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EXTRAORDINARY

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PART IV (A) – PROVINCIAL COUNCILS

Provincial Council Notifications

WESTERN PROVINCE PROVINCIAL COUNCIL

The draft of the Co-operative Employees Commission Statute of Western Province Provincial Council is mentioned below.

KEJITAN LALITH WANIGARATHNE,
Minister of the Western Provincial Roads,
Transport, Co-operative Development and Trade,
Housing and Constructions, Estate
Infrastructure Facilities, Industry and
Rural Development.

At the Ministry of Western Provincial Roads, Transport,
Co-operative Development and Trade, Housing
and constructions, Estate Infrastructure Facilities,
Industry and Rural Development,
No. 204, Denzil Kobbekaduwa Mawatha,
Battaramulla,
26th September, 2018



Co-operative Employees Commission Statute of Western Province Provincial Council

A STATUTE TO ESTABLISH AND INCORPORATE A PROVINCIAL COMMISSION TO BE KNOWN AS THE WESTERN PROVINCE CO-OPERATIVE EMPLOYEES COMMISSION TO MAKE SPECIAL PROVISION IN RESPECT OF THE EMPLOYEES OF CO-OPERATIVE SOCIETIES IN THE WESTERN PROVINCE AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO AND TO ALLOCATE PROVISIONS TO REPEAL THE CO-OPERATIVE EMPLOYEES COMMISSION STATUTE NO. 01 OF 1994. THIS STATUTE IS INCONSISTENT WITH THE CO-OPERATIVE EMPLOYEES COMMISSION ACT. NO.12 OF 1972.

Be it enforced by the Provincial Council of the Western Province of the Democratic Socialist Republic of Sri Lanka as Follows.

Short Title and
date of
operation.

1. This Statute may be cited as the Co-operative Employees Commission Statute of Western Province Provincial Council No. of 2018 and shall come into Operation from the date of assent of the Governor of Western Province.

PART I

constitution, powers and functions of the western provincial Co-operative Employees Commission

Establishment of
Co-operative
Employer
Commission.

2. (1) A Western Provincial Co-operative Employees Commission hereinafter cited as “the commission” shall be incorporated hereby.
- (2) The Commission by the name assigned to it by Subsection (1) be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in that name.

Constitute of the
Commission.

3. (1) The Commission shall consist of the following three members appointed by the minister.
 - (a) A retired person of Sri Lanka Administrative Service,
 - (b) Attorney - at - law of Supreme Court,
 - (c) A retired officer at executive level in the State institution or in a State Corporation or a board of State.
- (2) The member appointed under above subsection 1 (a) shall be appointed by the minister as the chairman of Commission.
- (3) The appointments made under above Subsections (1) and (2) shall be published in the Gazette paper as effective from the date of Oath- taking or affirmation - making at a Court - of - Law.

Disqualifications
to become a
member.

4. Provided that a person is;
 - (a) an officer or employee or former officer or employee of a cooperative society or,
 - (b) a member of a co-operative society or union or person drawing a salary or wage from other institution serving on behalf of a cooperative society or,
 - (c) a member of Parliament, member of Provincial Council or councilor of a Local Government Authority or person connected to active politics or,
 - (d) not a citizen of Sri Lanka or,

- (e) decided or declared as a mentally instable person under the valid law of Sri Lanka or law operating in any other country or,
- (f) convicted as an offender of an offence of criminal nature or was convicted so by a Court-of-law in Sri Lanka or any other country or,
- (g) a member removed from office or a member whose membership was annulled as per Section 6 of this statute,

he shall be disqualified to be appointed or function as a member of the Commission.

5. (1) Each member of the Commission shall hold office for a period of not more than three years from the date of his appointment. Further, unless remove from office under Subsection 6(1), shall not be disqualified to be reappointed. Term of office of member
- (2) A member appointed to fill the vacancy created by a member's removal or resignation from the office of member, shall hold such office for the remaining period of the official tenure of the member he/she replaced.
- (3) In the event of a member being unable temporarily to accomplish the duties of his office due to bad health or other disability or being away from Sri Lanka, the minister may appoint a member to the Commission to act on his behalf.
6. (1) On being dissatisfied as to the *modus operandi* of any member, the minister may terminate his office as member.
- (2) A member of the commission may at any time resign from his office or chairmanship by way of a resignation letter sent to the minister and upon conveyance by the minister that the said resignation has been accepted.
- (3) The office of a member, who fails to attend three consecutive meetings of the Commission without formal permission obtained from the minister, will terminate.
7. (1) The person appointed as the chairman of the commission shall preside at all meeting of the commission at which he is present. In the absence of the chairman for any meeting of the commission by agreement of the two members present, one of them shall preside at the meeting. Chairman of the Commission and maintaining its proceedings
- (2) Two members shall constitute the quorum for a meeting of the Commission.
- (3) If at any meeting only two members of the Commission are present and such members are divided in opinion as to the decision to be taken on any question such question shall be referred to a meeting at which all three members of the Commission are present.
- (4) If at any meeting, at which the three members of the Commission are divided in opinion as to the decision to be given on any question, such question shall be decided according to the opinion of the majority of members present.
- (5) The Commission may decide on a matter not provided with specific provisions by this statute or any order formulated under it, and the decision taken regarding the said matter shall be conclusive.
- (6) Any act or proceeding of the Commission shall not be invalid by reason only of the existence of a vacancy among its members or any defect in the appointment of any of its members.

Remuneration of members	8.	The Chairman and members of the Commission shall be paid such remuneration and such allowances as may be determined by the Minister, in consultation with the Minister of Finance of the Province.
Secretary and other officers	9.	(1) There shall be a Secretary of the Commission and staff to assist him. (2) The Secretary of the Commission shall be an officer of Sri Lanka Administrative Service.
Taking of oaths/making affirmations by members and officers of the commission	10.	(1) The members of the Commission shall on first appointment take an oath or make an affirmation before a Judge of Court - of - Law in the form set out in the Schedule No. 01 to this statute. (2) The Secretary to the Commission and such of the other officers of the Commission, shall , on first appointment, take an oath or make an affirmation in the form set out in the Schedule No. 02 to this Statute within one month of being appointed to the Commission.
Disqualifications to be appointed to the staff of the Commission	11.	Provided that a person having any relationship deemed so by the Commission as the spouse, parents, children or a family member of a staff member of the Commission, holds an office in any Cooperative Society, such officer is inappropriate to be appointed to the staff of the Commission.
Powers of the Commission	12.	(1) The Commission shall have the following powers : - (a) To determine all matters relating to methods of recruitment to and conditions of employment of employees of co-operative societies, and the principles to be followed by such societies in making appointments and in making promotions from one post in a co-operative society to another post in the same society, to determine the qualifications necessary for appointment to any such post. (b) (i) To conduct examinations for recruitment as employees of co-operative societies of to appoint boards of examiners for the purpose of conducting such examinations and to charge fees from candidates presenting themselves for examinations; (ii) To conduct Efficiency Bar Examinations to measure the performance of employees of co-operative societies in relation to their promotion and appointing boards of examiners on that behalf and charge fees relevant to it; (iii) To organize and conduct training courses relevant to the subject field of Co-operative Employees and charge relevant fees; (c) to fix the scales of salaries to be attached to any such post or posts in any class, to revise or adjust such scales or salaries from time to time in consultation with the Commissioner and to establish such consultative machinery as the Commission may deem necessary to assist it in determining the remuneration and conditions of service of co-operative employees; (d) To require co-operative societies to pay salaries in accordance with the salary scale fixed by the Commission for any post or posts in any class or grade; (e) (i) To examine cooperative employees' appeals relating to a decision of a co-operative society; (ii) To determine the procedure or procedures to be followed by any co-operative society in exercising its rights of disciplinary action against its employees, to call upon any co-operative society to complete disciplinary inquiries against its employees within a time

- stipulated by the commission and to hear appeals arising out of any disciplinary orders made by any co-operative society;
- (f) To call upon any co-operative society to keep updated the prescribed records and documents relating to employees of that society;
 - (g) to call upon any co-operative society functioning within the province,
 - (i) to keep the prescribed name-lists or records relating to employees of that society and to furnish before the Commission such reports or records when the Commission may require in respect of any employees of that society;
 - (ii) to present to any officer who access the office of co-operative society for the purpose of examining any books, accounts records or any other documents kept therein and to hand over to the custody of an officer authorized by the Commission.
 - (h) To inquire matters relevant to an appeal made by a co-operative employee to the Commission or any matter reported to the Commission relating to a co-operative employee problem, by calling a relevant officer or employee of the co-operative society, or any party the Commission deems necessary to be called to the inquiry of the appeal.
 - (i) To call upon any co-operative society to furnish before a specified date such files, other documents or information as the Commission may require in respect of any employee of that society;
 - (j) To nominate Appeals Inquiry Officers and panels of officers to make such inquiries as are necessary on appeals that are referred by the Commission to such panel or panels and to report thereon to the Commission;
 - (k) To require any co-operative society to carry out such instructions, including instructions relating to reinstatement, as may be given by the commission in regard to any employees of such society, where the conduct of the employees has been the subject of an inquiry and the employees had appealed to the commission against the decision of the society;
 - (1)(i) To determine the general principals in accordance with which gratuity or other benefits may be granted to employees on the termination of their services;
 - (ii) To call upon the Society to pay any compensation amount prescribed by the Commission if there are any outstanding gratuity amount, security amount, salaries or due salaries or any benefits payable to them.
 - (m) (i) Whenever the Commission decides it is inappropriate for an employee to hold certain position as per rules of procedure formulated under this statute; to call upon the relevant employee or society to exercise any regulations conforming to that situation;
 - (ii) If the relevant employee fails to conform to a regulation made under above Sub - Section (1) by the Commission, to order to the co-operative society to terminate the relevant employee's service subsequent to giving him notice for a reasonable time period.
 - (n) To make regulations relating to appointment, transfer, promotion, disciplinary control and service termination of employees of a co-operative society and matters incidental thereto.
 - (2) In the exercise of the powers vested in the Commission by Sub - Section. (1) the Commission may modify, vary or revise or set aside any decisions or determinations made by the commission.

13. The expenses of the Commission shall be paid out of the moneys provided for the purpose by the provincial Council Annual Appropriation Statute and Supplementary Estimates.

Part II**CO-OPERATIVE SOCIETIES AND THEIR EMPLOYEES**

Co-operative society to be considered as an employer

14. A Co-operative society which for the time being pays out of its funds the salary and other emoluments of any employee shall be deemed to be the employer of such employee.

Co-operative societies and their employees to be subject to direction of the Commission.

15. Any Co-operative society, and any employee of such society, shall be subject to such directions as may be given by the Commission under this Statute and all decisions of the Commission in the discharge and exercise of its functions and powers under this statute shall be subject to the provisions of Section 12(2) and shall be final.

Directions of Commission to be binding upon Co-operative societies.

16. All directions given by the Commission in regard to any employee of any Co-operative society, subject to the provisions of Section 12(2) shall be final and binding upon such employee as if such directions were given by such society.

Changes that arises subsequent to this statute.

17. Any direction, order made under Cooperative Employees' Commission Statute No. 01 of 1994 or any other written law shall be valid and enforce as a direction, order made under this statute.

Qualifications relating to residing.

18. No persons shall be appointed to any post in a Co-operative society in any district in the Western Province unless that person has been resident within that District for a period of two years at least;

Provided however that where in the opinion of the Commission, no suitable candidate is available in any District for any post in any Co-operative society in the District, the Commission may permit that society to fill that post by appointing a suitable person from candidates of any other district of the Province.

Secondment of officers of Provincial Public Service.

19. Notwithstanding any other provisions of this statute the Commission may with the concurrence of the Minister and the approval of the Provincial Public Service Commission and with the consent of the relevant officer may appoint an officer in the Provincial Public Service to any office in the Co-operative society. Wherein, this Commission holds the power to approve the relevant service conditions for a maximum of two terms consisting two years per term to an officer of the Provincial Public Service who has been put on secondment in that manner.

Salary of employees of Co-operative societies.

20. Every Co-operative society shall out of its funds pay the salary and other allowances, if any, of its employees.

Transfer of employees of Co-operative societies.

21. (1) A Co-operative society shall have the power to transfer any employee of such society from any one of its work places to any other of its work places, and where such transfer is made for any reason other than on disciplinary grounds such transfer shall not adversely affect the emoluments of any such employee.

(2) The commission shall have the power to transfer any employee of a Co-operative society to another Co-operative society as an employee of the latter society at the joint request of two employees holding posts of similar status, provided that the concurrence of the respective employers has been previously obtained.

(3) (a) On a reasonable request made by an employee of Co-operative of a Co-operative society within the Western Province to transfer to a Co-operative society of another province, the Commission may provide its recommendation on the consent of two respective Co-operative societies to the Provincial Co-operative Employees Commission of the relevant province.

(b) Subsequent to considering about the consent of both Co-operative societies and other required qualifications regarding a transfer request made by an employee of a Co-operative society of another province through the Co-operative Employees Commission of the relevant province, such transfer may be approved.

(4) Above Sections (1), (2), (3) will only be relevant to permanent employees of co-operatives approved by the Commission.

22. No employee of a Co-operative society shall be suspended dismissed or otherwise punished by any Co-operative society except in accordance with the provisions of this statute or any regulations made thereunder.

Dismissal and punishment of employees of Co-operative Societies

23. (1) A co-operative society shall not require any employee to furnish by way of security an amount in excess of such sum as the Commission may prescribe.

Security
Furnished

(2) Any cash security furnished by any employee of a co-operative society shall be invested in a state bank in the name of the society, and any interest accruing thereon shall be paid to that employee on his retirement or resignation.

24. (1) Every regulation made under this statute by the Commission and approved by the minister, subsequent to its pronouncement by way of a *Gazette* notification, shall be considered as equally valid as a provision made under this statute and it shall have a legal authority of its own.

(2) Cooperative societies and their employees shall be bound to accept and follow every regulation enforced under this statute as a provision made under this statute.

25. Every co-operative society which is an employer and every employee of such society shall contribute periodically to the Employees Provident Fund and Employee's Trust Fund such amounts as may be required by relevant written law.

Provident Fund and Employees Trust Fund

26. Eventhough service is obtained prior to or later to a date of effect of this statute, all employees by which society their service was obtained, shall be considered as employees of that society and employed in service therein and be faithful to such society.

Co-operative employees to be employees of the society and not of the commission.

Part III

POWERS OF THE COMMISSIONER

27. (1) The commissioner shall have the power to grade each co-operative society for the purpose of fixing scales of salaries for posts in co-operative societies and to determine the grades or classes of employees and the number of employees in each such grade or class of any co-operative society and vary it as he may deem necessary, from time to time.

Commissioner to grade societies and determine staff.

(2) No co-operative society shall employ any person in contravention of the determination made by the commissioner under sub-section (1).

28. The Commission shall with the concurrence of the commissioner determine the scales of salary to be attached to any such post or posts in any class or grade and revise such scales of salaries from time to time.

The commission to secure the concurrence of the commissioner regarding salary scales etc.

Part IV

MISCELLANEOUS

Immunity of individual members of the commission.

29. No legal proceeding shall be instituted against any individual member of the Commission or the Secretary of the Commission or an officer of the staff in respect of any act done with *bona fide* intent or omitted to be done by him or a decision taken by the Commission as per powers of this statute or any act carried out or not carried out as per such powers.

Engagement of contractual casual or daily paid employees.

30. (1) A co-operative society may in the interests of its efficient operation engage the services of an expert or any specialist for any defined term, maximum being a period of six months, on a contractual basis with the prior approval of the commission.
- (2) A co-operative society may engage casual or daily-paid employees or employees paid on a piece rate basis for a maximum period of six months.
- (3) Provided, however, that no permanency of tenure of the office shall be granted to any employee recruited under above (1) and (2) without the concurrence of the commission.
- (4) In the event of employing an employee by any cooperative society contrary to provisions of this statute, any emoluments or allowances, if paid to such employee, shall all be recovered by Commissioner as a surcharge from the relevant parties responsible for such payment.

Offences and penalties.

31. (1) Any co-operative society or any officer or employee thereof -
- (a) Which or who contravenes the provisions of this statute ; or
- (b) Which or who willfully neglects or refuse or fails to do any act required by the Commission to be done, or to furnish any information, required for the purpose of this statute by the Commission or other duly authorized person ; or
- (c) Which or who willfully presents a false quarterly report or furnishes false information;
- Shall be guilty of an offence under this statute.
- (2) The Director Board of a co-operative society or each individual member thereof or any officer or employee of a cooperative society, collectively or individually bound to be liable for such an offence.
- (3) Every co-operative society or officer which or who commits any offence referred to in above sub-section (1) shall, on conviction after summary trial before a Magistrate, be liable to a fine not less than Fifty Thousand Rupees and not exceeding Hundred Thousand Rupees or imprisonment of not more than six months or both such fine and imprisonment.
- (4) Where any offence under this statute is committed by a co-operative society, every officer of that society shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.
- (5) On the conviction of any co-operative society or officer or employee for failure to carry out any such instructions or order given by the Commission, such co-operative society or officer or employee shall be liable -
- (a) To a penalty or imprisonment prescribed under above sub-section (3) or both such penalty and imprisonment or to pay, in addition to any punishment that may be imposed on such co-operative society under sub-section (3) a fine of Five Thousand Rupees for each day on which the failure is continued after the given date of conviction thereof; and
- (b) to take action to reinstate in service the said employee in the event of defaulting instructions made by the Commission ordering reinstating of an employee.

(6) To pay such employee the remuneration which would have been payable to him if he had been in such service on each such day and on each day of the period commencing on the date on which he should have been reinstated in service according to the instructions of the Commission and ending on the date of the conviction of such co-operative society, computed at the rate of salary or wages to which he would have been entitled if his services had not been terminated. Any sum which a co-operative society is liable to pay may be recovered on the order of the court by which it was convicted as if it were a fine imposed on it by that court and the amount so recovered shall be paid to the employee.

32. Every person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person, in any manner whatsoever influences or attempts to influence any decision of the Commission or any member thereof or an officer of the staff of the Commission shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not less than Fifty Thousand Rupees and not exceeding Hundred Thousand Rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Interference with the affairs of the Commission

33. No member of the Commission, nor the Secretary of the Commission, nor any member of the staff of the Commission, nor any other person shall publish or disclose to any person, otherwise than in the exercise of his official functions, the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.

Unauthorized disclosure of information prohibition.

34. No person shall in any legal proceeding be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member or officer thereof and any co-operative society or any member of the committee of management of such society or officer thereof in the exercise of, or in connection with the exercise of any of the functions of the Commission, unless the Chairman consents in writing to such production or disclosure.

Communication of the Commission to be privileged.

35. The Commission shall not entertain an appeal which relates to an appeal made under the Industrial Disputes Act, No. 43 of 1950 or in the event of a matter relevant to this is pending in any other Court - of- Law.

Application of the Industrial Disputes Act to Cooperative Societies and their employees.

36. In this statute, unless the context otherwise requires:-

"Commissioner" means the commissioner of co-operative Development and Registrar of co-operative societies of the Western Province;

Interpretation

"Co-operative society" means a society, association, board registered under the law relating to co-operative societies and functioning within the Western Province and the head office of which is established within the Western Province;

"District" means Colombo, Kalutara and Gampaha Districts within the Western Province;

"Employee" means an employee of a co-operative society within the meaning of this statute;

"Minister" means the Provincial minister to whom the subject or function of co-operative development has been assigned in the Western Province;

"Officer" means Chairman of a society, association or board or Deputy Chairman, Secretary, Treasurer, or Committee member of a Society, member of Director board or any other person delegated with power through committee orders or by-laws of the committee to issue directives on committee affairs;

"Province" means the Western Province.

37. In the event of any inconsistency between Sinhala, Tamil and English texts of this statute, the Sinhala text shall prevail.

Sinhala Text to prevail in case of inconsistency.

Schedule 01**OATH OR AFFIRMATION OF CHAIRMAN/MEMBER OF THE COMMISSION**

I having been appointed the Chairman/
a member of the Co-operative Employees Commission do swear/ solemnly and sincerely affirm that I will,
without fear or favor, affection or ill-will, discharge the function of the office of Chairman/ member of the
Co-operative Employees Commission of Western Province and that I will not, directly or indirectly reveal
any matters relating to such functions to any person otherwise than in the course of duty.

.....

Sworn / Affirmed before me this day of 20.....

JUDGE OF THE COURT

Schedule 02**OATH OR AFFIRMATION OF OFFICER OF THE COMMISSION**

I having been called upon to exercise
the functions of the Secretary of/an officer of the Co-operative Employees Commission of the Western
Province do swear / solemnly and sincerely affirm that I will not, directly or indirectly, reveal to any person
otherwise than in the course of duty any matter or any part thereof which may come to my knowledge in the
course of my duties as the Secretary / an officer of the co-operative Employees Commission of Western
Province.

.....

Sworn / Affirmed before me this day of 20.....

CHAIRMAN
CO-OPERATIVE EMPLOYEES COMMISSION
WESTERN PROVINCE

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