(2) The contracts of employment of all employees in employment at the date of the transfer of an enterprise or part of an enterprise shall, except in the case of a transfer by a Receiver in the insolvency of an enterprise, automatically be transferred to the transferee.

(3) All the rights and obligations between the employees and the transferee at the date of the transfer shall continue to apply as if they were rights and obligations between the employees and the transferee.

(4) A thing done before the transfer, by or in relation to the transferor in respect of the employees, shall be deemed to have been done by or in relation to the transferee.

(5) The provisions of subsections (2), (3) and (4) do not absolve a person of the liability to be prosecuted for, convicted of and sentenced for any offence committed before the transfer of the undertaking.

(6) A transfer of a contract of employment is subject to the provisions of this Act on labour-only subcontracting, as if the transfer involved a new employment.

(7) When the consent of the employee is required under subsection (1), the Commissioner may take any reasonable measures to satisfy himself or herself that the employee freely consents to the transfer.

(8) In this section, "transfer" includes sale and any disposition of an enterprise or part of an enterprise.

61. If the employer's personal or legal position formed the basis of a contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it is otherwise terminated in accordance with section 83 within that period, or

(a) expressly provides otherwise.

(b) expressly provides otherwise.

62. The death of an employee terminates a contract of employment, but the next-of-kin of the deceased employee is entitled to claim from the employer-

(a) any remuneration or other benefits due to the employee at the date of his or her death; and

(b) any property of the employee in the possession of the employer, if the claim is made not later than six months from the date of the employee's death.

63. Where an employee's appointment is terminated because of his or her imprisonment, the termination constitutes a dismissal of the employee and the fact of imprisonment is not to be regarded as a frustration or other automatic ending of the contract.

64. (1) Subject to subsection (2), unless expressly provided in the contract of employment, an employee is not bound to continue in employment if the employer removes the employee's place of employment more than forty kilometres from its previous location.
(2) An employee is deemed to have consented to employment at a new location if he or she continues in employment at that location for a period of four weeks without protest.

65. Unless expressly provided in the contract of employment, an employer shall not, without the consent of an employee, require the employee to accompany him or her out of The Gambia.

66. (1) Where section 64 or 65 applies and the employee is unwilling to change his or her place of employment or accompany the employer out of The Gambia, the contract is deemed terminated by reason of the unwillingness.

(2) Where a contract is deemed terminated under subsection (1), the employee is entitled to a sum equal to the remuneration due to the employee under the contract as if he or she had worked normally under the contract until the earliest date at which, but for the removal, it would have been terminable.

67. (1) Where in a voluntary winding-up of an employer's business, the Receiver does not renew a contract of employment he or she shall be responsible for terminating the contract in a way that is permissible under the contract.

(2) The compulsory winding-up of an employer's business—

(a) operates to terminate any contract of employment with that employer; but

(b) does not prevent renewal of that contract by the Receiver or any other person carrying on the business.

(3) On the insolvency or winding-up of an employer's business, the claim of an employee or those claiming on his or her behalf to wages and other payments to which he or she is entitled under this Act or any contract has priority over all other creditors, other than any claim for taxes levied by the State, for the following—

(a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the six months preceding the date of the declaration of insolvency or winding-up;

(b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;

(c) amounts due in respect of other types of paid absence accrued during the six months preceding the date of the declaration of insolvency or winding-up; and

(d) severance pay, compensation for unfair dismissal and other payments due to employees on the termination of their employment.

(4) The provisions of subsection (3) apply also where the business of an employer or a part of it is sold or transferred on application of a person holding a mortgage charge, lien or decree.
(5) The proceeds of a sale or an attachment under subsection (4) shall not be distributed until the person responsible for the distribution has taken reasonable steps to determine the remuneration and other benefits due -
   (a) to each employee of the business;
   (b) by order of the Tribunal to each employee; and
   (c) in respect of any contributions to social security or other social benefit funds, required by the laws of The Gambia.

PART IX – TERMS AND CONDITIONS OF EMPLOYMENT

68. (1) The provisions of this Part are minimum requirements and nothing in this Act is to prevent parties to a contract of employment from agreeing to terms and conditions of employment more beneficial than those provided under this Part.

(2) A provision of a contract of employment, which purports to provide terms and conditions less beneficial than those provided under this Part, shall, unless expressly provided in this Act to the contrary, be null and void and the appropriate provision of this Act shall be substituted for that provision.

(3) An employer who enters into a contract of employment knowing that it contains terms that are null and void by reason of subsection (2) is liable, in an action before the Industrial Tribunal, to pay the employee concerned, in addition to any damages for breach of the relevant provisions of this Part, further compensation of such amount as may be prescribed.

69. (1) During the duration of a contract of employment, an employer shall provide the employee concerned—
   (a) work in accordance with the contract for all days expressly or implicitly designated as working days under the contract; or
   (b) wages for the work at the same rate as if the employee had performed a day's work,
   if the employee presents himself or herself for the work and is able, ready and willing to work.

(2) The provisions of subsection (1) do not apply-
   (a) if on a working day the employer offers suitable alternative employment which the employee unreasonably refuses or fails to undertake; or
   (b) to a public authority in respect of those it employs on a casual or semi-casual basis.

70. (1) A person entering into employment to which this section applies shall, at the expense of the employer, be examined by a medical officer not more than one month before the commencement of employment, and the employer shall keep a written report of the examination.
(2) This section applies to—

(a) employment by The Gambia Ports Authority as a permanent or semi-casual employee;

(b) employment in a groundnut oil processing plant;

(c) employment as a driver of a motor vehicle;

(d) employment in an occupation involving the preparation or handling of food for human consumption;

(e) employment in a hotel or catering service;

(f) employment as a fisherman or in a fish-processing plant;

(g) employment which may reasonably be anticipated to continue for six months or more on a major project financed in whole or in part by the Government of a country, other than The Gambia, or by any international organisation; and

(h) any other employment specified by the Secretary of State by Order published in the Gazette.

(3) If it is not reasonably practicable to comply with the requirement in subsection (1), the medical examination shall take place as soon as is reasonably practicable after the commencement of the employment.

71. (1) This section applies to every female employee—

(a) with two years continuous service with the same employer; or

(b) whose period of service with the same employer has been interrupted by one or more periods, none of which exceeds seven months and who has in aggregate not less than eighteen months service with the same employer.

(2) An employee to which this section applies is entitled to maternity leave with pay at her normal rate for not less than the six weeks immediately preceding the expected date of confinement and for not less than the six weeks following that date.

(3) An employee to which this section applies who takes a period of maternity leave and wishes to return to her former employment shall, within six weeks following the actual date of confinement, give notice to her employer of her wish to return.

(4) An employee returning from maternity leave shall be placed in the same job with the same benefits and entitlements as immediately before her maternity leave began, within four weeks of giving notice to her employer of her wish to return to her employment.

72. (1) An employer who engages an employee in an activity specified in the Second Schedule shall supply the employee, free of charge, the safety equipment or safety device specified in that Schedule.
(2) A safety equipment or safety device supplied by an employer shall be of such nature and quality as to provide the employee adequate protection, so far as is reasonably practicable, from the risk occasioned by the activity in which he or she is engaged.

(3) The Secretary of State may, after consultation with the Secretary of State responsible for health and the Labour Advisory Board, by Order published in the Gazette, amend, extend or revoke any of the provisions of the Second Schedule.

(4) An employee to whom an employer has supplied safety equipment or safety device shall use the equipment so far as reasonably practicable.

(5) A person who wilfully-

(a) destroys or damages a safety equipment or safety device; or

(b) obstructs the proper operation or use of the equipment or safety device,

commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term of not less than six months, or to both the fine and imprisonment.

73. (1) An employee is entitled to accumulate days of annual leave provided for by Joint Industrial Council agreement, collective agreement, or otherwise by his or her contract of employment.

(2) Wherever a period of annual leave entitlement is specified by reference to a period of more than one month, the appropriate proportion of the entitlement is deemed to accrue for each month of employment.

(3) An employer shall, in consultation with the employee, determine and grant the data for the taking of annual leave.

(4) An amount of annual leave entitlement accumulated but not used at the time an employment is terminated shall be paid to the employee, calculated according to subsection (8).

(5) An employee is entitled to his or her regular remuneration for each day of public holiday, and his or her period of annual leave shall be extended by one working day with full pay for each day of public holiday that falls within the period of leave and would have been an ordinary working day for the employee.

(6) Payment for each day of annual leave and for each day of public holiday is due to an employee at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for his or her usual work on that day, excluding bonus but including overtime payment.

74. (1) An employee is entitled to accumulate days of paid sick leave provided for by Joint Industrial Council Agreement, collective agreement, or otherwise by his or her contract of employment up to a maximum of the entitlement attainable by any twelve months of employment.
(2) An employer may use paid sick leave days in respect of any day of normal work on which an employee is unable to perform his or her usual work because of bodily or mental illness, disease or injury.

(3) The payment for any day of paid sick leave shall be at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for normal work on that day, including both overtime and bonus pay.

75. A contract of employment that fixes retirement at an age after the attainment by an employee of his or her sixtieth birthday is valid and enforceable, and termination in accordance with that provision does not amount to unjustified dismissal under section 83.

PART X - PROTECTION OF WAGES

76. (1) The wages payable to an employee shall be paid in accordance with the terms of the contract of employment and may only be changed by agreement of both parties, provided they are paid:

(a) at least as frequently as once fortnightly, in the case of an employee whose wages are:

(i) fixed by the hour, day or week, or

(ii) calculated solely on a piece-work or task-work basis; or

(b) at least once a month in the case of an employee whose wages are fixed on a monthly or yearly basis; and

(c) ordinarily on the employee's normal work day and at the employee's normal place of work, unless specially agreed between the employee and employer.

(2) Subject to the proviso to subsection (1), where the contract of employment is for a specific task, wages may be paid on the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract will not be considered to be one for a specific task.

(3) The remuneration payable to an employee:

(a) shall be paid to the employee or to a person specified by him or her in writing;

(b) shall be paid in legal tender, and

(c) may, with the consent of the employee, be paid by cheque in the sum of the wages payable, or by direct payment to an account with a bank operating in The Gambia.

(4) Subject to subsection (5), partial payment of wages in the form of allowances-in-kind may be made in enterprises or occupations where allowances are customary and—

(a) the allowances are appropriate for the personal use and benefit of the employee and the employee's family; and

(b) the value attributed to an allowance is fair and reasonable.
Pay statement and deductions

77. (1) Every employee shall receive, with each payment of wages, an accurate itemized statement from the employer in writing in a form which sets out—

(a) the employee's gross wages due at the end of the pay period;
(b) the amount of every deduction from the employee's wages during the pay period and the purpose for which each deduction was made; and
(c) the employee's net wages payable at the end of the pay period.

(2) The following deductions may be agreed in a contract of employment—

(a) deduction of a reasonable charge for food, drink, lodging or clothing supplied by the employer to the employee, provided that no compulsion, by means of any contract or otherwise, has been imposed on the employee to purchase or otherwise incur the charges that are the basis for the deduction;
(b) deduction representing reasonable rent or other reasonable charge for accommodation provided by the employer for the employee or the employee's family;
(c) deduction of an amount for recovery of any advance made to the employee or in order to adjust a previous over-payment of wages;
(d) deduction of the amount of any tax, contribution to a statutory social security, superannuation, industrial injury or national insurance scheme, or any other charges imposed by any law of The Gambia;
(e) deduction of any contribution to a pension fund, superannuation scheme or friendly society organised by the employer, if the employee has given written consent to the deduction in advance and the entire deduction is applied for the benefit of the employee;
(f) deduction of any dues to a trade union of which the employee is a member, if the employee has given written consent to the deduction and the amount of the deduction is remitted directly to the trade union or its authorized official, subject only to retention by the employer of a reasonable charge, if any, for the cost of making and remitting the deduction; and
(g) deduction of reasonable compensation for damage to, or loss of, goods or monies expressly entrusted to the employee by his or her employer for safe custody and for which the employee is required to account if the loss or damage is directly attributable to the neglect or fault of the employee and the employee is employed on such work as may reasonably be expected to impose the responsibility.
(3) The total of all deductions made in any one-wage period shall not exceed one-third of all remuneration due in that wage period.

(4) For the avoidance of doubt, a reduction in remuneration usually paid or expected that occurs on account of-

(a) the disciplinary suspension from work of an employee; or

(b) the failure of an employee to report for work on a normal work day,

does not constitute a deduction for the purposes of this section if the amount not paid does not exceed the proportion of the wages payable for the period of absence or one twenty-sixth part of the wages payable for one month in respect of each day of the absence.

78. A court of civil jurisdiction shall not make an order for the attachment of wages or other benefits due to an employee.

79. All remuneration and accrued benefits due to an employee on the termination or completion of his or her contract of employment shall be paid to the employee on the day of the termination or completion of the contract.

80. (1) A practice or provision of a contract of employment which imposes conditions contrary to the requirements of this Part is null and void.

(2) An employer who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

81. (1) An employee is entitled to recover by action in the Tribunal any amount paid or not paid in contravention of any provision of this Part.

(2) An employee who induced the payment or non-payment under subsection (1) may only recover such amount as exceeds the benefit to him or her derived from the contravention.

(3) In addition to an award under subsection (1), the Tribunal may, if an employee makes an application concerning a contravention within two years of the contravention, order the employer to give the Commissioner at intervals of not less than once a month, for a period not exceeding two years, such information as shall, in the opinion of the Tribunal, show the absence of any further contravention of this Part:

PART XI – DISCIPLINE, DISMISSAL AND REDUNDANCY

82. (1) In this Part, a "disciplinary action" includes-

(a) a written warning;

(b) suspension; and

(c) demotion.

(2) An employer is entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances of the case.
(3) Subject to subsection (4), an employer shall not impose a fine or other monetary penalty on an employee, and is not obliged to pay wages to an employee for the period the employee is absent from work without permission of the employer or without reasonable excuse.

(4) An employer may deduct an amount of money from an employee’s wages to cover the costs of any property damaged by the employee.

(5) In deciding whether the employer has acted reasonably, the Tribunal or Court shall take into account the nature of the violation, the employee’s duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

83. (1) An employer shall not terminate an employee’s appointment or take disciplinary action against an employee unless there is a valid reason for the termination or action connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise.

(2) The following reasons do not constitute valid reasons for dismissal or taking of disciplinary action:

(a) an employee’s pregnancy or having taken maternity leave, race, colour, sex, religion, political opinion, national extraction, ethnic or social origin;

(b) an employee’s absence from work for a period of less than two weeks because of sickness or injury;

(c) an employee’s actual, perceived or suspected HIV/AIDS status;

(d) an employee’s removing or attempting to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;

(e) an employee’s exercise of a right to freely associate, including—
   (i) membership in a trade union,
   (ii) refusal, or indication of an intention to refuse, to join a trade union,
   (iii) participation or proposed participation in a legal industrial action,
   (iv) refusal to do any work normally done by an employee who is engaged in industrial action;

(f) an employee’s refusal, except in circumstances of national emergency or grave emergency to his or her employer, to work for more than the number of hours permitted by any law, collective agreement, or established work rule;

(g) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulation or collective agreement; or
(h) the institution of a police investigation involving the employee, concerning a matter not connected with the suitability of the employee for employment;

Unfair dismissal

84. A dismissal is unfair if it is not in conformity with section 83 or is a constructive dismissal under section 86.

Summary dismissal

85. (1) An employer may summarily dismiss an employee on the following grounds:

(a) if an employee is guilty of serious misconduct, inconsistent with the fulfillment of the expressed or implied conditions of his or her contract of employment which makes it unreasonable to expect the employer to continue the employment relationship;

(b) habitual or substantial neglect, through absence or otherwise, of his or her duties;

(c) lack of a skill that the employee expressly or by implication holds himself or herself to possess; or

(d) misrepresentation on which the contract of employment was based.

(2) In subsection (1), "summarily dismiss" means terminate the contract of employment of the employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

86. An employee is entitled to terminate the contract of employment without notice or with less notice than the employer is entitled by any statutory provision or contractual term if the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.

87. An employee is deemed not to have voluntarily resigned from employment unless there is clear evidence of the employee's deliberate intention to resign.

88. (1) Where an employer has reason to believe that grounds exist for dismissing an employee, the employer may suspend the employee without pay during a period of investigation, but not exceeding two weeks.

(2) Where an employer has taken action in accordance with section 89, the employee concerned may be suspended without pay until he or she is dismissed or the employer resolves not to dismiss him or her, or for three days, whichever is less.

(3) Where an employee is suspended without pay under subsection (1) or (2), but is not consequently dismissed, the employer shall pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

(4) Notwithstanding subsections (1), (2) and (3), where the conduct of an employee is the subject of an inquiry by the police force of The Gambia, or any other country, an employer may, if he or she considers it necessary in the interests of the
undertaking, suspend that employee without pay during all or any part of the time covered by the inquiry, subject to subsection (5).

(5) Where an employee is suspended under subsection (4) but is not consequently prosecuted to conviction in a court of law, the employer shall reinstate the employee in his or her original employment and pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

89. (1) Before deciding to dismiss an employee, the employer shall—

(a) explain to the employee the reason for which the employer is considering dismissing that employee; and

(b) hear and consider any representations made in defence of the employee.

(2) The employer shall give the explanation pursuant to subsection (1) in the presence of the employee and one other person, if any, whether or not a representative of a trade union, whom the employee may choose to accompany him or her.

(3) Before proceeding to comply with subsection (1), the employer shall, if the employee chooses not to be accompanied by another person, explain to the employee the advantage of being so accompanied.

(4) Proof that an employer failed to satisfy an obligation under subsections (1) and (2) raises a rebuttable presumption that the employer did not act with justice and equity in dismissing the employee.

90. (1) There is a conclusive presumption that the dismissal of an employee is unfair if, in a claim or complaint arising out of the dismissal, the employer fails to provide the reason for dismissal.

(2) In addition to proving that an employee was dismissed for reasons stated in section 83(1), an employer is required to show that in all circumstances of the case he or she acted with justice and equity in dismissing the employee.

(3) Failure by the employer to deliver to the employee at the time of dismissal a written statement of the reason for the dismissal raises a rebuttable presumption that the reason for dismissal was wrong or that the employer did not act with justice and equity in dismissing the employee, whichever may be applicable in the context of the case.

(4) In the circumstances mentioned in section 85, the employee shall provide the reason which made the continuation of the employment relationship unreasonable.

91. (1) An employee may, within six months of the date of dismissal, complain, orally or in writing, to the Commissioner or to an official of a trade union of which he or she is a member, that he or she has been unfairly dismissed, irrespective of whether notice has been given or not.

(2) Where a complaint is made to an official of a trade union, the official shall—

(a) collect such information as the Commissioner shall, by regulations, direct; and
(b) communicate the complaint and the accompanying information to the Commissioner within one week of its receipt.

(3) Where an official fails to communicate the complaint to the Commissioner within twenty-seven weeks of the dismissal, the Commissioner may, on behalf of the employee, and notwithstanding any other provision of law, commence proceedings in a civil court for negligence against the trade union and the official concerned.

(4) The right of an employee to make a complaint under this section is without prejudice to any right that he or she may enjoy under a collective agreement.

(5) Where the Commissioner fails to settle the matter within one month of receipt of a complaint made to him or her, the employee or trade union may bring a claim before the Tribunal in accordance with the Rules set out in the First Schedule of this Act.

92. (1) If the Tribunal finds that an employee's complaint of unfair dismissal is not well founded, it shall dismiss the complaint.

(2) If the Tribunal finds that a complaint is well founded, it shall uphold the complaint and—

(a) order reinstatement or re-engagement, of the employee with such compensation, if any, as the Tribunal considers just and equitable; or

(b) award such compensation as the Tribunal considers just and equitable.

(3) The Tribunal shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account, in particular, the wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

(4) Where the Tribunal finds that the employee caused or contributed to the dismissal to any extent, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(5) An award of compensation shall be such amount as the Tribunal considers just and equitable in the circumstances, having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal as well as—

(a) the reasonable expectation of the employee as to the period of time his or her employment with that employer might have continued but for the dismissal;

(b) the opportunities available to the employee for securing other suitable employment;

(c) the value of contractual benefits to which the employee might reasonably have expected to become entitled if he or she continued to be employed by the employer and, in particular, to such benefits as might have accrued with increased seniority;
(d) the value of statutory rights including pension rights of which dismissal has deprived the employee or frustrated the reasonable expectation of the employee that those rights would accrue; and

(e) the value of any accrued benefit to which the employee was entitled before his or her dismissal and of which he or she has been deprived as a result of his or her dismissal.

93. (1) A dismissal wholly or mainly for-

(a) economic, organisational, climatic or technical reasons, including mechanization or automation; or

(b) the reason that the employer proposes to move the place of employment more than forty kilometres and the employee is either not offered employment at the new place or declines the offer in accordance with section 64,

is deemed to be unfair if the employer is unable to show that he or she acted on sound business principles and has satisfied the conditions specified in subsection (2).

(2) Where an employer contemplates a dismissal for reasons set out in subsection (1), he or she shall-

(a) where they exist, consult the authorized representatives of any trade union which has members among the employees the employer contemplates should be dismissed and the relevant works committee;

(b) engage in consultation under paragraph (a) by, at least, supplying any person or group of persons required to be so consulted the following written information-

(i) an explanation of the circumstances giving rise to the need to dismiss,

(ii) an explanation for the rejection of any alternative course of action which the employer has considered, provided that, where appropriate, the employer has considered the possibility of re-deploying or of re-training the employees concerned.

(iii) a statement of any reasonable probability that a specified number of employees in specified categories may be re-employed by him or her within the twelve months following the dismissal, and

(iv) any other matter which the Commissioner may direct to be so communicated, either in a particular case or generally;

(c) in all cases where a selection is made for dismissal among a group of employees of the same class-

(i) make that selection in accordance with an agreement between the employer and a trade union representing the members of that class, or
(ii) if there is no agreement, make that selection on the principle of last in first out or on some other principle considered by the Tribunal to have been established and reasonable; and

(d) take all reasonable steps to secure that an offer of re-engagement or of suitable alternative employment within not more than six months of the date of dismissal is made in writing before the dismissal or as soon as reasonably practicable after the dismissal and, in the case of an apprenticeship, that suitable provision for continuation of the apprenticeship or for employment as a journeyman has been made.

(3) An alternative employment is not considered suitable under subsection (2) if it involves work which-

(a) the employee is not qualified to perform, or work of a substantially inferior grade to that which the employee was previously performing; or

(b) provides a significantly lower level of remuneration than that previously received by the employee.

(4) The provisions of subsections (1) and (2) do not apply to an employer-

(a) of five or less employees in aggregate in all his or her establishments; or

(b) who has agreed with a trade union with which he or she habitually negotiates in respect of the employees affected, a method of selection for dismissal and the terms of compensation for dismissal and who has honoured that agreement.

(5) An employer who-

(a) has delivered to an employee a written undertaking to re-engage the employee within not more than six months from the date of dismissal;

(b) has agreed to pay to the employee a retainer in accordance with subsection (6) during the whole of the interval between dismissal and re-engagement; and

(c) continuously honours the agreement,

is deemed to have satisfied the provisions of subsection (2).

(6) The minimum amount of the retainer mentioned in subsection (5) shall be-

(a) fixed by each Joint Industrial Council as soon as possible after the coming into operation of this Act, and may be amended, from time to time; or

(b) established by agreement with a trade union representing the employee in question, if the employment in question is not covered by the agreement of a Joint Industrial Council; or
(c) ten per cent of the employee’s basic pay, where no rate is fixed as specified by paragraph (a) or (b).

(7) An employer who has agreed to pay a retainer to a temporarily laid off employee may set off against his or her undertaking any amount of wages received by the employee from another employer during the period covered by the retainer, but if the employer does not disclose to the employer the total amount of any alternative remuneration received during the period covered by the retainer, the employer is deemed to have satisfied the whole of his or her agreement without further payment.

(8) Notwithstanding the requirements for the giving of notice for termination of a contract of employment under this Act, an employee dismissed by an employer for reasons set out in this section shall, notwithstanding an employer’s compliance with the requirements of this section, receive a redundancy allowance of six months regular remuneration.

94. (1) The Commissioner shall send a copy of all complaints received under section 91 to the Tribunal, endorsed with a note stating whether or not he or she intends to take steps to effect a settlement of the matter.

(2) Where the Commissioner attempts to effect a settlement, he or she shall do so within one month of his or her receipt of the complaint and, at least before the end of that period, notify the Tribunal that a settlement has been effected or that settlement efforts have ceased.

(3) A communication made by either party to the complaint in the course of settlement discussions undertaken by the Commissioner is not admissible as evidence in any proceedings in the Tribunal or any Court without the consent of the party who made the communication.

(4) No settlement effected by any means, other than that specified in subsection (2), is binding on either party to the complaint.

(5) If a settlement is effected, the Commissioner shall record its terms in writing and notify the Tribunal.

95. The Secretary of State may, by Order published in the Gazette, exempt an employer or employers from the application of sections 82 to 94, on condition that:

(a) the employer or employers so exempted have agreed, in writing, with a trade union or trade unions whose members are his or her employees to provide rights and mechanisms which, in the opinion of the Secretary of State, are at least as favourable to the employees as those provided in sections 82 to 94;

(b) the agreement makes provision for final resort to independent binding arbitration;

(c) that a joint application for exemption has been made by the parties to the agreement, indicating those groups or classes of employees covered by the agreement; and

(d) the exemption applies only to groups or class of employees of the employer or employers concerned that are covered by the agreement.
PART XII - REGISTRATION OF EMPLOYERS' ORGANISATIONS AND TRADE UNIONS

96. (1) The Registrar General (in this Part referred to as "the Registrar") is the Registrar of Trade Unions and Employers' Organisations.

(2) The Registrar shall maintain separate registers of employers' organisations and trade unions.

(3) The Registrar shall enter on the register of employers' organisations any employers' associations which-

(a) applies to be so registered;

(b) has, among its principal objects, the regulation of terms and conditions of employment of workers or the conduct of industrial relations with workers; and

(c) satisfies the conditions for registration under this Part.

(4) The Registrar shall enter on the register of trade unions any organisation which, immediately before the coming into force of this Part, was registered as a trade union, and any other organisation-

(a) of not less than fifty workers applying to be so registered and having among its principal objects—

(i) the regulation of terms and conditions of employment of workers, or

(ii) the conduct of industrial relations with employers; or

(b) composed entirely of organisations of workers having among their principal objects—

(i) the regulation of terms and conditions of employment of workers, or

(ii) the conduct of industrial relations with employers; and

(c) which satisfies the conditions for registration under this Part.

97. (1) The managing committee of an employers' association or a trade union within the meaning of section 96 shall, within thirty days of the founding of the organisation, make an application in writing to the Registrar for the registration of the organisation, accompanied by a copy of the rules of the organisation.

(2) Where the provision of subsection (1) are not complied with, the members of the managing committee of the organisation commit an offence and are liable on conviction before a Magistrate to a fine not exceeding one thousand dalasis for each day the non compliance continues.

(3) The Registrar shall, within one month of the receipt of the application and rules under section 97, cause notice of the application, together with the rules of the organisation, to be published in the Gazette.

98. (1) The Registrar shall not register an organisation unless he or she is satisfied that—
(a) the rules of the organisation have been
submitted in writing and satisfactorily
disclose the objects of the organisation;
(b) one of the principal objects of the
organisation is an object specified in
subsection (3) or (4) of section 96, as the
case may be;
(c) in the case of an organisation consisting
of persons engaged in, or engaged in
working in, more than one trade or
occupation, the rules of the organisation
contain provision adequate to protect the
sectional interests of those persons; and
(d) no objection received to the registration
shows that the organisation conducts its
affairs in contradiction of the laws or
Constitution of The Gambia.

(2) Before making a decision to deny an
application for registration, the Registrar shall
give the managing committee of the organ-
isation the right to make such oral or written
submissions in support of its application, as the
managing committee considers appropriate.

(3) Within three months after the date of
publication of the notice of receipt of the
application under section 97, the Registrar shall
notify the organisation-
(a) that it has or has not, been registered; and
(b) if it has not been registered, the reasons
for non-registration.

(4) A member of an organisation whose
application for registration has been denied may
appeal against the decision to the High Court
within three months from the date of the denial.

(5) On an appeal under subsection (4), the High
Court may make such order as it thinks proper,
including an order that the organisation be
registered, and a direction as to the cost of the
appeal.

99. (1) Within two months of the date of
publication of the notice referred to in section 97,
the Registrar, on being satisfied that the
organisation has complied with any regulations
for registration in force under this Part and
subject to the provisions of section 98, register
the organisation and its rules either as an
employers' organisation or as a trade union.

(2) On registration, the Registrar shall issue a
certificate, which, unless revoked or cancelled,
is conclusive evidence that the provisions of this
Act as to registration have been complied with.

100. An organisation registered under this Part
has legal personality, with the right to sue and
be sued, enter into contracts, own and dispose
of property, real and personal, and is subject in
all other ways to the laws of The Gambia in
accord with its status under this section.

101. An employers' organisation or trade union
that is or has been registered immediately
before the commencement of this Act is deemed
to be registered under this Act.

102. (1) Within three months of receipt of notifi-
cation from the Registrar that the organisation
has been registered, the secretary of the
organisation shall deposit with the Registrar-
(a) a note of the name and address of the
registered office of the organisation;
(b) a copy of the rules of the organisation showing any difference, if any, between them and those submitted in support of the application for registration;

(c) a list of the names and addresses of all
the national officers of the organisation
whether or not they are wholly or partially
remunerated by the organisation;

(d) the names and addresses of the mem-
bers of the governing body of the
organisation;

(e) a statement of the current financial posi-
tion of the organisation containing a note
of the date on which the financial year of
the organisation is due to end; and

(f) in the case of a trade union, a statement
of the number of members of the
organisation at a specified date not earlier
than one month before the date of the
return.

(2) While the organisation remains registered,
the secretary of the organisation shall notify the
Registrar within one month of any change of a
matter notified under paragraph (a), (b), (d) or (f)
of subsection (1).

(3) On notification by a registered organisation
of its change of name, the Registrar shall
register the new name and delete the former
name, unless the new name so closely
resembles the name of an existing registered
organisation as to be likely to cause confusion.

(4) A registered organisation that fails to give
the information required by this section com-
mits an offence and is liable on conviction to a fine of
not exceeding twenty thousand dalasis.

103. (1) Subject to subsection (2), an organi-
sation registered under this Part shall, not later
than the thirty-first day of January in every year,
furnish to the Registrar an annual return
containing the information specified in this
section.

(2) An organisation is not required to furnish an
annual return under this section until at least
twelve months after the date of its registration.

(3) The annual return shall include-

(a) a general statement of the receipts,
funds, effects and expenditure of the
organisation showing-

(i) fully the assets and liabilities at
that date, and the receipts and
expenditure during the year
preceding the date of the return,

(ii) separately the expenditure in
respect of the several objects of
the organisation, the expenditure
for remuneration of officers and
the expenditure for training offi-
cers and officials of the organis-
ation;

(b) a note of the number of members of
the organisation at the commence-
ment of that year; and

(c) a note of any alteration in the rules of
the organisation which came into
operation in the year preceding that
year.
(4) A registered organisation that fails to provide an annual return commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis.

104. (1) Where the Registrar, on the basis of an annual return, is unable to -

(a) determine with accuracy the receipt or expenditure of the organisation or the present financial position of the organisation; or

(b) ascertain with certainty the absence of irregularity or fraud,

he or she may, call for any book, record or other document kept by the organisation and relating to the account for his or her examination, or for examination by an auditor qualified as an accountant, appointed by him or her.

(2) Without derogating from the generality of subsection (1), an organisation shall disclose the following matters in its accounts -

(a) the authority for all expenditure by the organisation;

(b) the state of arrears of a payment due to the organisation including a statement of the estimated arrears of dues from members and a note of the steps taken to collect or write-off any arrears of more than three months’ standing;

(c) the state of the organisation’s investments and of deposits or loans made by or on behalf of the organisation, and of any obligation of the organisation in respect of any guarantee for an advance, loan or mortgage to any person; and

(d) a statement of the estimated value of the property of the organisation.

(3) Where the Registrar appoints an auditor under subsection (1), the organisation shall pay the reasonable expenses of the audit.

(4) An auditor has the power to require the production of all books, papers and documents relating to the accounts to be audited and to inspect them, but the auditor shall not enter the premises of an organisation without the consent of the organisation.

(5) A person who -

(a) fails to furnish any book, record or other document called for by the Registrar under subsection (1);

(b) fails to provide the auditor with any book, paper, or document to which the auditor requires; or

(c) otherwise hinders or molests the Registrar or the auditor in the exercise of the powers granted to them by this section,

commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(6) Where a person fails to comply with a requirement specified in subsection (1) or hinders the Registrar or an auditor in the exercise of their powers under this section, the Registrar may apply to the High Court, and the Court shall, if satisfied that the failure or hindrance has occurred, order the person concerned to comply with the requirement or cease the hindrance.
(7) Where an examination or audit of any account under the provisions of this section reveals that—

(a) a criminal offence may have been committed;

(b) a failure to satisfy any provision of this Act may have occurred; or

(c) the organisation has failed to take adequate steps to secure payment of outstanding monies due to it,

the Registrar may, if it appears expedient to do so for the benefit of the members of the organisation, institute appropriate criminal or civil proceedings against the person concerned.

(8) The proceedings under subsection (7) shall be instituted on behalf of and in the name of the organisation but shall be conducted at the expense of the Registrar.

(9) Once the Registrar has certified the copy of the accounts submitted under the provisions of this section as acceptable, the organisation shall make it available at its registered office for inspection by any member of the organisation on reasonable request.

105. (1) The Registrar may cancel the registration of an organisation if, after notification to the organisation at the last known address of its registered office and consideration of any representation made to him or her by any person acting on behalf of the organisation, he or she is satisfied that—

(a) the organisation has ceased to exist;

(b) the organisation does not satisfy, or has ceased to satisfy the requirements of section 98;

(c) any one of the purposes of the organisation is unlawful; or

(d) the organisation has requested that its registration be cancelled.

(2) The Registrar shall notify an organisation of the cancellation of its registration at the last known address of its registered office.

(3) Any one or more members of an organisation whose registration has been cancelled may, within sixty days of their notification of the cancellation, appeal against the cancellation to the High Court.

(4) On an appeal under subsection (3), the High Court may make such order as it thinks proper, including an order to register the organisation and a direction as to costs.

(5) The Registrar shall not give effect to a cancellation of registration, when the final outcome of an appeal is pending.

Regulations for the operation of this Part

106. The Registrar may make rules to facilitate the operation of this Part and shall publish those rules in the Gazette.
PART XIII - FREEDOM OF ASSOCIATION, RIGHT TO COLLECTIVE BARGAINING, AND INDUSTRIAL RELATION

107. Workers and employers have the right to establish and join workers' and employers' organisations of their own choice in accordance with the Constitution and laws of The Gambia.

108. (1) Workers' and employers' organisations have the right to draw up their constitutions and rules, to elect their representatives, to organise their administration and activities, and to formulate their programmes in full freedom, subject only to the Constitution and laws of The Gambia.

(2) Workers' and employers' organisations have the right to establish and join federations and confederations, and any organisation, federation or confederation has the right to affiliate with international organisations of workers and employers, subject only to the Constitution and laws of The Gambia.

109. (1) An employer who does an act designed to promote the establishment of a workers' organisation under its domination, or to support a workers' organisation by financial or other means, with the object of placing the organisation under his or her control, commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis.

(2) A person who has an interest in the matter may bring an action before the High Court alleging the offence specified in subsection (1).

(3) A Court that finds an employer guilty of an offence specified in subsection (1) may also order the cancellation of the registration of the dominated workers' organisation.

(4) The powers given by this section for remedying an employer's domination of a workers' organisation does not prevent any court from fashioning a remedy which it deems adequate in the circumstances.

110. (1) There are hereby established Joint Industrial Councils for the following industries, which shall be constituted in accordance with the provisions of this Act:

(a) commerce;
(b) artesanis;
(c) transport;
(d) the port industry; and
(e) agriculture and fisheries.

(2) The Secretary of State may-

(a) on the advice of the Labour Advisory Board, by Order published in the Gazette, constitute other Joint Industrial Councils; and

(b) assign to the Joint Industrial Councils supervision over the terms and conditions of employment of such categories of industry and of workers as, on the advice of the Labour Advisory Board, he or she deems fit.

(3) The Secretary of State may, on the advice of the Labour Advisory Board-
(a) revise the assignment of categories of industry and of workers in respect of any Joint Industrial Council; and

(b) terminate the operation of any Joint Industrial Council,

if he or she believes that adequate terms and conditions of employment will be maintained for all grades of workers for whom the Council operates.

(4) The Secretary of State shall appoint to each Joint Industrial Council-

(a) equal number of representatives of employers' organisations and of registered trade unions; and

(b) two independent members.

(5) A trade union which satisfies the Secretary of State that it has in membership not less than twenty-five per cent of the employees in any three or more categories of employees for which the Joint Industrial Council operates is entitled to have at least one representative on the relevant Joint Industrial Council.

(6) No registered trade union shall have more than three times the number of members of a Joint Industrial Council and of workers as any other single registered trade union which is a member of that Joint Industrial Council.

111. (1) A Joint Industrial Council shall, by agreement of a majority of representatives of employers and of trade unions, fix the minimum terms and conditions of employment of any employee or category of employees within the industries or job categories for which it operates, whether or not the employees are in management grades or are pensionable.

(2) A Joint Industrial Council shall fix minimum terms and conditions of employment for apprentices and, separately, for trained categories of workers possessing trade certificates.

(3) A provision of a Joint Industrial Council agreement, which is contrary to a valid direction of the Authority, is invalid.

(4) A Joint Industrial Council has the power to fix, amend or revoke any classification of trades within the industry in which it operates but shall act on the recommendation of the Labour Advisory Board in accordance with section 43.

(5) Nothing in this section permits a Joint Industrial Council to make any agreement which contravenes or derogates from any provision of this Act or of any other legislative provision whatsoever.

112. (1) The members of a Joint Industrial Council shall, at the first meeting in each calendar year, elect, to a twelve-month term, a chairperson and deputy chairperson from among their number.

(2) An outgoing chairperson and deputy chairperson are eligible for re-election under subsection (1).

113. A Joint Industrial Council may adopt, replace or amend its rules of procedure, but the rules must not contravene or revoke any provision of this Act.

114. (1) The chairperson, or if he or she is for any reason incapable of acting or fails or declines to, the deputy chairperson of a Joint
Industrial Council shall convene a meeting of that Council at least once in every six months and, in any event, on the request of any three members of the Council and shall cause all members to be notified of the time and place of the meeting.

(2) If both the chairperson and the deputy chairperson are incapable of acting or fail or decline to act in accordance with subsection (1), any three members of the Joint Industrial Council may convene a meeting of the Council and those members shall cause all members to be notified of the time and place of the meeting.

(3) If the chairperson or the deputy chairperson willfully fails or declines to convene a meeting of the relevant Joint Industrial Council as required by subsection (1) he or she shall, on the application of any member of that Council to the Tribunal, be removed from office, in which case the Secretary of State shall appoint a replacement within three months of the removal.

(4) If a meeting of a Joint Industrial Council properly convened under subsection (1) or subsection (2) is postponed, or is not attended by a quorum as established in its rules of procedure or is, for any other reason, ineffective, the person convening the meeting shall reconvene the meeting after a reasonable interval and shall notify the members of the time and place of the meeting.

(5) If, at a meeting reconvened under subsection (4) because-

(a) at the first meeting there was no quorum on one side of the membership; or

(b) the first meeting was postponed at the request of one side of its membership,

there is no quorum on the same side, the reconvened meeting shall, notwithstanding anything in the Council’s rules of procedure, be conclusively deemed to have a quorum and competent to conduct the business of the Council.

(6) A meeting reconvened under subsection (5) shall not be postponed again on the request of the same side and shall, if necessary, appoint an acting chairperson for the meeting.

(7) A Joint Industrial Council shall not meet jointly with another except with the agreement of the employer and trade union representatives and the independent members of all the Councils concerned.

(8) The Commissioner, or such person as he or she shall appoint for the purpose, may attend a meeting of a Joint Industrial Council in an advisory capacity.

115. (1) A Joint Industrial Council shall request the Secretary of State to publish by Notice in the Gazette, such minimum terms and conditions of employment on which it has agreed.

(2) The Secretary of State shall, within one month of receipt of a request under subsection (1), either—

(a) publish, in the Gazette, Notice of the agreement which constitutes the minimum terms and conditions of employ-