect of any employed person by the employer and that person respectively;

that question shall be decided by the Minister subject to the provisions of Section 84 of this Act.

(2) Where it has been decided by the Minister that contributions under this Act are not payable in respect of any person or any class of persons, and that decision is subsequently revised or reversed on appeal so as to make contributions payable in respect of that person or that class of persons, contributions shall be so payable only as from the date on which the decision was so revised or reversed.

(3) Subject to the provisions of the last foregoing subsection, the Minister may make regulations with respect to the payment of contributions during any period intervening between any application for the determination of any question, and the final determination of the question.

[Section **13** enables the Minister to make arrangements, on such conditions as he may prescribe, whereby the employment exchange may perform on behalf of an employer all or any of the employer's duties under the Act in respect of persons engaged through employment exchanges.]

[Under Section **14** the Minister may make Regulations[1] providing for the return of contributions paid erroneously; application must be made in the prescribed manner and, within the prescribed period, not being less than one year, from the date on which the contributions were paid.]

[Section **15** enables the Minister to make Regulations as to the payment of contributions by stamps, etc. For Regulations made see page 243.]

[Section **16** provides for the issue of unemployment insurance stamps by the Postmaster General.]

[1] For Regulations, see page 249.

[Section 17.—Offences in relation to unemployment cards, books and stamps—see paragraph 512.]

[Section 18.—Recovery of contributions on prosecutions—see paragraphs 513–515.]

[Section 19.—Civil proceedings by employees against employers for neglect to comply with provisions as to contributions—see paragraph 521.]

[Section 20.—Priority of contributions in cases of winding up and bankruptcy—see paragraph 70.]

Contributions out of Moneys provided by Parliament

21.—(1) There shall, subject to the provisions of this section, be paid out of moneys provided by Parliament, in respect of each weekly contribution paid by an employer in respect of an employed person, a contribution at a rate equal to one-half of the aggregate amount of the contributions paid in respect of the employed person by himself and his employer, or, in the case of an excluded person, paid by his employer.

(2) For the purpose of calculating the sums to be contributed under this section, while and in so far as contributions are paid by means of unemployment insurance stamps, the number of contributions paid in any year in respect of employed persons of each class mentioned in the first column of the Third Schedule[1] to this Act shall be deemed to be represented by the number of stamps appropriate to contributions in respect of employed persons of that class sold in that year, after deducting—

(*a*) the number (calculated in the prescribed manner) of stamps which have been used for the purpose of paying contributions otherwise than under the general provisions of this Act; and

(*b*) the number of stamps in respect of which a refund has been made; and

(*c*) such contributions as have been returned in respect of persons in respect of whom contributions were paid under the erroneous belief that they were payable in respect of those persons under the general provisions of this Act.

(3) The sums to be contributed under this section in any year shall be paid in such manner and at such times as the Treasury may determine.

PART III. BENEFIT

Statutory Conditions

Text: Chapters VI—IX

22.—(1) The first statutory condition for the receipt of benefit by an insured contributor is that he proves that not less than 30 contributions have been paid in respect of him as an insured contributor in respect of the two years immediately preceding the date on which claim for benefit is made.

(2) In determining whether an insured contributor has proved that the first statutory condition is fulfilled in his case, no account shall be taken of any contributions paid in respect of him for any period during which he was not bona fide employed.

[1] Page 238.

(3) If an insured contributor proves in the prescribed manner that he was, during any periods falling within the said period of two years—

(*a*) rendered incapable of work by reason of some specific disease or by bodily or mental disablement; or

(*b*) employed in any excepted employment;

sub-section (1) of this section shall have effect as if for the said period of two years there were substituted a period of two years increased by the said periods of incapacity or of such employment as aforesaid, but so as not to exceed in any case four years.

(4) If an insured contributor who is, or who has at any time during the two years immediately preceding the date of a claim for benefit been, in receipt of a pension paid out of moneys provided by Parliament in respect of a disability contracted by him during the late war, proves that the non-fulfilment in his case of the first statutory condition is due to that disability, he shall, if he proves that not less than ten contributions were paid in respect of him as an insured contributor during the said period of two years, be treated for the purposes of this Act as if he had proved that that condition was fulfilled in his case.

(5) After an insured contributor has at the beginning of his benefit year proved that the first statutory condition is fulfilled in his case, then, subject to and in accordance with regulations[1] made by the Minister, he shall be treated throughout the remainder of that benefit year as if that condition continued to be so fulfilled.

23. The second statutory condition for the receipt of benefit by an insured contributor is that he proves that he has made application for benefit in the prescribed manner and that since the date of the application he has been continuously unemployed.

24.—(1) The third statutory condition for the receipt of benefit by an insured contributor is that he proves that he is capable of and available for work.

(2) An insured contributor shall not be deemed to have failed to fulfil the third statutory condition by reason only that he is attending at an authorized course, or at a training course or course of instruction approved by the Minister in his case.

25.—(1) The fourth statutory condition for the receipt of benefit by an insured contributor is that, if the Minister has, for the purpose of giving him an opportunity of becoming or keeping fit for entry into or return to regular employment, required him to attend at an authorized course,[2] he proves either that he duly attended in accordance with the requirement or that he had good cause for not so attending.

(2) For the purposes of the fourth statutory condition an insured contributor who by reason of his misbehaviour while attending at an authorized course has been required to discontinue his attendance thereat during any period, shall not be deemed to have duly attended at the course or to have had good cause for not so attending during that period, or during such part thereof as may be determined on any subsequent claim to benefit.

[1] Benefit Miscellaneous Provisions Regulations, 1934, Part V, (S.R. & O., 1934, No. 1163); page 257.

[2] For definition see Section 113 (1) (b) page 236.

Disqualifications for Benefit

Text : Chapters X—XIII

26.—(1) An insured contributor who has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop or other premises at which he was employed shall be disqualified for receiving benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become bona fide employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation :

Provided that this subsection shall not apply in a case where the insured contributor proves—

(*a*) that he is not participating in or financing or directly interested in the trade dispute which caused the stoppage of work ; and

(*b*) that he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage is taking place, any of whom are participating in or financing or directly interested in the dispute.

(2) Where separate branches of work which are commonly carried on as separate businesses in separate premises are in any case carried on in separate departments on the same premises, each of those departments shall for the purposes of this section be deemed to be a separate factory or workshop or separate premises, as the case may be.

27. An insured contributor who loses his employment through his misconduct, or who voluntarily leaves his employment without just cause, shall be disqualified for receiving benefit for a period of six weeks or such shorter period as may be determined by the Court of Referees or the Umpire, as the case may be, being a period beginning as from such date as may be so determined.

28.—(1) If, on a claim for benefit, it is proved by an officer of the Ministry of Labour—

(*a*) that the claimant, after a situation in any employment which is suitable in his case has been notified to him by an employment exchange or other recognized agency, or by or on behalf of an employer, as vacant or about to become vacant, has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him ; or

(*b*) that the claimant has neglected to avail himself of a reasonable opportunity of suitable employment ; or

(*c*) that the claimant has without good cause refused or failed to carry out any written directions given to him by an officer of an employment exchange with a view to assisting him to find suitable employment, being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides ;

the claimant shall be disqualified for receiving benefit for a period of six weeks or such shorter period as may be determined by the court of

referees or the umpire, as the case may be, being a period beginning as from such date as may be so determined.

(2) For the purposes of this section employment shall not be deemed to be suitable employment in relation to any claimant if it is either—

(*a*) employment in a situation vacant in consequence of a stoppage of work due to a trade dispute; or

(*b*) employment in his usual occupation in the district where he was last ordinarily employed at a rate of wage lower, or on conditions less favourable, than those which he might reasonably have expected to obtain having regard to those which he habitually obtained in his usual occupation in that district, or would have obtained had he continued to be so employed; or

(*c*) employment in his usual occupation in any other district at a rate of wage lower, or on conditions less favourable, than those generally observed in that district by agreement between associations of employers and of employees, or, failing any such agreement, than those generally recognized in that district by good employers.

(3) After the lapse of such an interval from the date on which an insured contributor becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured contributor, if it is employment at a rate of wage not lower, and on conditions not less favourable, than those generally observed by agreement between associations of employers and of employees, or, failing any such agreement, than those generally recognized by good employers.

29. An insured contributor shall be disqualified for receiving benefit while he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds:

Provided that this section shall not apply in the case of an insured contributor who is an inmate of an institution used as a place of residence for workers if he proves that he was an inmate of the institution immediately before he became unemployed and that during the time when he was employed he paid the whole or a substantial part of the cost of his maintenance as such an inmate.

30.—(1) An insured contributor shall be disqualified for receiving benefit while he is in receipt of any sickness or disablement benefit under the National Health Insurance Acts, 1924 to 1932.

(2) Subject to the provisions of this Act relating to Northern Ireland, the Isle of Man and the Channel Islands,[1] an insured contributor shall be disqualified for receiving benefit while he is resident, whether temporarily or permanently, outside Great Britain.

Right to Benefit, and periods in respect of which it is payable

Text: Chapter XIV

31.—(1) An insured contributor who has attained the age of 16 years and is unemployed shall, if he proves that the statutory conditions are

[1] See page 235.

fulfilled in his case, and if he is not disqualified under this Act for the receipt of benefit, be entitled, subject to the provisions of this Act, to receive in a benefit year[1] benefit—

(*a*) in respect of periods not exceeding in the aggregate 156 days; and

(*b*) if qualified for additional days under the provisions of the next following subsection, in respect of additional days of which the maximum number shall be computed in manner provided by that subsection.

(2) The following provisions shall have effect with respect to additional days—

(*a*) an insured contributor shall be qualified for additional days if at the beginning of the benefit year five insurance years[2] have elapsed since the beginning of the insurance year in which he first became such a contributor, so, however, that a person shall cease to be so qualified if at the beginning of any benefit year five consecutive insurance years have elapsed without contributions being paid in respect of him as an insured contributor, but, upon contributions being again so paid, shall be treated for the purposes of this paragraph as if he had then first become an insured contributor;

(*b*) the maximum number of additional days in any benefit year shall be computed, in the case of an insured contributor qualified for such days, by allowing to him days at the rate of three for every five contributions paid in respect of him as an insured contributor in respect of the last five years, less one day for every five days in respect of which benefit has been paid to him in respect of the benefit years which ended in the last five years.

(3) For the purposes of paragraph (*b*) of the last foregoing subsection—

(*a*) the expression " the last five years " means the period of five complete insurance years last preceding the beginning of the benefit year in respect of which the computation of additional days is made;

(*b*) every two contributions paid in respect of a person as an insured contributor under the age of 18 years shall be reckoned as one contribution;

(*c*) fractions of a day shall be disregarded.

(4) An insured contributor who has in any benefit year exhausted his benefit rights[3] shall not thereafter be entitled to benefit in respect of any day in that benefit year, nor shall he become entitled to benefit in his next benefit year before the Monday next after the end of the calendar week for which there is paid the last of the ten contributions mentioned in paragraph (*b*) of subsection (1) of the next following section of this Act.

(5) In calculating contributions for the purposes of the last three foregoing subsections no account shall be taken of any contributions paid

[1] For definition of " benefit year " see Section 32, page 214.
[2] For definition of " insurance year " see Section 113 (1) (p), page 237.
[3] For definition see Section 113 (1) (d), page 236.

in respect of an insured contributor for any period during which he was not bona fide employed.

(6) Benefit shall be payable in respect of each week after the first week of a continuous period of unemployment.

(7) No person shall receive benefit in respect of any period of less than one day.[1]

32.—(1) For the purposes of this Act, the expression "benefit year" means, in relation to an insured contributor, the period of 12 months beginning on the date on which, on a claim for benefit, he proves for the first time after the commencement of this Act—

(*a*) that the first statutory condition is fulfilled in his case; and

(*b*) in the case only of an insured contributor who has exhausted his benefit rights in his last preceding benefit year, also that contributions have been paid in respect of him for ten weeks since the Sunday last before the last day in that benefit year in respect of which he received benefit;

and every subsequent period of 12 months commencing on the date on which that contributor on a claim for benefit proves the matters aforesaid for the first time after the termination of his last preceding benefit year: . . .

(2) If, in the case of any insured contributor, it is found that he has been treated in error as having begun his benefit year on any date by reason of his having been wrongly treated as having proved any of the matters aforesaid on that date, his benefit year shall nevertheless be deemed to have begun on that date, but he shall not be entitled to benefit during the remainder of that year until he proves those matters.

(3) For the purposes of determining whether an insured contributor has exhausted his benefit rights in his last preceding benefit year, if it is proved by an officer of the Ministry of Labour—

(*a*) that he has not made a claim for benefit in respect of any days in that year in respect of which he would have been entitled thereto if he had made a claim therefor; and

(*b*) that there is reasonable cause to believe that his omission to make the claim was with intent to avoid the necessity of proving the matters set out in paragraph (*b*) of subsection (1) of this section;

the insured contributor shall be deemed to have received benefit in respect of those days unless he proves that the omission was not with the intent aforesaid.

33. The Minister may by regulations make provision as to the circumstances in which and the extent to which contributions paid in error and sums paid to a person by way of benefit while he was not entitled thereto are to be taken into account for the purposes of the last two foregoing sections of this Act.

34. Where, owing to the fact that the wages or other remuneration of an insured contributor are paid at intervals greater than a week, or for any other like reason, contributions are paid in respect of him at intervals greater than a week, he shall be entitled, for the purpose of determining the number of contributions which are to be taken as

[1] For definition of "day" see Section 113 (1) (g), page 236.

standing at any time to his credit, to treat each of those contributions as being such number of contributions as there are weeks in the period for which the contribution was paid.

35.—(1) Any three days of unemployment, whether consecutive or not, within a period of six consecutive days shall be treated as a continuous period of unemployment, and any two such continuous periods separated by a period of not more than ten weeks shall be treated as one continuous period of unemployment, and in this Act the expression "continuously unemployed" shall be construed accordingly.

(2) The Minister may by regulations[1] prescribe that a period of consecutive days shall, for the purposes of the last foregoing subsection, begin or end on such day as may be prescribed and that such a period may be inclusive or exclusive of Sundays.

(3) Any time during which an insured contributor fails to fulfil the second, third or fourth statutory condition or is, under the provisions of this Act, disqualified for receiving benefit or to be deemed not to be unemployed, shall be excluded in the computation of continuous periods of unemployment, unless he proves that the failure to fulfil the condition, or the disqualification, was due to incapacity for work arising from some specific disease or bodily or mental disablement.

(4) Save as otherwise provided by regulations made in accordance with the provisions of this subsection a continuous period of unemployment shall be deemed to begin on the date on which the insured contributor makes application for benefit in the prescribed manner, but regulations[2] may be made by the Minister for authorizing some earlier date to be substituted for the date of the application:

Provided that, except in cases where good cause is shown for delay in making the application, such regulations shall not authorize the substitution of an earlier date for any purpose other than that of computing the first week of a continuous period of unemployment in a case in which the applicant, upon an application for benefit which begins his benefit year, proves in the prescribed manner that a continuous period of unemployment was in fact current at the date of that application.

(5) For the purposes of this Act an insured contributor shall not be deemed to be unemployed on any day on which he is following any occupation from which he derives any remuneration or profit, unless—

(*a*) that occupation could ordinarily have been followed by him in addition to his usual employment and outside the ordinary working hours of that employment; and

(*b*) the remuneration or profit received therefrom in respect of that day does not exceed three shillings and fourpence, or where the remuneration or profit is payable or is earned in respect of a period longer than a day, the remuneration or profit does not on the daily average exceed that amount.

(6) Notwithstanding that the employment of an insured contributor has terminated, he shall not be deemed to be unemployed for the purposes of this Act during a period in respect of which he continues to receive wages or receives any payment by way of compensation for the loss of, and substantially equivalent to, the remuneration which he would have received if the employment had not terminated.

[1] See page 258. [2] See page 255.

Rates of Benefit

86. Subject to the provisions of the three next following sections, benefit in the case of insured contributors of the classes set out in the first column of the Fourth Schedule[1] to this Act shall be at the respective weekly rates set out in the second column of that Schedule :

Provided that young men and young women who are between the ages of 18 and 21 years and are in receipt of an increase of benefit under either of the two next following sections shall be entitled to benefit at the same rate as men and women respectively who have attained the age of 21 years.

Dependants Benefit

Text : Chapter XV

37.—(1) Where an insured contributor who is entitled to benefit has a dependent child or dependent children, the weekly rate of benefit shall be increased by two shillings[2] in respect of each such child.

(2) For the purposes of this Act, the expression " dependent child " means, in relation to an insured contributor, any child, younger brother, or younger sister, of his who—

(*a*) is under the age of 14 years and is maintained wholly or mainly by him ; or

(*b*) is between the ages of 14 and 16 years and is maintained wholly or mainly by him and is either—

(i) a person under full time instruction at a day school ; or

(ii) a person who is unable to receive such instruction by reason of physical or mental infirmity ; or

(*c*) is between the ages of 14 and 16 years and is while unemployed maintained wholly or mainly by him, and is a person in whose case the statutory conditions, as hereinafter adapted for the purposes of this paragraph, are fulfilled (or would be fulfilled, if he were an insured contributor) and who is not disqualified (or would not be disqualified if he were an insured contributor) under this Act for the receipt of benefit.

(3) For the purpose of determining whether a person is a dependent child by virtue of paragraph (*c*) of the last foregoing subsection, the statutory conditions shall be construed subject to the following adaptations, that is to say, the first statutory condition shall be deemed to be omitted, and in the second statutory condition the words " has made application for benefit in the prescribed manner and " and the words " since the date of the application " shall be deemed to be omitted.

(4) In this section—

(*a*) the expression " child " includes a stepchild, adopted child (whether adopted under the Adoption of Children Act, 1926, the Adoption of Children (Scotland) Act, 1930, or otherwise), and illegitimate child ;

(*b*) the expression " younger brother " includes a younger half-brother and a younger step-brother ;

(*c*) the expression " younger sister " includes a younger half-sister and a younger step-sister ;

[1] See page 238.

[2] Raised to 3/- by Order in Council under Section 59 as from 31st Oct., 1935.

(*d*) the expression " day school," in relation to any person, does not include an authorized course, or a training course or course of instruction approved by the Minister in his case.

38.—(1) Where an insured contributor is entitled to benefit the weekly rate of benefit shall be increased by nine shillings in the following cases, that is to say :—

(*a*) where the insured contributor has residing with him or is wholly or mainly maintaining his wife ; or

(*b*) where the insured contributor is wholly or mainly maintaining her husband who is prevented by physical or mental infirmity from supporting himself ; or

(*c*) where the insured contributor has residing with him and is wholly or mainly maintaining—

(i) his father or step-father who is unable by reason of physical or mental infirmity to support himself ; or

(ii) his widowed mother, widowed step-mother, mother who has never been married, or mother whose husband is permanently disabled and unable to work ; or

(iii) a female person who has the care of the dependent children of the insured contributor ; or

(*d*) where the insured contributor has previously to becoming unemployed had in his employment and thereafter continues to employ at a rate of remuneration not less than nine shillings a week some female person who is not residing with him to assist in the care of the dependent children of the insured contributor :

Provided that the requirement in paragraph (*d*) of this subsection as to the employment of the female person previously to the insured contributor becoming unemployed shall not apply in any case where the necessity for employing such a female person did not arise until after the date on which the insured contributor became unemployed.

(2) No increase of benefit shall be payable to an insured contributor under this section in respect of a wife or any other female who—

(*a*) is in receipt of benefit (including benefit under a special scheme) ; or

(*b*) is in regular wage-earning employment otherwise than as having or assisting in the care of the dependent children of the insured contributor ; or

(*c*) is engaged in any occupation ordinarily carried on for profit ;

so, however, that the following provisions shall have effect with respect to the expressions hereinafter mentioned, that is to say—

(i) " regular wage-earning employment " shall not (subject to the provisions of paragraph (iii) of this subsection) include employment where the amount of wage earned is less than the increase in the weekly rate of benefit ;

(ii) " occupation ordinarily carried on for profit " shall not (subject to the provisions of the said paragraph (iii)) include the performance of work for payment which is less in amount than the increase in the weekly rate of benefit ;

(iii) neither of the last two foregoing paragraphs shall apply in any case where both a wage is earned by employment and payments are received for the performance of work, unless the aggregate amount of the wage and payments is less than the increase in the weekly rate of benefit;

(iv) "Occupation ordinarily carried on for profit" shall not include the provision of board and accommodation for not more than one lodger as a member of the family.

(3) An insured contributor shall not be entitled to an increase of benefit under this section in respect of more than one person.

39.—(1) For the purpose of the last two foregoing sections an insured contributor shall not be deemed to be wholly or mainly maintaining any person unless the insured contributor—

(*a*) when unemployed contributes towards the maintenance of that person an amount not less than the amount of the increase of benefit received in respect of that person; and

(*b*) when in employment (except in a case where the dependency did not arise until after the date on which the insured contributor became unemployed) contributed more than one-half of the actual cost of the maintenance of that person:

Provided that regulations may be made by the Minister providing that where—

(i) a person is partly maintained by each of two or more insured contributors, each of whom would be entitled to an increase of benefit in respect of that person if he were wholly or mainly maintaining that person; and

(ii) the contributions made by those two or more insured contributors towards the maintenance of that person amount in the aggregate to sums which would, if they had been contributed by any one of those insured contributors, have been sufficient to satisfy the requirements of this subsection;

that person shall be deemed for the purpose of the said sections to be wholly or mainly maintained by such of those insured contributors as may be prescribed by the regulations.

(2) No increase of benefit shall be payable to an insured contributor in respect of any person for any period before the date on which the insured contributor makes application in the prescribed manner for an increase in respect of that person:

Provided that regulations may be made for authorizing some earlier date to be substituted for the date of the application in cases in which good cause is shown for the delay in making the application.

(3) Where a claim for benefit is made by an insured contributor and another insured contributor receives an increase of benefit in respect of the first-mentioned insured contributor for any period occurring between the date when the claim is made and the date when it is allowed, the benefit payable to the first-mentioned insured contributor for that period shall be reduced by the amount of the increase of benefit so received by the second-mentioned insured contributor.

Determination of Claims and Questions

Text : Chapter XVI

40.—(1) For the purposes of this Act an umpire and one or more deputy umpires may be appointed by His Majesty.

(2) The Minister may by regulations make provision with respect to the appointment of persons to act in the place of the umpire or any deputy umpire in the case of the unavoidable absence or incapacity of the umpire or any deputy umpire.

(3) There shall be paid out of moneys provided by Parliament to the umpire and deputy umpires, and to persons appointed to act in place of the umpire or any deputy umpire under the regulations aforesaid, such salaries or remuneration as the Treasury may determine.

(4) Unless the context otherwise requires, any reference in this Act to the umpire shall include a reference to a deputy umpire and to any person appointed as aforesaid under the said regulations.

41.—(1) A court of referees for the purposes of this Act shall consist of one or more members chosen to represent employers, with an equal number of members chosen to represent insured contributors, and a chairman appointed by the Minister.

(2) Panels of persons chosen to represent employers and insured contributors respectively shall be constituted by the Minister for such districts and such trades or groups of trades as the Minister may think fit, and the members of a court of referees to be chosen to represent employers and insured contributors shall be selected from those panels in the prescribed manner.

(3) The Minister may by regulations provide that any claim or question which is referred to a court of referees may, with the consent of the claimant or the person or association in whose case the question arises, but not otherwise, be proceeded with in the absence of any member or members of the court other than the chairman, and in any such case the court shall, notwithstanding anything in this Act, be deemed to be properly constituted, and the chairman shall, if the number of the members of the court is an even number, have a second or casting vote.

(4) Subject as aforesaid, the constitution of courts of referees shall be determined by regulations made by the Minister.

(5) A court of referees shall record their decisions in writing and shall include in the record of every decision a statement of their findings on questions of fact material to the decision.

(6) The Minister may pay such remuneration to the chairman and other members of a court of referees, and such travelling and other allowances (including, subject as hereinafter provided, compensation for loss of remunerative time) to any such chairman or members, and such other expenses in connection with any such court, as the Minister, with the consent of the Treasury, may determine :

Provided that compensation for loss of time shall not be paid to any person in respect of any time during which he is in receipt of remuneration under this subsection.

42.—(1) For the purposes of this Act officers, in this Act referred to as " insurance officers," shall be appointed by the Minister (subject to

the consent of the Treasury as to number) to act for such areas as the Minister directs.

(2) There shall be paid to insurance officers out of moneys provided by Parliament such salaries or remuneration as the Treasury may determine.

43.—(1) All claims for benefit shall be submitted forthwith for examination to one of the insurance officers.

(2) The insurance officer shall forthwith take into consideration any claim submitted to him for examination under this section, and if in any case the insurance officer to whom a claim has been submitted is of opinion that the claim ought to be allowed, he may himself allow the claim.

(3) If the insurance officer is not satisfied that a claim ought to be allowed, he may either refer the claim (so far as practicable within 14 days from the date on which the claim was submitted to him for examination) to the court of referees for their decision or, subject to the provisions of this section, himself disallow the claim.

(4) The insurance officer shall not himself disallow a claim on any of the following grounds, namely—

(*a*) that the third statutory condition is not fulfilled;

(*b*) that the claimant is disqualified by reason of the provisions of Section 27 or Section 28 of this Act;

(*c*) that the claimant does not fulfil one or more of the additional conditions or terms with respect to the receipt of benefit imposed by orders made under Section 55 of this Act, or is subject to restrictions on the amount or period of benefit imposed by such orders.

(5) The insurance officer shall not himself disallow a claim on the ground that the fourth statutory condition is not fulfilled, except in cases where that condition is not fulfilled only by reason of a person under the age of 18 years having been required to discontinue for not more than one day his attendance at an authorized course in consequence of his misbehaviour while attending thereat.

(6) Where a claim is disallowed by the insurance officer, the claimant may at any time within 21 days from the date on which the decision of the insurance officer is communicated to him, or within such further time as the Minister may in any particular case for special reasons allow, appeal in the prescribed manner to the court of referees.

44.—(1) Subject as hereinafter provided, an appeal shall lie to the umpire from any decision of the court of referees as follows:—

(*a*) at the instance of an insurance officer, in any case;

(*b*) at the instance of an association of employed persons of which the claimant was a member on the last date on which he was employed before the claim subject to the appeal was made and has continued to be a member until the date when the appeal is made, in any case;

(*c*) at the instance of the claimant—

(i) without leave in any case in which the decision of the court of referees is not unanimous; and

(ii) with the leave of the chairman of the court of referees in any other case.

(2) In any case in which a decision of a court of referees disallowing a claim is not unanimous, notice in writing of the fact shall be given by the court to the claimant within three days of the decision and an appeal under this section must be brought within six months of the date of the decision of the court of referees or such longer period as the umpire may in any case for special reasons allow.

(3) Where leave to appeal from a court of referees is not granted by the chairman when the decision of that court is given, an application for such leave may be made by the claimant in such form and within such time after the date of the decision as may be prescribed by regulations made by the Minister.

(4) An application for leave to appeal under this section shall be granted by the chairman if it appears to him that there is a principle of importance involved in the case or any other special circumstance by reason of which leave to appeal ought to be given.

(5) Where the chairman of a court of referees grants leave to appeal under this section the chairman shall record in writing a statement of the grounds on which leave to appeal is granted.

(6) The decision of the umpire on any appeal from a court of referees shall be final.

45. In the last two foregoing sections references to claims for benefit shall be construed as including references to questions arising in connection with such claims and references to allowing or disallowing a claim shall be construed as including references to determining a question in favour of or adversely to a claimant:

Provided that—

(*a*) if any question arises as to whether a person was or was not employed in any excepted employment during any period falling within the period of two years mentioned in the first statutory condition, that question shall be decided by the Minister subject to the provisions of Section 84 of this Act; and

(*b*) an insurance officer shall refer to the court of referees any question whether a claimant is liable to have deductions made under any of the provisions of this Act from any benefit to which he is, or may become, entitled.

46. Nothing in the last three foregoing sections shall be construed as preventing an insurance officer, a court of referees or the umpire, on new facts being brought to his or their knowledge, from revising a decision given in any particular case, but where any such revision is made, the revised decision shall have effect as if it had been an original decision, and the said sections shall apply accordingly.

47. In any case where—

(*a*) a person is required to attend before a court of referees; or

(*b*) on an appeal to the umpire from a decision of a court of referees a person affected by the decision is requested by the umpire to attend before him on the consideration of the appeal and so attends;

that person shall be paid out of moneys provided by Parliament such travelling and other allowances, including compensation for loss of remunerative time, as the Minister with the sanction of the Treasury may determine.

General provisions as to procedure

48.—(1) The Minister may by regulations—

(*a*) prescribe the evidence to be required as to the fulfilment of the conditions and the absence of the disqualifications for receiving or continuing to receive benefit, and for that purpose require the attendance of insured contributors at such offices or places and at such times as may be required, and require employers to answer inquiries relating to any matters on which the fulfilment of the conditions or the absence of the disqualifications depends; and

(*b*) prescribe the manner in which applications for benefit may be made and the procedure to be followed on the consideration and examination of claims and questions by the umpire, courts of referees and insurance officers; and

(*c*) prescribe the mode in which any question may be raised as to the continuance of benefit in the case of a person in receipt of benefit; and

(*d*) enable any insured contributor in whose case good cause is shown for delay in making a claim for benefit or in proving any matter on such a claim, to be treated for the purposes of such provisions of this Act, as may be specified in the regulations as if the claim had been made or the matter proved on such earlier date as may be determined in accordance with the regulations.

(2) The Arbitration Act, 1889, and the Arbitration Act, 1934, shall not apply to proceedings before the umpire, courts of referees or insurance officers, except so far as they may be applied by regulations made by the Minister.

Payment of benefit pending determination of claim or question

49.—(1) Where a court of referees allow a claim for benefit or determine a question arising in connection with such a claim in favour of the claimant, benefit shall be payable in accordance with the decision of the court, notwithstanding that an appeal to the umpire is pending, except in a case where an appeal has been brought (within 21 days from the date on which the decision of the court was given) on the ground that the claimant ought to be disqualified by reason of the provisions of Section 26 of this Act.

(2) If, in any case where a claim for benefit is made by a person in respect of a benefit period immediately following a benefit period in respect of any day of which he was entitled to or received benefit, a question is raised whether the claimant has not ceased to be entitled to receive benefit by reason of the provisions of Section 28 of this Act, the claimant shall, unless and until it is decided by the court of referees that the claim should not be allowed, and if he is otherwise entitled to benefit, be treated as being entitled to receive benefit, and benefit shall be payable accordingly.

(3) In the last foregoing subsection the expression " benefit period " means the period of six working days in a week in respect of which benefit is payable.

(4) Any benefit paid in pursuance of the foregoing provisions of this section shall be treated, notwithstanding that the final determination of the claim or question is adverse to the claimant, as having been duly paid and shall not be recoverable from the claimant under the provisions of this Act or otherwise.

(5) Subject to the provisions of this section, the Minister may make regulations with respect to the payment of benefit during any period intervening between any application for the determination of a claim for benefit or any question arising in connection with such a claim and the final determination of the claim or question.

50. Regulations made by the Minister under this Act may, with the concurrence of the Postmaster-General, provide for the payment of benefit through the Post Office and for enabling claimants for benefit to make their claims through the Post Office.

Repayment of Benefit

Text : Chapter XVII

51.—(1) If it is found at any time that any person, by reason of the non-disclosure or misrepresentation by him of a material fact (whether the non-disclosure or the misrepresentation was or was not fraudulent) has received any sum by way of benefit while the statutory conditions or any other conditions for the receipt of benefit imposed by or under this Act were not fulfilled in his case, or while he was disqualified for receiving benefit, he shall be liable to repay the sum so received by him to the Unemployment Fund or, in a case where the sum was received from an education authority acting under the powers conferred on it by Section 81 of this Act, to the education authority.

(2) Where any person is liable to repay to the Unemployment Fund, or to an education authority, any sum received by him by way of benefit that sum may, unless that person shows that the sum was received by him in good faith and without knowledge that he was not entitled thereto, be recovered without prejudice to any other remedy by means of deductions from any benefit to which that person thereafter becomes entitled.

[Section **52** of the 1935 Act provides that benefit paid during emergencies, otherwise than in accordance with the requirements of this Act, shall be deemed to be duly made but without prejudice to the provision of Section 51 (1).]

[Section **53** of the 1935 Act declares benefit to be inalienable.]

Benefit and outdoor relief or unemployment allowances

Text : Chapter XVIII

54.—(1) In determining whether outdoor relief shall or shall not be granted to a person in receipt of or entitled to receive benefit (including benefit under a special scheme), the authority having power to grant the relief shall take into account the amount of the benefit.

(2) In any case where an authority has granted outdoor relief to or on account of, or the Unemployment Assistance Board has under the Unemployment Act, 1934, granted an allowance to, a person who was not in receipt of benefit, or was in receipt of less than the full amount of benefit to which he was entitled—

(*a*) in excess of the amount which would have been granted if that person had been in receipt of benefit or had been in receipt of the full amount of benefit to which he was entitled ; or

(*b*) in excess of the amount which would have been granted if an insured contributor had been in receipt of an increase of benefit in respect of that person ;

then, if a claim by that person for benefit, or for the full amount of benefit to which he was entitled, or a claim in respect of that person for an increase of benefit, for any part of the period in respect of which relief, or an allowance, as the case may be, has been so granted, is subsequently allowed, the Minister may treat the benefit allowed to that person, or the increase of benefit allowed in respect of that person, as the case may be, as reduced by a sum not exceeding such an amount as the authority or the Board, as the case may be, certifies to have been so paid in excess for the period for which the benefit or increase of benefit was allowed, and may pay to the authority or to the Board, as the case may be, the sum by which the benefit or increase of benefit is treated as having been reduced as aforesaid :

Provided that the total charge on the Unemployment Fund shall not be greater than the amount of the benefit or increase of benefit allowed.

Removal of Anomalies as to Benefit

Text : Chapter XIX

55.—(1) For the purpose of removing anomalies which may arise from time to time in the operation of this Act in connection with the classes of persons hereafter in this section mentioned, the Minister may make orders, in relation to the classes of persons to whom this section applies, imposing such additional conditions and terms with respect to the receipt of benefit and such restrictions on the amount and period of benefit, and making such modifications in the provisions of this Act relating to the determination of claims for benefit, as may appear necessary for the purpose aforesaid.

(2) The classes of persons to whom this section applies are the following :—

(*a*) persons who habitually work for less than a full week, and by the practice of the trade in which they are employed nevertheless receive earnings or similar payments of an amount greater than the normal earnings for a full week of persons following the same occupation in the same district ;

(*b*) persons whose normal employment is employment for portions of the year only in occupations which are of a seasonal nature ;

(*c*) persons whose normal employment is employment in an occupation in which their services are not normally required for more than two days in the week or who owing to personal circumstances are not normally employed for more than two days in the week;

(*d*) married women who, since marriage or in any prescribed period subsequent to marriage, have had less than the prescribed number of contributions paid in respect of them, but not including a married woman who proves that she has been deserted by, or is permanently separated from, her husband, or that her husband is incapacitated for work and has been so continuously for at least six weeks.

(3) Orders made under this section in relation to persons of the class specified in paragraph (*a*) of the last foregoing subsection shall not operate so as to reduce the amount of benefit otherwise payable to any person in respect of any week by more than the amount by which the aggregate of the earnings or similar payments received by him in that week and of the benefit aforesaid exceeds the normal earnings for a full week of persons following the same occupation in the same district.

(4) Orders made in pursuance of this section may apply either generally to all the persons specified in subsection (2) of this section or to any class of those persons or to any portion of such a class, or with respect to them or any of them, in any specified area.

(5) In the case of a person who, immediately before the date on which any order made in pursuance of this section comes into operation, satisfied the requirements for the receipt of benefit under the law in force immediately before the said date, benefit may, during such period as may be necessary for the examination of the qualifications of that person for the receipt of benefit under the said order, but not in any case after the expiration of three months from the said date, be paid to him as if the order had not been made.

(6) Before any order is made under this section a draft thereof shall be laid before Parliament and no such order shall have effect unless each House has resolved that the draft thereof be approved.

(7) Before laying before Parliament the draft of any order proposed to be made under this section the Minister shall submit the draft to the Unemployment Insurance Statutory Committee and the Committee shall forthwith consider the draft and report thereon to the Minister, and the Minister shall consider the report of the Committee and may then lay the draft before Parliament either without amendments or with such amendments as he thinks fit.

(8) Whenever the draft of any order is laid before Parliament in pursuance of this section there shall be laid together therewith the report of the Committee thereon and a statement by the Minister showing what amendments, if any, have been made since the report of the Committee and what effect, if any, has been given to any recommendations of the Committee, and, if effect has not been given to any recommendation, giving reasons for not adopting it.

(9) In this section the expression " prescribed " means prescribed by an order made under this section.

PART IV. ADMINISTRATION AND FINANCE

Unemployment Insurance Statutory Committee

Text: Chapter XX

56.—(1) There shall be constituted a committee to be called " the Unemployment Insurance Statutory Committee " to give advice and assistance to the Minister in connection with the discharge of his functions under this Act and to perform the duties specified in this Act.

(2) The Committee shall consist of a chairman and not less than four nor more than six other members. At least one member of the Committee shall be a woman.

(3) The chairman and other members shall be appointed by the Minister and shall hold office for a period which, in the cases of each of the members first appointed, and of any member appointed to fill a casual vacancy, shall be of such duration not exceeding five years as may be determined by the Minister, and in the case of all other members shall be a period of five years :

Provided that the chairman or any member may by notice in writing to the Minister resign office at any time, and shall be eligible for reappointment from time to time after his resignation or after the expiration of his term of office.

(4) Of the said members, other than the chairman, there shall be appointed, one after consultation with organizations representative of employers, one after consultation with organizations representative of workers, and one after consultation with the Minister of Labour for Northern Ireland.

(5) No member of the Committee shall be capable of being elected to, or of sitting in, the House of Commons.

(6) If a member becomes, in the opinion of the Minister, unfit to continue in office or incapable of performing his duties, the Minister shall forthwith declare his office to be vacant, and shall notify the fact in such manner as he thinks fit, and thereupon the office shall become vacant.

(7) The Minister shall appoint a secretary to the Committee and may appoint such other officers and such servants to the Committee, and there shall be paid to them such salaries and allowances, as the Minister may with the consent of the Treasury determine.

(8) The expenses of the Committee to such an amount as may be approved by the Treasury (including such salaries or other remuneration paid to all or any of the members as the Minister with the consent of the Treasury may determine and including salaries and allowances payable under the last foregoing subsection) shall be paid by the Minister.

(9) There may be paid as part of the expenses of the Committee to persons attending meetings at the request of the Committee such travelling and other allowances (including compensation for loss of remunerative time) as the Minister may, with the consent of the Treasury, determine.

(10) The Committee may act notwithstanding any vacancy in the number of the Committee.

(11) The Committee may make rules for regulating the procedure (including the quorum) of the Committee.

57.—(1) The Minister may from time to time refer to the Unemployment Insurance Statutory Committee for consideration and advice such questions relating to the operation of this Act as he thinks fit (including questions as to the advisability of amending this Act).

(2) The Minister shall furnish the Committee with such information as they may reasonably require for the proper discharge of their functions under this Act.

Financial Provisions

Text: Chapter XXI

58.—(1) For the purposes of this Act, there shall be established, under the control and management of the Minister, a fund called "the Unemployment Fund," into which shall be paid all contributions payable under this Act by employers and employed persons and out of moneys provided by Parliament, and out of which shall be paid all claims for benefit and any other payments which under this Act are payable out of the fund.

(2) The accounts of the Unemployment Fund shall be examined by the Comptroller and Auditor-General and shall, together with his report thereon, be laid before Parliament.

(3) Any moneys forming part of the Unemployment Fund may from time to time be paid over to the National Debt Commissioners and by them invested, in accordance with regulations made by the Treasury, in any securities which are for the time being authorized by Parliament as investments for savings banks funds.

(4) The National Debt Commissioners shall present to Parliament annually an account of the securities in which moneys forming part of the Unemployment Fund are for the time being invested.

59.—(1) The Unemployment Insurance Statutory Committee shall, not later than the end of February in every year, make a report to the Minister on the financial condition of the Unemployment Fund on the 31st day of December last preceding, and shall also make a report to the Minister on the financial condition of the fund whenever they consider that the fund is or is likely to become, and is likely to continue to be, insufficient to discharge its liabilities, and may make a report on the financial condition of the fund at such other times as they think fit.

(2) If the Committee at any time report that the Unemployment Fund is or is likely to become, and is likely to continue to be, insufficient to discharge its liabilities, or is and is likely to continue to be more than reasonably sufficient to discharge its liabilities, the report shall contain—

(*a*) recommendations for the amendment, either generally or in relation to special classes of insured contributors, of the provisions of this Act referred to in the Fifth Schedule to this Act or of the provisions of any previous order made under this section, being such amendments as in the opinion of the Committee are required in order to make the fund, as the case may be, sufficient or no more than reasonably sufficient to discharge its liabilities; and

(*b*) an estimate of the effect which the amendments recommended will have on the financial condition of the fund;

and, where the Committee report that the fund is and is likely to con-

tinue to be more than reasonably sufficient to discharge its liabilities, the report may contain recommendations for the application of any sum towards the discharge of the liabilities mentioned in subsection (2) of the next following section of this Act.

(3) The Committee shall give such notice as they consider sufficient of their intention to make a report under this section and shall take into consideration any representations which may be made to them with respect thereto.

(4) Within the period of two months after the receipt by the Minister of any report under this section or, if Parliament is not sitting at the expiration of that period, then as soon after the expiration thereof as Parliament sits, the Minister shall lay the report before Parliament, and in a case where the report contains recommendations for the amendment of this Act or of any previous order made under this section, shall after consultation with the Treasury lay before Parliament—

(*a*) the draft of an order making such amendments as are duly recommended by the report, or, if and so far as any amendment so recommended is not adopted by the Minister, making such amendments (being amendments which the Committee had power to recommend) as will in his opinion have substantially the same effect on the financial condition of the Unemployment Fund as that estimated by the report as being the effect of the amendments recommended; and

(*b*) if and in so far as the amendments proposed by the draft order differ from the amendments recommended by the report, a statement of the reasons for the difference.

(5) If each House resolves that the draft of an order laid before it under this section be approved, the Minister shall make an order in the terms of the draft to take effect on such date as may be specified in the order, and as from that date the provisions of this Act and of any such previous order as aforesaid shall have effect subject to the provisions of the order.

[Section **60.**—Treasury advances to the Unemployment Fund—see paragraph 482.]

61. Any expenses incurred by the Minister in carrying this Act into effect, to such amount as may be sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament.

[Section **62.**—Contribution out of Unemployment Fund to expenses of Government Departments—see paragraphs 483–484.]

General Administrative Provisions

63. Anything required or authorized under this Act to be done by, to or before the Minister may be done by, to or before a secretary to the Ministry of Labour or by, to or before any assistant secretary to the Ministry or other person authorized in that behalf by the Minister.

64.—(1) For the purpose of this Act, the Minister may appoint such officers, inspectors, and servants as the Minister may, with the sanction of the Treasury, determine.

(2) There shall be paid out of moneys provided by Parliament to officers, inspectors and servants so appointed such salaries or remuneration as the Treasury may determine.

[Section **65** defines the powers of inspectors—see paragraph 522.]

[Section **66** provides for inspection to be undertaken by other departments.]

67. Regulations made by the Minister under this Act may provide for the reference to central or local committees representing employers and employed persons, for consideration and advice, of questions bearing upon the administration of this Act.

PART V. ARRANGEMENTS AND SCHEMES

Text: Chapter XXII

68.—(1) Subject to the provisions of this Part of this Act, the Minister may, on the application of any association to which this section applies, make an arrangement (in this Act referred to as a " special arrangement ") with the association whereby in lieu of benefit being paid under this Act to persons who prove that they are members of the association, there shall be repaid periodically to the association out of the Unemployment Fund such sum as appears to be, as nearly as may be, equivalent to the aggregate amount which those persons would have been entitled to receive during that period by way of benefit under this Act if no such arrangement had been made.

(2) This section applies to the following associations, namely, a society approved under the National Health Insurance Acts, 1924 to 1932, or body ancillary thereto, or any other association of employed persons, being a society, body or association the rules of which provide for payments to its members or any class thereof while unemployed, but not being either an industrial assurance company or collecting society, or a separate section of any such company or society, or a society organized by any such company or society solely or jointly with other bodies.

(3) The fact that persons other than employed persons can be members of an association shall not prevent the association being treated as an association to which this section applies if the association is substantially an association for the benefit of employed persons.

69.—(1) It shall be lawful for any association to make any such amendments in the instrument governing its constitution as may be necessary for the purpose of enabling the association—

(*a*) to become an association with which the Minister may make a special arrangement; or

(*b*) to include any class of its members within the scope of such an arrangement.

(2) If the instrument regulating the constitution of the association contains provisions requiring any interval of time to elapse before any action can be taken or any amendment of the instrument can take effect, those provisions shall not apply to action taken for the purposes aforesaid.

(3) The powers conferred by this section on an association may, notwithstanding anything in the instrument governing the constitution of the association, be exercised by the council or other governing body of the association.

(4) In this section the expression " instrument " includes any Act, memorandum, articles of association, trust deed or rules.

70.—(1) The Minister shall not make or continue a special arrangement with an association unless he is satisfied that under the rules of the association—

(*a*) the payments thereby authorized represent a provision for unemployment which exceeds the provision represented by benefit at the rate for the time being payable by at least—

(i) three shillings per week in the case of men who have attained the age of 21 years ;

(ii) two shillings and six pence per week in the case of women who have attained the said age ;

(iii) one shilling and six pence per week in the case of young men and boys who have not attained the said age ;

(iv) one shilling and three pence per week in the case of young women and girls who have not attained the said age ; and

(*b*) the aggregate amount of the excess payable in a year is at least—

(i) seventy-five shillings in the case of men who have attained the said age ;

(ii) sixty shillings in the case of women who have attained the said age ;

(iii) thirty-seven shillings and six pence in the case of young men and boys who have not attained the said age ;

(iv) thirty shillings in the case of young women and girls who have not attained the said age ; and

(*c*) the excess is payable in at least ten weeks in the year.

(2) The Minister shall not make or continue a special arrangement with an association unless the association has such a system of ascertaining the wages and conditions prevailing in every insurable employment in which its members are employed and of obtaining from employers notification of vacancies for employment and giving notice thereof to its members when unemployed, as is, in the opinion of the Minister, reasonably effective for securing that unemployed persons competent to undertake the particular class of work required shall, with all practicable speed, be brought into communication with employers having vacancies to fill.

71.—(1) The Minister may, with the consent of the Treasury and subject to such conditions and otherwise as the Minister may prescribe, pay to any association with which a special arrangement is in force, by way of contribution towards the administrative expenses of the association in connection with the arrangement, such sum (not exceeding the amount hereafter specified) as he thinks fit :

Provided that the sum so paid shall not exceed in any year an amount calculated at the rate of one shilling for each week of the aggre-

gate number of weeks of unemployment in respect of which a repayment is made to the association under the arrangement.

(2) The council or other governing body of any association which has made a special arrangement shall be entitled to treat the contributions due from any of its members to the Unemployment Fund, or any part thereof, as if such contributions formed part of the subscriptions payable by those members to the association, and, notwithstanding anything in the rules of the association to the contrary, may reduce the rates of subscription of those members accordingly.

(3) Where any sum is paid to a person under a special arrangement, so much thereof as represents the amount of benefit which, but for the arrangement, would have been paid to him shall be deemed for the purpose of this Act to have been paid by way of benefit.

(4) The Minister may make regulations for giving effect to the provisions of this Part of this Act relating to special arrangements and for referring to insurance officers, courts of referees or the umpire appointed under this Act any question which may arise under those provisions.

(5) Where, in consequence of a decision of an insurance officer, court of referees or umpire, an association has paid to one of its members any sum by way of provisions for unemployment and the decision is subsequently revised, then—

(*a*) so much of that sum as represented the amount of benefit which, but for the arrangement, would have been payable to that person may, unless that person shows that the sum was received by him in good faith and without knowledge that he was not entitled thereto, be recovered, without prejudice to any other remedy, by means of deductions from any benefit or from any payment from the association to which that person thereafter becomes entitled; **and**

(*b*) where the decision is revised on new facts being brought to the knowledge of the insurance officer, court of referees or umpire, repayment of that sum shall, notwithstanding the revision, be made to the association out of the Unemployment Fund, if it is shewn that no-one concerned with the case on behalf of the association could reasonably have been expected to ascertain the facts on which the decision was revised, and that recovery of the sum has not been practicable.

[Sections **72, 73** and **74.** Supplementary Schemes and Special Schemes—see paragraphs 523–532.]

PART VI

EDUCATION AND POWERS OF EDUCATION AUTHORITIES

Text: Chapter XXIII

[Section **75.** Crediting of contributions to persons receiving whole time education—see paragraphs 72–76.]

Provision of courses of instruction by education authorities

76.—(1) Every education authority shall, as soon as may be after the commencement of this Act, unless it has already complied with the

provisions of subsection (1) of Section 13 of the Unemployment Act, 1934, submit to the Minister proposals for the provision of such courses of instruction as may be necessary for persons in its area between the minimum age for entry into insurance and the age of 18 years who are capable of and available for work but have no work or only part-time or intermittent work.

(2) If after the commencement of this Act the Minister approves with or without modifications any proposals made by an education authority under the last foregoing subsection or any proposals made by an education authority before the commencement of this Act under subsection (1) of the said Section 13, or if before the commencement of this Act the Minister has approved under subsection (1) of the said Section 13 any proposals made under that subsection, the authority shall provide courses in accordance therewith :

Provided that the Minister shall not approve any proposals submitted to him by an education authority in England or Scotland unless they are in accord with schemes made by him with the consent of the Treasury for England and Scotland respectively, after consultation, in the case of the scheme for England, with the Board of Education and, in the case of the scheme for Scotland, with the Scottish Education Department.

(3) If it is certified by the Minister that, having regard to the number of such persons as aforesaid in the area of any education authority, insufficient provision has been made under the foregoing provisions of this section for courses of instruction in or in any part of the area, and that such courses of instruction as are specified in the certificate are necessary in such localities as are specified therein, it shall be the duty of the authority to provide such courses of instruction in those localities within three months from the date of the certificate or such further time as the Minister may allow, and if the authority fails to do so the Minister may make such an order as he thinks necessary or proper for the purpose of compelling the authority to fulfil that duty.

(4) Any order made by the Minister under this section may in England be enforced by mandamus.

(5) It is hereby declared that proceedings in Scotland for the enforcement of any order made by the Minister under this section may be taken at the instance of the Minister under Section 91 of the Court of Session Act, 1868, as amended by any subsequent enactment.

Provision of training courses by Minister

77. The Minister, subject to the approval of the Treasury, may provide training courses for persons who have attained the age of 18 years and are capable of and available for work but have no work or only part-time or intermittent work.

Power to require attendance of persons under 18 at authorized courses

78.—(1) If any person (whether an insured contributor or not) who is between the minimum age for entry into insurance and the age of 18 years is capable of and available for work but has no work or only part-time or intermittent work, the Minister may require his attendance in accordance with regulations at any authorized course at which he can reasonably be expected to attend.

(2) If any person whose attendance at an authorized course has been required by the Minister under this section fails, except by reason of sickness or other unavoidable cause, to attend at that course, then—

(*a*) in England, proceedings may be taken by or on behalf of the Minister—

(i) in the case of a person who has not attained the age of 16 years, under Section 45 of the Education Act, 1921 (notwithstanding that he may be over the age at which an order could otherwise be made under that section); or

(ii) in the case of a person who has attained the age of 16 years, under section 78 of that Act;

as if the requirement were respectively a school attendance order or a requirement imposed under the said Act for attendance at a continuation school, and as if proceedings could be taken by or on behalf of the Minister under those sections, and the provisions of that Act shall apply accordingly; and

(*b*) in Scotland—

(i) in the case of a person who has not attained the age of 16 years, proceedings may be taken by or on behalf of the Minister under Section 4 of the Day Industrial Schools (Scotland) Act, 1893 (notwithstanding that that person may be over the age at which an order could otherwise be made under that section) as if the requirement to attend at the course were an an attendance order and as if proceedings could be taken by or on behalf of the Minister under the said section, and the provisions of the said Act shall apply accordingly provided that it shall not be competent in any such proceedings to pronounce a sentence of imprisonment; and

(ii) in the case of a person who has attained the age of 16 years, the provisions of subsection (8) of Section 15 of the Education (Scotland) Act, 1918, shall apply as if the requirement to attend at the course were an order by an education authority served upon that person in accordance with that subsection.

(3) For the purposes of the last foregoing subsection and of any such proceedings as are therein mentioned a person who, by reason of his misbehaviour while attending at any course, has been required to discontinue his attendance thereat for any period shall be deemed to have failed without unavoidable cause to attend at that course.

(4) An education authority shall have power to assist the Minister with respect to the attendance at authorized courses of persons who may be, or have been required by the Minister under this section to attend thereat, and, for the purpose of the power conferred by this subsection, the expression "education authority" shall include a local education authority for elementary education under the Education Act, 1921:

Provided that legal proceedings for enforcing a requirement of the Minister that any person should attend at an authorized course shall not be taken by an education authority except under subsection (2) of this section on behalf of the Minister.

(5) The regulations made by the Minister under this section may make provision for the establishment of boards of assessors for the purpose

of reporting to him as to the advisability of requiring persons to attend at an authorized course.

Expenses of and in connection with courses

79.—(1) The Minister, subject to the approval of the Treasury, may defray the cost of authorized courses provided by him and contribute towards the cost of any other authorized courses and may also defray, or contribute towards, the cost of training courses, courses of instruction, or courses of occupation, provided in pursuance of arrangements made with the Minister by any public authority or other body for persons who are capable of and available for work but have no work or only part-time or intermittent work.

(2) The Minister, subject to the approval of the Treasury, may defray or contribute towards the travelling expenses of persons travelling to or from any such course as aforesaid, and may make payments to persons attending at any such authorized course, training course, or course of instruction as aforesaid, not being a course provided only for persons who have not attained the age of 18 years.

[Section **80** empowers the Minister to authorize the payment of grants out of the Unemployment Fund towards the cost of authorized courses, not exceeding 50 per cent. in the case of courses of instruction for young persons and 75 per cent. in respect of training courses for adults.]

[Sections **81** and **83** given power to education authorities to assist boys and girls in the choice of employment and to undertake duties in connection with attendance at authorized courses of instruction and administration of insurance benefit.]

[Section **82.** The Minister may make regulations requiring employers, when any person (whether an insured contributor or not) who is between the minimum age for entry into insurance and the age of 18 years leaves their employment, to give notice thereof to the Minister in the prescribed manner.]

PART VII. MISCELLANEOUS AND GENERAL

[Section **84.** Determination of questions by the Minister and appeals from the Minister to the High Court. The provisions are as described in Chapter IV.]

[Section **85.** Minister's decision to be conclusive for purposes of proceedings under the Act—see paragraph 511.]

[Section **86.** Penalty for false representations and for failure to comply with the Act—see paragraphs 516-517.]

[Section **87.** General provisions as to prosecutions—see paragraph 518.]

[Section **88.** Civil proceedings to recover sums due to Unemployment Fund—see paragraph 520.]

[Section **89.** Evidence in proceedings—see paragraph 519.]

[Section **90.** Evidence on oath at Statutory inquiries—see paragraph 545.]

[Section **91** enables any person who is required to produce a certificate of birth, marriage or death to obtain one on payment of a fee of 6d. for a birth certificate and 1s. for a marriage or death certificate.]

[Section **92** enables the Minister by regulations to provide for the representation of deceased or insane contributors.]

[Section **93** prescribes the documents which are exempt from stamp duty. They include a draft, order or receipt in respect of money payable in connection with an arrangement with an association under Section 68, or with a special or supplementary scheme.]

[Section **95** provides that persons temporarily serving in the armed forces of the Crown shall be regarded for the purposes of unemployment insurance as employed persons in the service of the Crown.]

[Section **96.** Crediting of contributions to discharged seamen, marines, soldiers and airmen.]

[Section **97.** Crediting of contributions to short service constables of the Metropolitan Police Force.]

[Section **98** empowers the Minister, after consultation with the Board of Trade, to make regulations modifying the provisions of the Act in their application to persons employed in the mercantile marine.]

[Section **99.** Power to make Regulations to govern the position of persons employed on night work—see paragraphs 312–313.]

[Sections **100–103.** Provisions for promoting Employment—see paragraphs 557–558.]

[Sections **104–107.** Regulations, Orders and Special Orders—see paragraphs 533–547.]

Northern Ireland.

[Section **108** empowers the Minister to enter into agreement with the Ministry of Labour for Northern Ireland for enabling contributions and benefit paid in Great Britain or Northern Ireland to be taken into account in the other country. Where such an agreement has been entered into, for the purpose of determining the right to benefit in Great Britain contributions paid and benefit received in Northern Ireland shall be taken into account.]

[Sections **109** and **115,** and the Sixth Schedule deal with the application of the Act to Northern Ireland—see paragraphs 548–550.]

Isle of Man and Channel Islands.

[Section **110** enables the Minister to make reciprocal arrangements with the Isle of Man and the Channel Islands in respect of any statutory scheme of unemployment insurance.]

Transitional provisions.

[Sections **111** and **112** contain transitional provisions as to benefit and authorized courses consequent upon the changes made by the 1934 Act.]

Definitions

113.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

[" *Age* "—*see Section* 113 (2), *page* 237.]

(*a*) " Application for benefit " means an application for benefit made in the prescribed manner ;

(*b*) " Authorized course " means, subject to the provisions of the last foregoing section of this Act, a course of instruction or training course provided under or in pursuance of Section 76 or Section 77 of this Act and includes, in relation to insured contributors who have attained the age of 18 years, any training course provided by the Unemployment Assistance Board under the Unemployment Act, 1934 ;

(*c*) " Benefit " means the sums payable under Part III of this Act to an insured contributor who is unemployed ;

[" *Benefit period* "—*see Section* 49 (3), *page* 223.]

(*d*) " Benefit rights " means, in relation to an insured contributor, his right to receive benefit for the number of days allowed in his case by the provisions of paragraphs (*a*) and (*b*) of subsection (1) of Section 31 of this Act or by the provisions of paragraphs (*a*) and (*b*) of subsection (1) of Section 3 of the Unemployment Act, 1934, or by the provisions of sub-paragraph (*b*) of paragraph (1) of Article 1 of the Unemployment Insurance (National Economy) (No. 2) Order, 1931, as the case may be ;

[" *Benefit year* "—*see Section* 32 (1), *page* 214.]

(*e*) " Calendar week " means the period of seven days commencing from the midnight between Sunday and Monday ;

[" *Child* "—*see Section* 37, *page* 216.]

(*f*) " Claim for benefit " includes an application for benefit ;

(*g*) " Day " means a period of 24 hours from midnight to midnight or such other period of 24 hours as the Minister may for any general or special purpose prescribe ;

[" *Dependent child* "—*see Section* 37, *page* 216.]

(*h*) " Education authority " means, except in the application of this Act to Scotland, a local education authority for the purposes of higher education under the Education Act, 1921 ;

(*i*) " Employed person " means any person of either sex, whether a British subject or not, who has attained the minimum age for entry into insurance under this Act and is employed in insurable employment ;

(*j*) " Employer's contribution " means a contribution payable under the general provisions of this Act by an employer on his own behalf in respect of an employed person, whether the employed person is or is not an excluded person ;

(*k*) " Employment exchange " has the same meaning as the expression " labour exchange " in the Labour Exchanges Act, 1909, and includes a branch employment office and a juvenile employment bureau ;

(*l*) " Excepted employment " has the meaning assigned to it by Section 3 of this Act ;

(*m*) " Excluded person " means an employed person who, by virtue of the provisions of Section 5 of this Act, is not insured under this Act;

(*n*) " General provisions of this Act " means the provisions of this Act other than those contained in Part V thereof relating to special and supplementary schemes;

(*o*) " Insurable employment " has the meaning assigned to it by Section 3 of this Act;

(*p*) " Insurance year " means the period beginning on the 27th Monday in any calendar year and ending on the Sunday preceding the 27th Monday in the next calendar year;

(*q*) " Insured contributor " means a person insured under this Act;

(*r*) " The Minister " means the Minister of Labour;

(*s*) " Prescribed " means prescribed by regulations made by the Minister;

(*t*) " Statutory conditions " means the conditions set out in Sections 22 to 25 of this Act, and references to the first, second, third and fourth statutory conditions shall be construed accordingly;

(*u*) " Trade dispute " means any dispute between employers and employees or between employees and employees which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises or not.

(2) For the purposes of this Act—

(*a*) a person shall be deemed to be between any two ages therein mentioned if he has attained the first mentioned age but has not attained the second mentioned age;

(*b*) a person shall be deemed according to the law in England as well as according to the law in Scotland, not to have attained the age of 21 years until the commencement of the 21st anniversary of the day of his birth, and similarly with respect to other ages.

FIRST SCHEDULE

[Part I.—Employments within the meaning of the Act—see paragraphs 13–19.

Part II.—List of Excepted Employments—see paragraph 21.

Part III.—Employments which are excepted if certified by Minister —see paragraph 39.]

SECOND SCHEDULE

[Persons excluded by reason of having been employed in certain employments excepted under the National Health Insurance Act, 1924—see paragraph 48.]

THIRD SCHEDULE

Weekly Rates of Contributions payable by Employers and Employed Persons

Class of employed persons to whom rate applies	Weekly rate of of contribution	
	By the employed person	By the employer
Men who have attained the age of 21 years -	10*d.*	10*d.*
Women who have attained the age of 21 years -	9*d.*	9*d.*
Young men between the ages of 18 and 21 years	9*d.*	9*d.*
Young women between the ages of 18 and 21 years - - - - - - - - - -	8*d.*	8*d.*
Boys beteeen the ages of 16 and 18 years - -	5*d.*	5*d.*
Girls between the ages of 16 and 18 years - -	4½*d.*	4½*d.*
Boys and girls who have not attained the age of 16 years - - - - - - - - -	2*d.*	2*d.*

FOURTH SCHEDULE

Weekly Rates of Benefit

Class of insured contributor	Rate of benefit	
	s.	*d.*
Men who have attained the age of 21 years - - - -	17	0
Women who have attained the age of 21 years - - - -	15	0
Young men between the ages of 18 and 21 years - - -	14	0
Young women between the ages of 18 and 21 years - - -	12	0
Boys between the ages of 17 and 18 years - - - - -	9	0
Girls between the ages of 17 and 18 years - - - - -	7	6
Boys who have not attained the age of 17 years - - -	6	0
Girls who have not attained the age of 17 years - - -	5	0

FIFTH SCHEDULE

Section 59

Provisions of Act of which Amendments may be Recommended by the Unemployment Insurance Statutory Committee

Provision	*Subject Matter*
Section 22	First statutory condition for receipt of benefit.
Section 23	Second statutory condition for receipt of benefit.
Section 24	Third statutory condition for receipt of benefit.
Section 25	Fourth statutory condition for receipt of benefit.
Section 26	Disqualification where employment lost through trade dispute.
Section 27	Disqualification where employment lost through misconduct or voluntarily.
Section 28	Disqualification for refusing or failing to apply for work.
Section 29	Disqualification while in prison or workhouse.
Section 30	Miscellaneous disqualifications.
Section 31	Right to benefit and period in respect of which it is payable.
Section 32 (except subsection (3) thereof)	Reckoning of benefit years.
Section 33	Reckoning of contributions and benefit paid in error.
Section 34	Reckoning of contributions paid at intervals greater than a week.
Section 35	Reckoning of periods of unemployment.
Section 36	Ordinary rates of benefit.
Section 37	Increase of benefit in respect of dependent children.
Section 38	Increase of benefit in respect of adult dependants.
Section 39	General provisions as to increase of benefit.
Section 49 (except subsection (5) thereof)	Payment of benefit pending determination of claim or question.
Section 55	Orders with respect to benefit in case of special classes of persons.
Section 75	Crediting of contributions to persons receiving whole-time education.
Section 80	Power to make grants out of Unemployment Fund towards expenses of attendance at authorized courses.
Section 96	Discharged seamen, marines, soldiers and airmen.
Section 97	Short service constables of the Metropolitan Police Force.
Third Schedule	Weekly rates of contributions payable by employers and employed persons.
Fourth Schedule	Weekly rates of benefit.

APPENDIX II

STATUTORY RULES AND ORDERS

Reference is made in the Text and Appendix to Regulations and Orders made by the Minister of Labour under the Unemployment Insurance Acts. The more important Regulations are reproduced below, as amended. The amendments are shown in italics. Copies may be obtained from H.M. Stationery Office.

SCOPE

Text : Chapter II

Employment outside the United Kingdom Regulations, 1931

(S.R. & O., 1931, No. 820)

1. Where a person in the employment of a person resident, or having his principal place of business, in Great Britain is engaged outside the United Kingdom for the purpose of the execution of some particular work in employment which if it were employment in Great Britain would make him an employed person within the meaning of the Acts, he shall, if he was immediately before leaving Great Britain an insured contributor, be deemed for the purposes of the Acts to be an employed person and insurable thereunder :

Provided that these Regulations shall not apply :—

(*a*) unless the engagement for employment outside the United Kingdom was made before the insured contributor left Great Britain, or, if having left Great Britain to take up insurable employment in Northern Ireland, before he left Northern Ireland, or unless it followed, or was one of a consecutive series of engagements in insurable employment (whether under the same employer or different employers) that followed, immediately upon the termination of an engagement so made as aforesaid ;

(*b*) to so much of any continuous period of employment outside the United Kingdom as is in excess of ten years from the date of the commencement of the first engagement ;

(*c*) to employment within paragraph (*b*) of Part I of the First Schedule to the Unemployment Insurance Act, 1920.

2.—(1) It shall be the duty of every employer of a person to whom the provisions of Regulation 1 apply :—

(*a*) before sending such person to a place outside the United Kingdom, or engaging or re-engaging him if already outside the United Kingdom, to give to a Local Office :—

(i) details of the particular work being carried out by the employer;
(ii) the name of the person;
(iii) the nature of the work to be performed by that person outside the United Kingdom;
(iv) the approximate length of time expected to elapse before the termination of the engagement;
(v) such other particulars with regard to that person as may reasonably be asked;

(*b*) to notify to a Local Office the return of such person to Great Britain, or his leaving the service of the employer whilst outside the United Kingdom, and, in the latter case, to deliver to the Local Office the unemployment book of such person.

(2) This Regulation shall not apply to persons whose period of employment outside the United Kingdom is included in a calendar week or weeks during any part of which a contribution is payable in respect of them on account of employment within Great Britain.

(3) Where on account of the absence of an employed person outside the United Kingdom an employer or an employed person is unable to perform within the specified time any act required by the Acts or any Regulations made thereunder to be done either forthwith or on the happening of a certain event, he shall be deemed to have complied with the provisions of the Acts or Regulations if he performs the act as soon as is reasonably possible after the expiration of the specified time.

(4) Any person to whom these Regulations apply may for the purposes of paragraph (4) of the Unemployment Insurance (Collection of Contributions) Regulations, 1920, and subject to the provisions thereof, by writing appoint a person to inspect the book while he himself is outside the United Kingdom.

(5) Every person to whom these Regulations apply and every employer of such person shall comply with any directions that may be given to him by the Minister for the purpose of carrying out these Regulations.

(6) If an insured contributor to whom these Regulations apply is outside the United Kingdom at the time of his engagement by an employer having his principal place of business in Great Britain, it shall be the duty of such employer, without prejudice to the provisions of any other Regulations, to obtain a fresh book in respect of the insured contributor from a Local Office of the Ministry of Labour (S.R. & O., 1920 (No. 2014), page 243).

EXEMPTIONS

Text : Chapter II

Exempt Persons Regulations, 1928

(S.R. & O., 1928, No. 307)

The Minister of Labour by virtue of the powers conferred on him by the Unemployment Insurance Act, 1920, hereby makes the following Regulations :—

2.—(1) Any employed person, not being a person over 65 who can prove that he is either—

(*a*) in receipt of any pension or income of the annual value of £26 or upwards, which does not depend on his personal exertions; or

(*b*) ordinarily and mainly dependent for his livelihood upon some other person; or

(*c*) ordinarily and mainly dependent for his livelihood on the earnings derived by him from an occupation employment in which does not make him an employed person within the meaning of the Acts; or

(*d*) a person who is employed in an occupation which is of a seasonal nature and does not ordinarily extend over more than 18 weeks in any year and who is not ordinarily employed in any other occupation, employment in which would make him an employed person within the meaning of the Acts.

may apply to the Minister for an Unemployment Insurance Exemption Certificate exempting him from liability to be insured under the Acts, and every application for such a certificate shall be made on the appropriate form prescribed in the First Schedule hereto, or in such other form as the Minister may deem expedient and shall be forwarded to the Minister in such manner as he may from time to time direct.

(2) Every person making application for an Unemployment Insurance Exemption Certificate, or for the renewal of such a certificate shall—

(*a*) state fully and correctly all particulars required to be given in the form of application; and

(*b*) make a full disclosure of all facts on which he relies to show that he is entitled to exemption; and

(*c*) furnish such further evidence in relation to his application as the Minister may in any particular case require.

3.—(1) An Unemployment Insurance Exemption Certificate shall be in the form prescribed in the Second Schedule hereto, or in such other form as the Minister may deem expedient, and any employed person who shows that he is the holder of an Unemployment Insurance Exemption Certificate, or of a certificate of exemption granted under the provisions of Section 2 of the National Insurance Act, 1924, shall be entitled to an Unemployment (Exempt Persons) Book in place of an Unemployment Book, and so long only as the holder of a certificate of exemption granted under the National Insurance Act, 1924, is the rightful holder of an Unemployment (Exempt Persons) Book that certificate shall have effect as an Unemployment Insurance Exemption Certificate.

(2) An Unemployment (Exempt Persons) Book shall be in such form as the Minister may from time to time direct, and any Regulations for the time being in force with regard to the issue, custody and stamping of Unemployment Books shall, so far as they are not inconsistent, apply to the issue, custody and stamping of Unemployment (Exempt Persons) Books.

4.—(1) An Unemployment Insurance Exemption Certificate shall remain in force for such period, not exceeding five years, from the date of its being granted or renewed, as may be specified in the certificate. Provided that:—

(*a*) if while the certificate is in force the circumstances of the exempt person alter in such a way as to disentitle him to exemption, or if he attain the age of 65 the certificate shall thereupon become void; and

(*b*) if at any time the exempt person gives notice to the Minister that he desires that the certificate of exemption granted to him shall be cancelled, the certificate shall be cancelled accordingly, and shall thereupon become void as from such date as the Minister may determine.

(2) An Unemployment Insurance Exemption Certificate which has expired or become void shall be surrendered forthwith by the holder thereof to the Minister, or otherwise as the Minister may direct, together with a statement in such form as the Minister may direct of the circumstances in which the certificate is surrendered, and any employed person surrendering an expired or void Unemployment Insurance Exemption Certificate or Certificate of Exemption granted under the provisions of the National Health Insurance Act, 1924, shall at the same time surrender to an Employment Exchange, Branch Employment Office or Juvenile Employment Bureau, or otherwise as the Minister may direct, the Unemployment (Exempt Persons) Book held by him. Provided that for the purposes of this provision paragraph (ii) of Regulation 2 of the Unemployment Insurance (Collection of Contributions for Persons over 65) Regulations, 1928,[1] shall not apply.

(3) Where an exempt person desires to obtain a renewal of his Unemployment Insurance Exemption Certificate he may if he can prove that he will after the expiration of that certificate continue to be qualified under the first paragraph of Regulation 2 of these Regulations, make application to the Minister before the expiration of his certificate for the renewal thereof in such a manner as the Minister may direct.

PAYMENT OF CONTRIBUTIONS

Text: Chapter III

Collection of Contributions Regulations, 1920 to 1934[2]

(S.R. & O., 1920, No. 2014, as amended by S.R. & O., 1925, No. 975, S.R. & O., 1930, No. 569 and S.R. & O., 1934, No. 600)

Regulations 1 and 2 contain definitions, etc.

3.—(1) Every person who is required by the Act to be or to become an insured contributor shall obtain from a Local Office, or in such other way as the Minister may direct, an Unemployment Book, and shall sign the book forthwith in the space provided for the purpose.

[1] S.R. & O., 1928, No. 14.

[2] 1920 Act, Section 6 (amended by 1930 Act, Section 3), gave power to the Minister to make regulations for matters incidental to the payment and collection of contributions.

(2) An insured contributor on obtaining a book in accordance with these Regulations shall be responsible for the custody of the book until it is delivered to an employer or to a Local Office in accordance with these Regulations.

(3) Every employer of an insured contributor shall, immediately after the date of the engagement, or in the case of an employed person required to become an insured contributor by reason of attaining *a specified age*, immediately after he attains that age, or in the case of an employed person required to become an insured contributor at the date of the commencement of the Act, immediately after that date, obtain from the insured contributor a book then current, and it shall be the duty of the insured contributor to deliver or cause to be delivered his book to the employer accordingly :

Provided that where at the time of engagement an insured contributor's book is lodged at a Local Office, the employer shall be held to have complied with this Regulation as soon as he has obtained from the insured contributor the receipt for such book duly issued by the Local Office and has despatched it to that Local Office with a view to obtaining the book.

Provided also that where, in response to an application for a book properly made by an insured contributor, a book is issued by a Local Office direct to his employer, the requirements of subsections (1) and (3) of this Regulation shall be deemed to have been satisfied.

(4) The employer on obtaining the book shall become responsible for the custody of the book so long as the employment continues, or till the book is returned to the insured contributor or delivered to the Local Office in accordance with these Regulations.

(5) The person for the time being responsible for the custody of the book in accordance with these Regulations, *or any person having in his possession or under his control any book issued in respect of an insured contributor*, shall produce it for inspection at any reasonable time when required to do so by an Inspector appointed for the purposes of the Act and, if so required by the Inspector, shall deliver up the book to the Inspector who may, if he thinks fit, retain the book.

4. If any insured contributor desires to inspect his book while it is in the custody of the employer, the employer shall, subject as hereinafter mentioned, give him a reasonable opportunity of so doing either within or immediately before or after working hours.

Provided that no insured contributor shall be entitled by virtue of this provision to inspect his book more than once in any one month nor except at such time as may be fixed by the employer for the purpose.

5.—(1) On the termination of the employment of any insured contributor for any cause other than his death or on contributions ceasing for any cause to be payable in respect of him under the general provisions of the Act, the employer shall forthwith return the book to the insured contributor (*or in the case of an insured contributor under the age of* 18 *years send it to such Local Office or dispose of it in such manner as may be directed by the Minister*) without any note or mark of any kind made in, affixed to, or impressed on it, other than any such mark as is required for the purpose of cancelling in accordance with these Regulations any stamp affixed to the book. *Where a book is to be sent to a*

Local Office in accordance with this regulation, the employer shall give to the insured contributor a token card to be provided by the Minister as an acknowledgment that the book has been or is about to be sent by the employer to the Local Office.

(2) *Except in cases in which the book is to be sent to a Local Office in accordance with the last preceding paragraph* the insured contributor on the termination of his employment shall apply to the employer for the return of his book, and on the book being returned to him, shall give to the employer, if he demands it, a receipt for the book. *Where the book is to be sent to a Local Office as aforesaid, the insured contributor, on the termination of his employment, shall apply to the employer for the token card mentioned in the last preceding paragraph.*

(3) An employer shall comply with any directions which may be given by the Minister as to the *sending to a Local Office or the* return to an insured contributor of his book at any other time than on the termination of his employment.

(4) Subject to any directions of or Regulations made by the Minister, the insured contributor to whom a book is returned under the foregoing provisions shall, if he is unemployed, or if for any other reason contributions cease to be payable in respect of him under the general provisions of the Act, forthwith deliver the book to a Local Office, there to be retained till contributions again become or are about to become payable in respect of him under the general provisions of the Act.

(5) If for any reason the book is not returned to the insured contributor in accordance with Regulation 5 (1) on the termination of his employment or on contributions ceasing for any other reason to be payable in respect of him under the general provisions of the Act, the employer shall, as soon as may be, deliver the book to a Local Office provided that nothing in this subsection shall relieve the employer of his obligation to comply with Regulation 5 (1).

6. On the death of an insured contributor the employer, if the book is then in the custody of the employer, or if the book is not then in the custody of the employer, the insured contributor's representative, whether legally so constituted or not, shall forthwith deliver the book to a Local Office.

7.—(1) A book shall be issued without charge to a person properly applying for a book, and when issued shall remain the property of the Minister.

(2) A book shall be in such form as the Minister directs, and shall be current only during such period, not exceeding fifty-three weeks from the date of the issue thereof, as may be specified thereon and shall within six days, or such longer time as the Minister in any special case allows, after the date on which it ceases to be current, be returned by the person for the time being responsible in accordance with these Regulations for the custody of the book, to a Local Office, and a fresh book shall thereupon be issued without charge to the person so returning the book:

Provided that, where the book on the date on which it ceases to be current is in the custody of the employer, he shall, if the insured contributor so requires, *but subject to the provisions of Regulation* 5, instead

of returning it to a Local Office, return it to the insured contributor who shall give to the employer, if he demands it, a receipt for the book, and shall himself exchange the book for a fresh book, at a Local Office and deliver the fresh book forthwith to the employer.

Provided also, that, where the Minister so directs, a book may be exchanged for a fresh book at any time or in a manner other than that prescribed in this Regulation.

(3) If a book is destroyed, is lost, or is defaced in any material particular, the Minister may issue a new book in substitution for it and, if he thinks fit may charge a sum not exceeding one shilling for the new book, such sum to be paid by the person for the time being responsible in accordance with these Regulations for the custody of the book so destroyed, lost, or defaced, as aforesaid and such number of contributions as are shown to the satisfaction of the Minister to have been paid by the affixing or impressing of stamps to or upon the book so destroyed, lost, or defaced, may in the discretion of the Minister be credited to the insured contributor.

Save as aforesaid no charge shall be made by the Minister in connection with the issue, custody, delivery up, or exchange, or replacement of any book.

(4) Where a book is destroyed, lost or defaced and the number of the book cannot be supplied to the Minister, the Minister may decline to take any steps to trace the account with the Unemployment Fund of the person whose book has been so destroyed, lost or defaced.

(5) Where any book is lost the Minister, if he thinks fit, may pay out of the Unemployment Fund any sum not exceeding one shilling by way of reward to the person by whom the book is returned to the Local Office, and he may refuse to restore the book to the person responsible for its custody until that person has repaid to the Minister any sum which has been so paid by the Minister by way of reward and which he is liable to repay under subsection (2) of Section 28 of the Act.

(6) If any person refuses or fails to pay any sum for the payment of which he is liable under this Regulation, the Minister may, if he thinks fit, recover such sum by deduction from any benefit or other payment due or to become due to such person under the Act or the Regulations made thereunder.

[Paragraph 8 provides for the use of an emergency book where an employed person has not delivered to the employer an unemployment book in accordance with the Regulations.]

9.—(1) Every contribution payable under the general provisions of the Act shall, except as otherwise provided in these Regulations, be paid by the affixing of a stamp to the book of the insured contributor in the space indicated for that purpose upon the book, and the value of the stamps so affixed shall be the following.[1]

(2) An employer who is liable to pay contributions in respect of any insured contributor shall pay those contributions at the following times in accordance with the following provisions, that is to say:—

(i) Where he pays to the insured contributor wages or other

[1] The current rates are set out on page 238.

pecuniary remuneration in respect of the employment of such insured contributor he shall, before paying to the insured contributor the wages of remuneration in respect of the period for which contributions are payable, affix to the book of the insured contributor a stamp or stamps in payment of the contributions due in respect of that period.

(ii) Where he does not pay to the insured contributor wages or other pecuniary remuneration in respect of the employment, he shall, on the first day of employment in each calendar week, affix to the book of the insured contributor a stamp in payment of the contribution in respect of that week.

[(iii) This provides that the books of men of the Naval, Army or Air Force Reserve who are in training should be stamped before the expiration of the period of currency or the termination of training whichever is the earlier.]

(3) It shall be the duty of the employer, in addition to his obligation to comply with any other requirement of the Act or the Regulations thereunder in regard to the payment of contributions,

(*a*) on the termination of the employment whether or not any wages are then paid ;

(*b*) within six days after the expiration of the period of currency of the book,

to affix to the book of the insured contributor a stamp or stamps in payment of all the weekly contributions due from him but still outstanding in respect of the period ending at the date of such termination or expiration.

(4) It shall further be the duty of the employer, on being so required by any duly appointed Officer of the Ministry of Labour to affix to an arrears book a stamp or stamps in payment of all the weekly contributions due from him but still outstanding in respect of any insured contributor who is or has been in his employment and to forward the arrears book, when stamped, to the person or address indicated thereon.

[Regulation 9 (5) provides that where the employer employs a substantial number of insured contributors regularly, he may deposit with the Minister a sum equal to the estimated amount of the contributions payable by him during a period of *twenty-seven* weeks or such less period as may be agreed between him and the Minister in respect of those insured contributors both on his own behalf and on behalf of those insured contributors.]

(6) No stamp shall be affixed to or impressed upon a book otherwise than in respect of insurable employment and any stamp affixed or impressed otherwise shall not be deemed to be a payment of a contribution except for the purpose of Section 28 (1) of the Act.[1]

(7) (i) An employer shall immediately after affixing any stamp to a book cancel the stamp by writing in ink, or stamping with a metallic die with black indelible ink or composition, across the face of the stamp the date upon which it is affixed and not otherwise, but save as expressly provided in Regulations made under the Act or as directed

[1] Section 28 (1) of the 1920 Act becomes Section 14 of the 1935 Act.

by the Minister no other writing or mark shall be made at any time upon the book or stamp.

(ii) An employer may, if he thinks fit, inscribe upon the book of any insured contributor employed by him, but only in such manner as to be easily erased or removed, the number of that person upon the pay-list or in the books of the employer.

(8) No person shall affix to a book a stamp which has been cancelled or defaced, *or which has been previously affixed to a book or other document to which stamps are required or authorized to be affixed for the purposes of the Act.*

[**9A.** Regulations dated 17th June, 1930, made under 1930 Act, Section 3[1] (S.R. & O., 1930, No. 569), prescribe the conditions whereby employers may pay contributions by means of stamps impressed upon books by a machine and die approved by the Minister.]

[**10.** This section of the Regulations provides for arrangements for the payment of contributions when any group of insured contributors is ordinarily employed by two or more employers in a week. Particulars of the conditions under which such arrangement may be sanctioned may be obtained from the Ministry of Labour (Unemployment Insurance Department).]

11. In the case of an insured contributor employed as an agent by two or more employers, and paid by commission or fees or a share of the profits, or partly in one and partly in another of those ways, the employer in the employment on which the insured contributor is mainly dependent for his livelihood shall be deemed to be the employer of the insured contributor for the purposes of the provisions of the Act relating to the payment of contributions.

[Paragraph **12** provides that where an insured contributor is employed by two or more employers in any week, and no one of these employers is the first person employing him in that week, then unless the case is one for which other provision is expressly made by these Regulations, that one of the employers who first makes a money payment to the insured contributor in respect of his employment in that week shall be responsible for payment of contributions.]

[Paragraph **13** provides for arrangements for the payment of contributions by grouped employers in respect of any one insured contributor who is ordinarily employed by more than one of them. Particulars of the conditions under which such arrangements may be sanctioned may be obtained from the Ministry of Labour (Unemployment Insurance Department).]

14. Where an insured contributor works under the general control and management of some person who is not his immediate employer, that person (in this Regulation referred to as the substantial employer) shall be deemed to be the employer for the purpose of the provisions of the Act and Regulations thereunder relating to the payment of contributions if he would be so deemed under the Regulations made in that behalf under the National Health Insurance Acts, 1911 to 1920, and the aforesaid provisions of the Act and Regulations shall in that

[1] 1935 Act Section 15.

case be construed and have effect as if the substantial employer were the immediate employer of the insured contributor.

Provided that the substantial employer may deduct from any payments due from him to the immediate employer any sums paid by him as contributions on behalf of the insured contributor, and the immediate employer may deduct from the insured contributor's wages or from any other payments due from him to the insured contributor any sums which the substantial employer would be entitled to deduct were he the immediate employer.

15. Where during any period an insured contributor has been employed by one employer partly in an occupation, employment in which makes him an employed person and partly in some other occupation and contributions have by arrangement between the employer and the insured contributor been paid as if he were wholly engaged in the first-mentioned occupation, those contributions shall be deemed to have been duly paid under the general provisions of the Act.

16. On any occasion on which the number of contributions paid in respect of an insured contributor is recorded, any fraction of a contribution, whether arising by reason of the affixing of stamps of the wrong kind or of the wrong denomination to an unemployment book or otherwise, may be disregarded.

17. No person shall assign or charge or agree to assign or charge any book, and any sale, transfer or assignment of, or any charge on, any book shall be void, and of no effect, and no person shall deface or destroy a book or alter or amend any of the figures or particulars (other than his address) therein contained. *For the purposes of this Regulation a person who removes from a book a stamp which has been affixed thereto for the purpose of the Act shall be deemed to have defaced that book.*

Employer's Duties Undertaken by the Ministry of Labour

The Minister has made Regulations under the 1920 Act, Section 31[1] (Arrangements under Section 31, Regulations 1920; S.R. & O., 1920, No. 2097), to enable an employer to enter into an arrangement for his duties as to custody, production and stamping of Unemployment Books to be undertaken by the Employment Exchange.

Return of Contributions Regulations, 1926[2]

(S.R. & O., 1926, No. 437 (amended by S.R. & O., 1930, No. 181))

2. Where any contributions have been paid in respect of any person under the erroneous belief that the contributions were payable in respect of that person . . . that person and his employer or either of them may make application to the Minister for the return of the contribu-

[1] 1935 Act Section 13.

[2] The 1926 Regulations revoked Regulation 4 of the 1920 Regulations (S.R. & O., 1520, No. 2093) and S.R. & O., 1924, Nos. 273 and 1600.

tions so paid by them respectively; and the Minister, if he is satisfied that the contributions paid were in fact so paid as aforesaid and that they were not payable under the general provisions of the said Acts, shall repay to the applicants or either of them a sum equal to the amount of the contributions so paid by them respectively. Provided that (1) *in calculating the amount of any repayment to be made to a person under this Regulation, there shall be deducted the amount (if any) paid to that person by way of unemployment benefit since the date on which the first contribution paid in error within the period prescribed in Regulation 3 of these Regulations was paid, less any amount which in the opinion of the Minister was paid to that person since the said date and within the said period by way of unemployment benefit in respect of either— (a) valid contributions paid in respect of that person at any time or (b) contributions paid in error in respect of that person before the beginning of the said period and* (2) the Minister may repay to the employer instead of to the employed person the contributions erroneously paid by the employer on behalf of the employed person and not recovered from him.

3. Application for the return of any contribution paid in respect of any person under the erroneous belief that contributions were payable in respect of him . . . shall be made within six years from the date on which that contribution was paid and shall be made in such form as the Minister may direct.

DETERMINATION OF QUESTIONS AS TO SCOPE AND CONTRIBUTIONS

Text: Chapter IV

(1935 Act, Section 4[1])

Determination of Questions Regulations, 1920

(S.R. & O., 1920, No. 1814)

1.—(1) Any person, or any association of employers or employees, or any officer of the Ministry of Labour authorized in that behalf, who desires to obtain the decision of the Minister on any question required to be determined by the Minister under Section 10[2] of the Act, may make an application for the purpose by delivering or sending to the Minister an application in such one of the forms set out in the Schedule to these Regulations as is appropriate to the case.

(2) An application may be made to the Minister at any time for the revision of a decision previously given by him under the Act (other than a decision against which an appeal is pending, or in respect of which the time for appealing has not expired) on the ground that there are facts which had not been brought to the Minister's notice at the time the decision was given.

Any such application must be made by some person by whom the original application could have been made and shall contain a statement of any such new facts upon which the applicant bases his claim that the decision ought to be revised.

[1] See page 204.

[2] Section 4 of the 1935 Act.

2. If the Minister on the consideration of any application under these Regulations is of opinion that the application is not made *bona fide* or is made by a person or association having no interest in the question or is frivolous he may refuse to decide the question; but if he is not of such opinion he shall give his decision on the question within such time as may be necessary for considering the matter and the Minister shall, if he considers the question admits of reasonable doubt, reserve his decision and give public notice, in such manner as he thinks fit, of the nature of the application and of the date, not being less than 14 days after the date of the notice, on or after which he proposes to give his decision on the application:

Provided that where there is in the opinion of the Minister no reasonable doubt as to a class of employment or a class of persons (whether or not a decision has been given with reference to that class) and the only question raised in the application is whether a person is within such class, instead of giving public notice the Minister may give notice as aforesaid only to the person in question and to his employer and if the question relates to any Special or Supplementary Scheme, to the Joint Board of Management of the Special or Supplementary Scheme.

3. If before the decision is given any representations with reference to the application are made in writing to the Minister by or on behalf of any person or body appearing to him to be interested the Minister shall take those representations into consideration, and the Minister may at any time require any person appearing to him to be interested to supply to him such information in writing as he thinks necessary for the purpose of enabling him to give a decision.

All such representations and information shall be open to inspection by any person or body of persons appearing to the Minister to be interested or by any persons authorized in that behalf by any such person or body of persons.

4. Any person claiming to be interested may apply to the Minister to be heard by him orally in reference to any application under these Regulations, and the Minister may, in any case in which he thinks it desirable, require the attendance before him of any person appearing to him to be interested to give oral information on the subject of any application.

5. The Minister shall give notice of his decision to the applicant and shall publish the decision in such manner as he thinks fit.

6. In the event of the Minister determining to refer the question for decision to the High Court he shall send notice in writing of his determination to the applicant and shall, in addition, either send notice of the application having been made and of his determination to any person or body of persons appearing to him to be interested or, if he thinks the case is one in which public notice ought to be given, give public notice to that effect in such manner as he thinks fit.

7. Where any question is required to be referred to the Minister under subsection (7) of Section 22[1] of the Act the question shall be referred to the Minister by means of an application for the purpose

[1] Section 85 of the 1935 Act.

made by the Court before which the proceedings in which the question arises are pending and in any such case the foregoing provisions of these Regulations shall apply.

8. Any notice or other document required or authorized to be sent to any person for the purpose of these Regulations shall be deemed to be duly sent if sent by post addressed to that person at his ordinary address.

9. Anything required in these Regulations to be done by, to, or before the Minister may be done by, to, or before a person appointed by the Minister in that behalf, and subject to the provisions of these Regulations, the procedure shall be such as the Minister may determine.

FIRST STATUTORY CONDITION

Text : Chapter VI

Substituted Period Regulations, 1930

(S.R. & O., 1930, No. 321)

2. An insured contributor who desires to prove for the purposes of subsection (4) of section 5[1] of the Unemployment Insurance Act, 1927, as amended by Section 7 of the Unemployment Insurance Act, 1930, that he was during any periods falling within the period of two years mentioned in the first statutory condition incapacitated for work by reason of some specific disease or by bodily or mental disablement shall furnish particulars of such incapacity for work in the following manner :—

(*a*) If he is insured under the National Health Insurance Act, 1924 he shall, unless he satisfies the Minister that he is unable to do so, obtain and forward a certificate in the form set forth in the First Schedule to these Regulations, signed in the case of a member of an Approved Society by the Secretary or other responsible official of the Society, or the Secretary of a Branch of the Society of which he is a member, and in the case of a person who is not a member of an Approved Society by an officer of the Ministry of Health, or of the Scottish Board of Health.

(*b*) If he is not insured under the National Health Insurance Act, 1924, or if being so insured he satisfies the Minister that he is unable to obtain such certificate as aforesaid, he shall furnish particulars in such manner as the Minister may direct, or may for good cause accept as sufficient in any special case.

3. An insured contributor who desires to prove for the purposes of the said subsection (4) of Section 5 of the Unemployment Insurance Act, 1927, as amended as aforesaid, that he was during any periods falling within the period of two years mentioned in the first statutory condition employed in any of the employments specified in Part II of the First Schedule to the Unemployment Insurance Act, 1920, shall complete the form set forth in the Second Schedule to these regulations,

[1] 1935 Act, Section 22 (1), page 209.

or such other form as the Minister may deem expedient, and shall forward the same to the Minister in such manner as may from time to time be directed, and for the purpose of such proof as aforesaid he shall state fully and correctly all particulars required to be given in the said form, and furnish such further evidence as the Minister may in any special case require.

FOURTH STATUTORY CONDITION

(1935 Act, Sections 25 and 78)

Text : Chapter IX

Attendance at Authorized Courses Regulations, 1934

(S.R. & O., 1934, No. 847)

1. For the purpose of requiring the attendance of a person to whom subsection (1) of Section 14 of the Unemployment Insurance Act, 1934,[1] applies, at an authorized course[2] at which he can reasonably be required to attend, whether as a condition for the receipt of benefit or otherwise, the Minister shall issue to such person a formal notice in writing (hereinafter referred to as a " requirement ") : Provided that where a requirement is in respect of a person who has not attained the age of 16 years it shall be issued to the person who would be liable to proceedings under subsection (2) of the said Section 14, or under that subsection as modified by subsection 7 of Section 32 of the said Act[3] in respect of a failure to comply with such requirement.

2. Where a requirement is issued in respect of a person and a claim for an increase in the weekly rate of benefit is made in respect of that person as a dependent child, the requirement shall for the purpose of such claim be treated as issued to that person.

3. A requirement shall contain such information as is in the Minister's opinion reasonably necessary to enable it to be complied with.

4. In deciding whether a requirement shall be issued all the circumstances of the case shall be taken into account including the distance of the place of residence of the person whose attendance may be required from the place where the authorized course is held. the available travelling facilities and any arrangements made as to the payment of fares ; and a requirement shall not be issued to, or in respect of, a person where it appears to the Minister :—

(*a*) that a period of four weeks has not elapsed since the person ceased to receive whole-time education ; or

(*b*) that the person is engaged in intermittent or part-time employment of a nature or to an extent that renders a requirement to attend at an authorized course undesirable in his case ; or

[1] 1935 Act, Section 78, page 232.
[2] For definition of " An authorized course " see 1935 Act, Section 113 (b), page 236.
[3] 1935 Act, Section 78 (2).

(*c*) that the person is attending an alternative course of such a nature that a requirement is undesirable in his case ; or

(*d*) that the person would not be able to attend at an authorized course without travelling more than four miles a day on foot to and from the course ;

nor shall the Minister issue a requirement unless it appears to him that the person has had no work or only part-time work—

(i) on at least six consecutive days (exclusive of Sundays) immediately preceding the date on which it is proposed to issue the requirement ; or

(ii) on at least six days so exclusive as aforesaid (whether consecutive or not) during the three weeks immediately preceding such date.

5. The provisions of any requirement shall not apply to the hours (if any) during which a person to or in respect of whom the requirement is issued is at work, but save as aforesaid a requirement shall remain in force until the person whose attendance has been required has been in full-time work for a period of four consecutive weeks : Provided that :—

(*a*) The Minister may suspend or terminate a requirement at any time ; and

(*b*) excuse from a requirement may be given by the Superintendent of the course for one day or part of a day.

6. Where the attendance of a person at an authorized course has been duly required, and while such requirement is in force and is applicable, such person shall attend when he has no work or only part-time work on each day during which the course is open at such times and for such number of hours as the Superintendent of the course may direct and shall comply with the rules in force thereat.

7. The Minister may establish boards of assessors for the purpose of reporting to him in the case of particular persons as to the advisability of requiring such persons to attend at authorized courses and such boards of assessors shall be established for such areas as the Minister thinks fit.

8. The Minister shall constitute panels of persons suitable for serving on any such boards, including where possible representatives of the education authority in the area for which the board is established, and a board of assessors shall consist of not less than two, nor more than three, members appointed by the Minister from such panel, provided that a board of assessors shall, if possible, always include a representative of such education authority.

9. Members of a board of assessors shall serve for such period as the Minister may provide, but the Minister at any time may terminate such period and may withdraw at any time the name of any person from a panel.

BENEFIT MISCELLANEOUS PROVISIONS

Text : Chapter XIV

Benefit Miscellaneous Provisions, Regulations, 1934

(S.R. & O., 1934, No. 1163)

Part I.—Application for Increase of Benefit

1. Where an insured contributor who is entitled to benefit desires to obtain an increase of benefit in respect of any person, he shall make an application in writing and shall give such information with regard to that person as the Minister may require to enable the Insurance Officer, Court of Referees or the Umpire (as the case may be) to determine whether that person is a dependant within the meaning of the Acts relating to unemployment insurance. In particular he shall give details as to the identity, usual place of residence, occupation and relationship to the applicant of that person ; his position under the Unemployment and the National Health Insurance Acts, his available sources of income and the amounts contributed by any person towards his maintenance, and if the person be a child, as to the matters mentioned in Section 9 of the Unemployment Insurance Act, 1934.[1] If the person be an adult he shall also furnish a declaration signed by that person stating his date of birth and verifying the particulars respecting him furnished by the applicant.

2. If on a particular date an insured contributor makes an application for an increase of benefit and also proves—

(*a*) that on a date earlier than the particular date he was in all respects qualified to make such application, and

(*b*) that throughout the whole period between the earlier date and the particular date there was good cause for delay in making such application,

then for the purposes of Section 10[2] of the Act the earlier date shall be substituted for the date of the application.

Part II.—Antedating claim for Benefit

3. If on a particular date an insured contributor makes a claim for benefit or proves any matter on such claim, and also proves—

(*a*) that on a date earlier than the particular date he was in all respects qualified to make the claim, or in a position to furnish proof of the matter, and

(*b*) that throughout the whole period between the earlier date and the particular date there was good cause for delay in making such claim, or in furnishing such proof,

he shall be treated for all the purposes of the Acts relating to unemployment insurance as if he had made the claim or proved the matter on the earlier date.

[1] 1935 Act, Section 37 (2), (3). [2] 1935 Act, Section 39 (2).

Part III.—Commencement of Period of Continuous Unemployment

4. Where an insured contributor makes an application for benefit whereby a continuous period of unemployment would begin, but also proves—

(*a*) that on a date earlier than the date of such application he was unemployed but incapacitated for work by reason of some specific disease, or bodily or mental disablement, and

(*b*) that throughout the whole of the period between the earlier date and the date on which the application for benefit was made there was good cause for delay in making such application,

then for the purpose of beginning the continuous period of unemployment the earlier date shall be substituted for the date on which the insured contributor made such application as aforesaid.

5. If in connection with an application for benefit which begins a benefit year an insured contributor proves in the manner hereinafter provided that he has been continuously unemployed since some date earlier than the date on which that application is made and that that period of continuous unemployment is current at the date of such application, such earlier date shall, for the purpose of computing the first week of a continuous period of unemployment, be substituted for the date on which the application was made.

6. For the purpose of proving any matter requiring to be proved under this part of these Regulations the insured contributor shall comply with such procedure as the Minister may from time to time direct and shall furnish such other evidence with regard to the matter to be proved as an Insurance Officer, a Court of Referees, or the Umpire (as the case may be) may require.

Part IV.—Irregular Benefit and Contributions

7. For the purpose of deciding whether an insured contributor has exhausted his benefit rights in any benefit year, the insured contributor shall be deemed to have received benefit in respect of any day in respect to which any sum was paid to him by way of benefit, notwithstanding that he was not entitled thereto; provided that if during the benefit year in which any such sum was paid to him that sum or any part thereof (other than sums representing payments in excess of the rate to which the insured contributor was properly entitled) is recovered, then for the purpose aforesaid there shall be excluded the number of days equivalent to the number produced by dividing the sum so recovered by the daily rate at which it was paid to him, or to the whole number nearest to such number.

8. For the purpose of computing or recomputing the number of additional days for which an insured contributor is qualified in a current benefit year under Section 3 (2) of the Act[1]—

(1) any contributions paid in error in respect of that contributor in respect of the last five years shall be excluded; and

[1] 1935 Act, Section 31.

(2) all sums paid to an insured contributor by way of benefit to which he was not entitled in respect of the benefit years which ended in the last five years (other than sums representing payments in excess of the rate to which he was properly entitled), shall be taken into account and the insured contributor shall, subject as hereinafter provided, be deemed to have received benefit on any day in respect of which any sum so required to be taken into account was paid to him :

Provided that—

(i) if any sum so taken into account is a sum which would be deducted in connection with a claim to repayment of contributions paid in error under Section 28[1] of the principal Act, the insured contributor shall, in respect of that sum be deemed to have received benefit in respect only of the number of days equivalent to the number produced by dividing the amount (if any) by which that sum exceeds the employee's share of such contributions, by the rate at which it was originally paid to him ; so however that fractions of a day shall be disregarded ; and

(ii) if the sums so taken into account have, or any part thereof has, been recovered there shall be deducted from the number of days in respect of which the insured contributor is to be deemed to have received benefit a number of days equivalent to the number produced by dividing the sum so recovered by the rate at which it was paid to him, or to the whole number nearest to such number ; so however that in computing the sum so recovered any amount by which the sum taken into account has been diminished under proviso (i) shall be excluded.

9. For the purpose of determining whether an insured contributor has complied with the provisions of subsection (1) of Section 4[2] of the Act—

(1) any contributions paid in error in respect of that contributor shall be excluded ; and

(2) an insured contributor, in respect of any sums received by him by way of benefit to which he was not entitled, shall be deemed to have received benefit in respect of any day in respect of which he would, for the purpose of deciding whether he had exhausted his benefit rights, be deemed under the provisions of Regulation 7 hereof to have received benefit ; provided that if any sum received by an insured contributor by way of benefit to which he was not entitled is recovered from the insured contributor in the benefit year in which it was so paid to him, the recovery shall be deemed to be made in respect of such sums so last received as aforesaid.

Part V.—Proof of First Statutory Condition

10. If an insured contributor has at the beginning of his benefit year proved that the First Statutory Condition is fulfilled in his case then, unless under the provisions of Section 4 (2)[3] of the Act he is again required to prove that that condition is fulfilled, he shall for the purpose

[1] 1935 Act, Section 14. [2] 1935 Act, Section 32 (1). [3] See 1935 Act, Section 32 (2).

of any subsequent claim to benefit in that benefit year be treated as though that condition continued to be fulfilled.

11. Where an insured contributor has on a claim for benefit made during a benefit year been required under the provisions of Section 4 (2) of the Act[1] to prove and has proved that the First Statutory Condition is fulfilled in his case, that insured contributor shall thereafter during the remainder of that benefit year be treated as if that condition continued to be so fulfilled.

Night Work Regulations, 1924

(S.R. & O., 1924, No. 1601)

1. For the purpose of determining claims for unemployment benefit (and for no other purpose) :—

(*a*) where a period of employment begun on a Saturday extends over midnight into Sunday, the person employed shall, in respect of such period, be treated as having been employed on Saturday only ;

(*b*) where a period of employment begun on a Sunday extends over midnight into Monday, the person employed shall in respect of such period, be treated as having been employed on Monday only ;

(*c*) where a period of employment begun on any day other than Saturday or Sunday extends over midnight into the following day, the person employed shall, in respect of such period :

(i) be treated as having been employed on the first day only if the employment before midnight is of longer duration than after midnight ; and

(ii) be treated as having been employed on the second day only if the employment after midnight is of longer duration than before midnight, or if the employment before and after midnight is of equal duration.

Computation of Periods Regulations, 1923

(S.R. & O., 1923, No. 533)

1. For the purposes of Section 5[2] of the Act of 1923 a period of consecutive days shall be exclusive of Sundays.

Benefit Regulations, 1920-1934

(S.R. & O., 1920, No. 2112 (as amended by S.R. & O., 1921, Nos. 921 and 1623, S.R. & O., 1922, No. 821, S. R. & O., 1928, No. 322, and S.R. & O., 1934, No. 611))

[Paragraphs **1** and **2** contain definitions.]

3.—(1) Where an insured contributor desires to obtain unemployment benefit, or to obtain any payment in respect of unemployment

[1] 1935 Act, Section 32 (2). [2] 1935 Act, Section 35 (2); page 215.

from an association of employed persons with which an arrangement has been made under Section 17 of the Act, he shall

(*a*) make an application or give notice, as the case requires, to the Minister in such manner as the Minister may direct, or may for good cause accept as sufficient in any special case ; and

(*b*) lodge his unemployment book at a Local Office ; and

(*c*) furnish such evidence as the Minister may require that he is not in receipt of sickness or disablement benefit or disablement allowance under the National Health Insurance Act, 1924 ; and

(*d*) furnish such evidence as the Minister may require that he is not in receipt of an Old Age Pension under the Old Age Pensions Acts, 1908 to 1919, *or under those Acts as extended by Section* 1 *of the Blind Persons Act*, 1920 ; and

(*e*) if required so to do, furnish a certificate of his birth or such other evidence as the Minister may direct or may for good cause accept as sufficient in any particular case ; and

(*f*) furnish such other evidence as to the fulfilment of the conditions and the absence of disqualifications for receiving or continuing to receive unemployment benefits or other payments as the Minister may require, and shall for that purpose attend at such Offices or places as the Minister may require.

Provided that where in any special case the Minister is satisfied that the insured contributor is unable or has omitted for good cause to produce his unemployment book the Minister may, if he thinks fit, dispense with the lodging of the book under this Regulation.

Provided also that for the purpose of this Regulation neither an arrears book nor an emergency book shall be deemed to be an unemployment book.

(2) With the object of obtaining information from employers on the subject of conditions and disqualification for unemployment benefit referred to in Sections 7 and 8 of the Act, notice that the book has been lodged at the Local Office under this Regulation and calling attention to the provisions of Section 7 and 8 shall, unless it is not practicable to do so, forthwith be given by the Minister to the person appearing to be the insured contributor's last employer.

(3) Where the insured contributor desires to obtain payment from any association of employed persons with which an arrangement has been made under Section 17 of the Act the Local Office shall deliver to him such a receipt for the book lodged by him as may be necessary to enable him to claim from the Association any payment due to him while unemployed.

4.—(1) An insured contributor desiring to obtain unemployment benefit shall attend the Local Office at which *he made his last application for unemployment benefit in the prescribed manner, or at such other office as the Minister may approve in his case*, on every working day between such hours as the Minister may direct and shall there as evidence of being unemployed on that day sign a register to be kept at the office for the purpose.

Provided that :—

(*a*) an insured contributor residing at a distance of more than

two miles, but not more than four miles from the Local Office nearest or most convenient to his place of residence shall be required to attend only on alternate days, and on each attendance may sign the register in respect of the preceding day as well as in respect of the actual day of attendance if the terms of the declaration set out on the register were satisfied in his case on both days; and

(*b*) an insured contributor residing more than four miles from the Local Office nearest or most convenient to his place of residence shall attend at such longer intervals, or furnish such other evidence of being unemployed as the Minister may direct, and on each attendance may sign the register in respect of all days on which the terms of the declaration set out on the register were satisfied in his case since his last attendance as well as in respect of the actual day of attendance; and

(*c*) *an insured contributor shall for special cause approved by the Minister in each case (and subject to such conditions as the Minister may impose), attend only at such intervals as the Minister may direct, and on such attendance may sign the register in respect of all the days on which the terms of the declaration set out on the register were satisfied in his case since his last attendance as well as in respect of the actual day of attendance.*

(*d*) *Where in the opinion of the Minister an exceptional amount of unemployment exists either generally or in any particular district and it is expedient that all or any specified class of insured contributors should be excused from personal attendance and signature of the register on any days on which they would under these Regulations have been liable to attend and sign the register, an insured contributor shall, if he complies with such conditions (if any) as may be imposed by the Minister be excused either from personal attendance or from signing the register or from both as the Minister may direct and shall not be disqualified from the receipt of benefit by reason only of the fact that he has not so attended or signed as the case may be.*

(1A) *An insured contributor who has failed on any day to attend and sign the register in accordance with the foregoing provisions of this Regulation shall nevertheless be treated as if he had duly attended and signed on that day if he proves on a claim to unemployment benefit that he had good cause for such failure.*

(2) The Minister may in any particular case require an insured contributor, notwithstanding that he has duly signed the register in accordance with these Regulations, to furnish further evidence that he was unemployed and not disentitled to benefit on all or any of the days in respect of which he has signed the register.

(3) Subject to the provisions of these Regulations as to excuse from signing the register an insured contributor shall not be deemed to have been unemployed on any day in respect of which he has not signed the register in accordance with these Regulations.

5. Subject to the foregoing provisions and to any directions of the Minister, unemployment benefit shall be paid at the Local Office at which the book of the insured contributor concerned is lodged, and at weekly intervals on such day or days of the week and at such hours

as the Minister may direct, and subject to any such directions the amount paid on any occasion shall be the amount of unemployment benefit due up to and including the day next but one preceding the day on which the payment is made.

6. Where a Court of Referees have recommended that a claim for unemployment benefit should be allowed and the recommendation has been referred by the Insurance Officer to the Umpire, the insured contributor shall, if the Court of Referees so recommend, be entitled to receive unemployment benefit as from the date of recommendation until the claim is finally determined by the Umpire.

DEPENDANTS BENEFIT

Text : Chapter XV

Joint Maintenance of Dependants Regulations, 1934

(S.R. & O., 1934, No. 1164)

1. Where a dependant is partly maintained by each of two or more persons entitled to benefit in such circumstances that the provisions of subsection (3) of Section 2 of the Unemployment Insurance Act, 1930, are thereby applicable, that dependant shall be deemed to be wholly or mainly maintained by the eldest of such persons (being a person who by a decision of an Insurance Officer, a Court of Referees or the Umpire, for the time being in force is entitled to benefit and is at that time such eldest person) ; but if such persons or a majority of such persons (being persons for the time being so entitled as aforesaid) by notice in writing signed by them and addressed to the Minister designate some other one of their number in place of the eldest, the dependant shall be deemed to be wholly or mainly maintained by that one so designated so long as he continues to be so entitled as aforesaid.

2. A notice and the designation contained therein given under Regulation 1 hereof may be revoked at any time by a fresh notice signed by such persons or by a majority of such persons as are by a decision of an Insurance Officer, a Court of Referees or the Umpire for the time being in force entitled to benefit and another one of their number may be designated therein, and the provisions of Regulation 1 hereof shall apply accordingly to the one so last designated.

[See also paragraph 1 of the Benefit Miscellaneous Provisions Regulations 1934, as regards an application for dependants benefit.]

DECISIONS ON BENEFIT CLAIMS

Text : Chapter XVI

Courts of Referees Regulations, 1930 and 1934

(S.R. & O., 1930, No. 184 (as amended by S.R. & O., 1934, No. 1166))

1.—(1) The panels of persons chosen to represent employers and insured contributors respectively required to be constituted by the Minister shall be composed of such number of members as the Minister sees fit to appoint for each district.

(2) Before appointing a person to be a member of a panel, the Minister shall take into consideration the name of any person suggested for appointment by the Advisory Committee for the district concerned, or, if in the district there is no such Advisory Committee, he shall take into consideration the name of any person suggested for appointment by or on behalf of any employers or insured contributors or by any associations of employers or employed persons if in his opinion the person or association making the suggestion is an interested party.

(3) The members of a panel shall hold office for three years from the date of their appointment or for such other term as the Minister may direct:

Provided that the Minister may at any time terminate the appointment of any member of a panel.

(4) Where a vacancy occurs by reason of the death or retirement of of a member of a panel before the termination of his appointment, any person appointed by the Minister to fill such vacancy shall hold office only until the expiration of the term for which that member was appointed.

Provided that nothing in these Regulations shall be construed as implying any obligation upon the Minister to fill any vacancy in a panel.

2.—(1) A Court shall consist of a chairman, appointed by the Minister, and one person drawn from the employers' panel and one person drawn from the insured contributors' panel and duly summoned to serve on the Court.

(2) So far as practicable the persons drawn from the two panels shall be men when men's cases are being considered and women when women's cases are being considered.

(3) Each member of a panel shall, so far as practicable, be summoned to serve in turn upon a Court.

(4) Any case may, with the consent of the claimant or association concerned but not otherwise, be proceeded with in the absence of any member or members of the Court other than the Chairman, and in any such case the Court shall be deemed to be properly constituted, and the chairman shall, if the number of the members of the Court is an even number, have a second or casting vote.

(5) No member of a panel shall act as a member of a Court during the consideration of a case in which he appears as the representative of the claimant or by which he is or may be directly affected or in which he has taken any part as an official of an association or as an employer or as a witness or otherwise or whilst he is himself claiming unemployment benefit or is disqualified for the receipt of such benefit.

3. Any claim of an insured contributor to benefit or matter or question which under the provisions of the Act falls to be decided by a Court may at any time prior to consideration by the Court be referred by the Chairman thereof for previous examination and report to two persons, who are persons resident in the neighbourhood in which the insured contributor resides, and of whom one shall be drawn from the employers' panel and the other from the insured contributors' panel.

4. Where the Insurance Officer in pursuance of his powers under Section 8 of the Unemployment Insurance Act, 1930,[1] has disallowed a claim for benefit, any appeal against such a disallowance shall be made in writing, containing a statement of the grounds of the appeal and shall be lodged at the Local Office of the Ministry of Labour at which the claim was made.

5.—(1) (*a*) Reasonable notice of the time and place at which a Court will sit for the consideration of any case shall be given to the claimant, and except by consent of the claimant a Court shall not proceed to the consideration of any case unless such notice has been given.

(*b*) During the consideration by a Court of any case the claimant, an insurance officer, and any officer of the Ministry of Labour that the Minister may direct, shall be entitled to be present at the sitting of the Court and the claimant may be represented at the sitting of the Court by any person, not being counsel or solicitor, authorized by him, but for the purpose of discussing its recommendations the Court may order all persons not being members of the Court to withdraw from the sitting of the Court.

(2) Where the case to be considered by a Court is a claim by an Association which has made an arrangement under Section 17 of the Act for payment of a sum in lieu of unemployment benefit, the secretary of the Association, or the secretary of the branch of the Association through which the claim was made, shall have the same rights as to notice, presence at the sitting of the Court, and representation by another person, as are given to a claimant by these Regulations.

(3) The Court may allow any person appearing to the Court to be likely to be affected by the decision of the Court to be present during the consideration of a case, but, save as aforesaid, there shall not be admitted to the sitting of the Court any member of the public or the representative of any newspaper.

(4) The decision of a majority of a Court shall be the decision of the Court, but if the decision disallowing a claim is not unanimous a statement that one of the members dissented, and the reason given by him for so dissenting, shall be recorded in the report of the proceedings of the Court.

(5) *Any notice which under the provisions of these Regulations or of Section 8 of the Unemployment Insurance Act, 1930, is required to be given to the claimant, may be sent by post to his last known address.*

5a. *A claimant who desires to appeal against a decision of a Court of Referees where leave to appeal is not granted when the decision of the Court of Referees is given, shall within 21 days after the date of the decision, or within such longer period as the Chairman of the Court of Referees may in any case for special reason allow, make application for such leave in the form set out in the schedule hereto, or in such form substantially to the like effect as may from time to time be approved by the Minister.*

[1] 1935 Act, Section 43 (3).

Local Referees Regulations, 1931

(S.R. & O., 1931, No. 360)

1. Where an insured contributor resides at a considerable distance from the nearest place at which sittings of a Court of Referees are held, any claim by the insured contributor which under the provisions of the Act has been submitted for examination to an Insurance Officer, may be referred by the Insurance Officer to Local Referees for examination and report before he decides whether to allow the claim or to refer it to a Court of Referees.

2.—(1) The Local Referees shall be two persons who are persons resident in the neighbourhood in which the insured contributor resides, and of whom one shall be drawn from the employers' panel and the other from the insured contributors' panel.

(2) So far as practicable the persons drawn from the two panels shall be men when men's claims are being considered and women when women's claims are being considered.

(3) Each member of a panel shall, so far as practicable, be summoned to serve in turn.

(4) Any claim may, with the consent of the claimant or Association concerned but not otherwise be proceeded with in the absence of one of the two Local Referees who have been summoned, and in this case the Local Referees shall be deemed to be properly constituted.

(5) No member of a panel shall act as a Local Referee during the examination of a claim in which he appears as the representative of the claimant or by which he is, or may be, directly affected or in which he has taken any part as an official of an Association or as an employer or as a witness or otherwise or whilst he is himself claiming benefit or is disqualified for the receipt of benefit.

3.—(1) Reasonable notice of the time and place at which the Local Referees will sit for the examination of any claim shall be given to the claimant, and except by the consent of the claimant Local Referees shall not proceed to the examination of any claim unless such notice has been given.

(2) During the consideration by Local Referees of any claim the claimant, an Insurance Officer, and any officer of the Ministry of Labour that the Minister may direct, shall be entitled to be present at the sitting of the Local Referees, and the claimant may be represented at the sitting by any person, not being counsel or solicitor, authorized by him, but for the purpose of discussing its report the Local Referees may order any person to withdraw from the sitting.

(3) Where the claim to be considered by Local Referees is a claim by an Association which has made an arrangement under Section 17 of the Act,[1] for payment of a sum in lieu of unemployment benefit, the Secretary of the Association, or the Secretary of the branch of the Association through which the claim was made, shall have the same rights as to notice, presence at the sitting of the Local Referees, and representation by another person, as are given to a claimant by these Regulations.

[1] 1935 Act, Section 68; page 229.

(4) The Local Referees may allow any person appearing to them to be likely to be affected by their report to be present during the consideration of a claim, but save as aforesaid, there shall not be admitted to the sitting of the Local Referees any member of the public or the representative of any newspaper.

(5) If the Local Referees do not agree on their report each Referee shall make a separate report.

4. Nothing in these Regulations shall prevent an Insurance Officer from deciding or referring to a Court of Referees any claim referred to in Regulation 1 hereof before the receipt of any report.

ADDITIONAL BENEFIT CONDITIONS TO BE SATISFIED BY CERTAIN CLASSES OF APPLICANTS

Text: Chapter XIX

Anomalies Orders,[1] 1931 and 1933 (as amended)

(S.R. & O., 1931, No. 818, as amended by S.R. & O., 1933, No. 820 and S.R. & O., 1935, No. 804)

1.—(i) In the case of the class of persons who habitually work for less than a full week and by the practice of the trade in which they are employed nevertheless receive earnings or similar payments of an amount greater than the normal earnings for a full week of persons following the same occupation in the same district, the amount of benefit otherwise payable to persons of the said class in respect of any benefit week shall be reduced by the amount by which the aggregate of the earnings or similar payments received by them in that benefit week and of the benefit aforesaid exceeds the normal earnings for a full week of persons following the same occupation in the same district.

(ii) The provisions of sub-paragraph (i) hereof shall not apply to those portions of the said class who have worked as aforesaid and received earnings or similar payments as aforesaid for a period of less than four consecutive weeks, or who since the last occasion on which they so worked and received such earnings or similar payments have ceased for a period of four consecutive weeks or longer so to work and receive such earnings or similar payments.

[Paragraph 2 was revoked by the Seasonal Workers Order, 1935.]

3. A member of the class of persons whose normal employment is employment in an occupation in which their services are not normally required for more than two days in the week or who owing to personal circumstances are not normally employed for more than two days in the week shall not be entitled to receive benefit in respect of any days other than those days in the week which constitute his normal employment.

4. A married woman (other than a married woman whose husband is incapacitated from work or is unemployed and not in receipt of benefit) who since marriage has had less than fifteen contributions paid

[1] By Section 114 (2) of the 1935 Act Regulations made under the 1931 Act have effect as if they were Orders made under Section 55.

in respect of her, or who, if more than six months have elapsed since her marriage, has had less than eight contributions paid in respect of her during the period of three months preceding the beginning of her benefit quarter, shall be entitled to benefit only if, in addition to satisfying the other requirements of the Acts for the receipt of benefit, she also proves—

(i) That she is normally employed in insurable employment and will normally seek to obtain her livelihood by means of insurable employment, and

(ii) *that having regard to all the circumstances of her case and particularly to her industrial experience and the industrial circumstances of the district in which she resides either—*

(*a*) *she can reasonably expect to obtain insurable employment*; *or*

(*b*) *her expectation of obtaining insurable employment in her usual occupation is not less than it would otherwise be by reason of the fact that she is married.*

This Regulation shall not apply to married women who prove that they have been deserted by, or that they are permanently separated from, their husbands.

Anomalies (Seasonal Workers) Order, 1935

(S.R. & O., 1935, No. 804)

2. In this Order, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

" the Act " means the Unemployment Insurance Act, 1935 ;
" the Minister " means the Minister of Labour ;
" off-season " means—

(*a*) in relation to seasonal workers whose normal employment is in an occupation followed by them in one district only, that part or those parts of the year during which persons are not normally employed in that occupation in that district, and

(*b*) in relation to seasonal workers whose normal employment is in an occupation followed by them in two or more districts, that part or those parts of the year during which persons are not normally employed in that occupation in those districts, and

(*c*) in relation to seasonal workers whose normal employment is in an occupation at a holiday or health resort in which employment is to a substantial extent dependent on the presence of visitors thereat during the holiday seasons, that part or those parts of the year other than holiday seasons ;

" seasonal worker " means a member of the class of persons whose normal employment is employment for a part or parts of the year only in an occupation or occupations of a seasonal nature.

3. In the case of any seasonal worker to whom this Order applies

(i) any periods of off-season falling within the same insurance year shall be treated as forming one off-season, so however that where an insurance year begins in a period of off-season, calendar year shall be substituted for insurance year, and

(ii) in reckoning the extent of any off-season there shall be excluded all periods during which he proves that he was rendered incapable of work by reason of some specific disease or by bodily or mental disablement.

4.—(1) A seasonal worker shall be entitled to receive benefit in days during the off-season only if in addition to satisfying the other requirements of the Act for the receipt of benefit he also proves

(*a*) (i) that he has been employed during the off-season in each of the two complete insurance years preceding the beginning of the off-season current at the date of his claim for benefit; or

(ii) that he has been employed during the off-season in one of the two said years, and also that he has been employed during the off-season so current as aforesaid; and

(iii) that in either case such employment amounts in the aggregate to at least as much as one-quarter of the whole of the combined extent of the respective off-seasons as aforesaid; and

(*b*) that having regard to all the circumstances of his case, and particularly to his industrial experience and to the industrial circumstances of the district in which he resides, he can reasonably expect to obtain employment during a substantial period of the off-season.

(2) For the purposes of sub-paragraph (*a*) hereof calendar year shall be substituted for insurance year in any case where an insurance year begins in a period of off-season.

5. This Order shall apply only to seasonal workers who in any district are engaged in occupations in which during a substantial part of the year no substantial amount of employment is normally available in that district, or who are engaged in occupations at a holiday or health resort in which employment is to a substantial extent dependent on the presence of visitors thereat during holiday seasons.

6. This Order shall not apply to any seasonal worker who proves

(1) that the aggregate of the seasons in the district or districts in which he is normally employed amounts to 39 weeks in the year, or

(2) that in any period of four out of any five consecutive insurance years falling within the period of the last 10 complete insurance years immediately preceding the date on which he makes a claim for benefit there have been actually paid in respect of him at least 150 contributions under or in pursuance of the Act.

For the purpose of calculating the said number of contributions

(*a*) each week during which such worker was serving as a seaman,

marine, soldier, or airman, and was a person to whom Section 96 of the Act applies, or would have applied if the date of his discharge had been after the 30th of June, 1927, shall be treated as one contribution, and

(*b*) each week during the whole or any part of which such worker was employed in employment that was insurable under the provisions of a special scheme shall be treated as one contribution, so however that no week shall be so treated if a contribution has also been paid in respect of that person for that week under the general provisions of the Act.

ARRANGEMENTS WITH ASSOCIATIONS

Text : Chapter XXII

(1935 Act, Section 68.)[1] Associations Regulations, 1930 and 1934

(S.R. & O., 1930, No. 136 (as amended by S.R. & O., 1934, No. 1165))

2. Every application by an Association of employed persons for an arrangement under Section 17 of the Act shall be made in such form as the Minister may direct, and shall be accompanied by two copies of the rules of the Association.

3. The Minister may, at any time, by notice in writing to that effect, cancel as from the date of the notice or any later date specified in the notice any arrangement made with an Association under Section 17 of the Act, if in his opinion the Association ceases to comply with any of the conditions contained in the arrangement or in the Act or in these Regulations, without prejudice, however, to the right of the Association to receive under subsections (1) and (6) of that Section such sums as may be properly payable to the Association in respect of any period prior to the termination of the arrangement.

4. It shall be a condition of any arrangement made with an Association under Section 17 of the Act that—

(1) The arrangement shall apply only in respect of those members of the Association who are of a class entitled under the rules of the Association to receive when unemployed payments representing a provision for unemployment at least equal in all respects to the provisions set out in Section 17 (1) (*a*) of the Act, as the minimum provisions enabling the Minister to make an arrangement under the Act.

(2) The Association shall furnish the Minister with such information as he may require with regard to the working of the arrangement including the administrative expenses incurred in connection therewith, and shall allow the Minister to inspect any books, accounts, vouchers and other documents relating to payments made by or to the Association in connection with payments to its members while unemployed.

[1] Page 229; Repealed Act of 1920, Section 17.

5.—(1) Payments by the Minister under Section 17 of the Act to to an Association with which an arrangement has been made shall be made at such intervals as may be specified in the arrangement or agreed upon between the Minister and the Association.

(2) If it is found that the amount of any such payment is in excess of the amount which ought properly to have been paid, the Minister may (without prejudice to any other remedy) deduct the amount of the excess from any payments to which the Association may be subsequently entitled.

6. In any case in which the Minister is of the opinion that an Association has failed wholly or partly to carry out the terms of the arrangement or has carried them out negligently or inefficiently, the Minister may decline to make any payment by way of contribution to the administrative expenses of the Association or may make such reduction as he thinks fit in the payments so to be made, without prejudice to the right of the Minister to discontinue the arrangement.

7. If any question arises between the Minister and an Association whether a person being a member of the Association would have been entitled to receive unemployment benefit if no arrangement had been made with the Association under Section 17 of the Act, or as to the rate to which he would have been entitled, the question shall be determined by the Insurance Officer, the Court of Referees and the Umpire, as the case may require, in like manner as if the person had made a claim to unemployment benefit; and the provisions of the Unemployment Insurance Acts, 1920 to 1930, and the Regulations made thereunder relating to the determination of claims to unemployment benefit shall apply accordingly, subject to the following modifications :—

(*a*) The rights conferred on the employed person by the aforesaid provisions shall, so far as they are applicable, be vested in the Association and shall be exercised only by, or on behalf of the Association.

(*b*) The Minister or the Association may in all cases require the decisions of the Court of Referees to be submitted to the Umpire for final adjudication.

7a.—(i) If any question arises on a claim by an Association that a sum paid by way of provision for unemployment by the Association to one of its members in pursuance of a decision of an Insurance Officer, Court of Referees or Umpire, should notwithstanding the revision of that decision on new facts, be paid to the Association out of the Unemployment Fund in pursuance of the provisions of Section 21 of the Unemployment Insurance Act, 1934,[1] that question shall be determined by an Insurance Officer, Court of Referees or Umpire, as the case may require.

(ii) The Association making the claim shall make an application in such form as the Minister may from time to time direct, and shall set out the grounds upon which it is proposed to rely to show that no-one concerned with the case on behalf of the Association could reasonably have been expected to ascertain the facts upon which the decision was revised, and that recovery of the sum in question has not been practicable.

[1] 1935 Act, Section 71; page 230.

INDEX TO UNEMPLOYMENT INSURANCE ACTS 1920-1935

In Regulations and in decisions of the Umpire covering the period 1920 to 1935 reference is made to Sections of the repealed Acts 1920 to 1934. The following index selects some of the more important Sections of the repealed Acts and indicates the corresponding Section of the consolidating Act of 1935.

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