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SOCIALIST REPUBLIC OF
SRI LANKA**

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MINIMUM RETIREMENT AGE OF WORKERS

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BILL

**to provide for the minimum retirement age at which an employer may
retire any worker and for matters connected therewith or incidental
thereto.**

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Minimum Retirement Age of Workers

L.D. – O. 27/2021

AN ACT TO PROVIDE FOR THE MINIMUM RETIREMENT AGE AT WHICH AN
EMPLOYER MAY RETIRE ANY WORKER AND FOR MATTERS CONNECTED
THEREWITH OR INCIDENTAL THERETO

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

1. This Act may be cited as the Minimum Retirement Age of Workers Act, No. of 2021. Short title

5

PART 1

MINIMUM RETIREMENT AGE

2. Notwithstanding the provisions of any other written law, a contract of service, collective agreement or any other form of contract of service, the minimum retirement age of a worker who has not attained the age of fifty two years on the date of operation of this Act or who is recruited after the date of coming into operation of this Act shall be upon such worker attaining the age of sixty years (hereinafter referred to as the “minimum retirement age”): Minimum retirement age

10

15 Provided that, the minimum retirement age of a worker who has reached the age of fifty two years or above, on the date of coming into operation of this Act, shall be deemed to be the age as specified in Schedule I.

3. (1) Any employer who employs fifteen or more workers shall not retire any worker other than the workers specified in Schedule II, and any worker engaged in any trade or occupation as shall be prescribed by regulation, from time to time, in keeping with the nature of the work until such worker attains the minimum retirement age: Premature retirement

20

25 Provided that, any employer may prematurely retire any worker in terms of the provisions of the contract of service or the collective agreement on following grounds:-

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- (a) upon being sick;
- (b) on disciplinary grounds;
- (c) upon closure or the destruction of an establishment due to any natural cause; or
- 5 (d) with the prior written approval of the Commissioner-General under the provisions of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971.

(2) The provisions of subsection (1) shall not apply to
10 any employer who has employed fifteen workers or less than that on an average within the twelve months period prior to the retirement of any worker.

(3) Any worker who wishes on his own to vacate his job prior to the minimum retirement age may on his own do so.

- 15 4. Any retirement age specified in a contract of service, collective agreement or any other form of contract of service entered into before or on or after the date of operation of this Act, as less than the minimum retirement age shall subject to the provisions of section 3 be deemed to be void and the
20 minimum retirement age as specified in this Act shall apply in respect thereof.
- Term of contract of service & etc. contrary to the provisions of this Act to be void

PART 11

COMPLAINTS AND INQUIRIES

- 25 5. (1) Any worker who has been prematurely retired by the employer other than in the manner specified in subsection (1) of section 3, may within two months from the date of such retirement, complain in writing to the Commissioner-General in respect of such retirement.
- Complaints to the Commissioner-General against premature retirement

(2) Where any worker has made a complaint to the Commissioner-General under subsection (1), the Commissioner-General shall, conduct an inquiry and within two months from the date of receipt of such complaint grant
5 his final determination on the complaint.

(3) Upon an inquiry under subsection (2), if the Commissioner-General is satisfied that-

(a) the complaint made by the worker is not substantiated with supporting evidence, or such
10 premature retirement is in accordance with the provisions of subsection (1) of section 3, the Commissioner-General shall dismiss such complaint; or

(b) the worker has been prematurely retired by his
15 employer contrary to the provisions of this Act, the Commissioner-General shall by notice issued by him to the employer, direct the employer –

(i) to reinstate such worker from the date of such notice, in the same capacity in which the worker
20 was employed prior to such retirement and to pay him his wages and all other benefits from the date of such retirement; or

(ii) where the Commissioner-General is of the opinion that reinstatement is impractical due
25 to the closure of the establishment or commencement of liquidation process of the establishment in which such worker was employed, to pay the worker compensation in terms of the formula determined by the
30 Commissioner-General as specified in section 6D of the Termination of Employment of

5 Workmen (Special Provisions) Act, No.45 of 1971, based on the last paid wages to such worker up to the date of closure of such establishment or the date of commencement of liquidation of such establishment, as the case may be, in lieu of reinstatement.

(4) Where any worker who has prior to coming into operation of this Act made a complaint in terms of the Industrial Disputes Act (Chapter 131) or the Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971 to the Commissioner-General, a Labour Tribunal, an arbitrator or an Industrial Court against premature retirement and a final determination has not been made on such complaint by the Commissioner-General, Labour Tribunal, arbitrator or Industrial Court, the Commissioner-General has no power to inquire into a complaint made under this Act:

20 Provided that, if the worker has made a complaint in terms of the Industrial Disputes Act (Chapter 131) or the Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971 against the premature retirement such worker shall not be entitled to make a complaint under this Act.

25 **6.** (1) An employer who is dissatisfied with a decision of the Commissioner-General made under section 5 may make an application to the Court of Appeal against such decision, for the issue of an Order in the nature of a writ. An employer who makes such application shall furnish to the Commissioner-General, a security in cash, where the Order for which is subject to such application directs –

Application
to the Court
of Appeal

(a) only the payment of a sum of money to the worker, of an amount equal to such sum;

(b) both the payment of a sum of money to the worker and his reinstatement, of an amount equal to such sum and twelve times the monthly salary or wages of such worker that was at the time his contract of service was terminated. In the case of a daily paid worker, monthly salary or wages shall be twenty-six times the daily wages of such worker.

(2) The Court of Appeal shall not entertain an application for the issue of an Order in the nature of a writ where such application is not accompanied by a certificate of the Commissioner-General to the effect that the applicant has furnished the security in cash.

(3) The Commissioner-General shall cause all monies furnished as security under this section, to be deposited in an account bearing interest, in any approved bank in Sri Lanka. The security shall be released to the relevant parties in terms of the final determination of the Court of Appeal or of the Supreme Court, as the case may be.

PART III

20 ADMINISTRATION OF THE ACT AND POWERS OF THE
COMMISSIONER-GENERAL

25 **7.** The Commissioner-General of Labour shall be in charge of the administration of this Act and may delegate any of his powers, duties and functions under this Act to any officer of the Labour Department as authorized by the Commissioner-General of Labour.

8. (1) The Commissioner-General shall for the purposes of any inquiry in respect of a complaint made under section 5, have the following powers of a District Court -

30 (a) to summon and compel the attendance of witnesses;

 (b) to compel the production of documents; or

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5 (c) to require the evidence of any witness to be given on oath or affirmation or cause to be administered by an officer authorized in that behalf by the Commissioner-General an oath or affirmation to every such witness.

(2) The Commissioner-General may by notice in writing served on any employer direct such employer to furnish to him before a date as specified in such direction-

10 (a) a return relating to all his workers or any class or description of such workers and any particulars as the Commissioner-General may require for the purposes of this Act;

15 (b) such information or explanation as the Commissioner-General may require in respect of any particulars stated in any return furnished by such employer; or

(c) certified true copies of the whole or any part of any register or record maintained by such employer.

(3) Every person who –

20 (a) fails without cause to appear before the Commissioner-General at the time and place mentioned in the summons issued by the Commissioner-General; or

25 (b) refuses to be sworn or affirmed as a witness before the Commissioner-General or any officer authorized by the Commissioner-General in that behalf;

(c) refuses to extend the assistance required by the Commissioner-General as necessary for entry or inspection or the exercise of his powers; or

- (d) hinders or obstructs the Commissioner-General in the exercise of the powers conferred on the Commissioner-General; or
- 5 (e) refuses to produce any register or record of wages or give any information which the Commissioner-General requires him to produce or give under the powers conferred on the Commissioner-General; or
- 10 (f) makes or causes to be made any register or record of wages which is false in any material particular, or produces or causes or knowingly allows to be produced any such register or record to the Commissioner-General acting under the powers conferred on him, knowing the same to be false; or
- 15 (g) furnishes any information to the Commissioner-General acting under the powers conferred to him, knowingly the same to be false; or
- 20 (h) (i) fails without cause, or with cause which in the opinion of the Commissioner-General is unreasonable, to appear before the Commissioner-General at the time and place mentioned in any summons issued by the Commissioner-General; or
- 25 (ii) refuses or fails without cause or with cause which in the opinion of the Commissioner-General is unreasonable, to produce and show to the Commissioner-General any document which is in his possession or power and which is in the opinion of the Commissioner-General necessary for arriving at the truth of the matters
- 30 being inquired into by the Commissioner-General; or
- (iii) refuses to be affirmed or sworn in as a witness before the Commissioner-General; or

- (iv) defaults in complying with any direction given by the Commissioner-General, or who when called upon to furnish a return knowingly makes or furnishes or caused to be furnished a false return or a return containing any false statement,

under this section, commits an offence and shall be liable on conviction thereof after summary trial before a Magistrate to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

9. Any notice which is required by this Act to be served on or given to any person shall if it is not served on or given personally to such person, be deemed to have been duly served on or given to such person if it is sent to him by registered post addressed to the usual or last known place of abode or business of such person.

Service of
Notices

10. (1) The Minister may make regulations in respect of all matters which are stated or required by this Act to be prescribed or in respect of all matters for which regulations are required or authorized to be made by this Act.

Regulations

(2) Every regulation made by the Minister under this section shall be published in the *Gazette* and shall come into operation upon such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister under this section shall within three months from its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything previously done thereunder.

PART IV

OFFENCES AND PENALTIES

11. Any employer who contravenes the provisions of subsection (1) of section 3 commits an offence and shall on conviction be liable to a fine not exceeding five thousand rupees or imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. Premature retirement
12. (1) An employer who fails to comply with a direction specified in the notice issued by the Commissioner-General under section 5, commits an offence and shall be liable on conviction after summary trial by a Magistrate to a fine not less than five thousand rupees or to an imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. Non-compliance with the directions of Commissioner-General
- (2) The burden of proof that the employer has complied with the directions of the notice issued by the Commissioner-General under section 5 lies on such employer.
- (3) Upon conviction of an employer under this section such employer shall –
- (a) pay in addition to the fine such employer is liable to pay under subsection (1), an additional fine of one hundred rupees in respect of each day he continues to fail to comply with such direction after conviction;
- (b) pay to the worker the wages, benefits or compensation under paragraph (b) of subsection (3) of section 5, which would have been payable to such worker if such worker had been in employment without being retired for the period commencing on the date specified in the notice issued under section 5 and ending on the date of conviction of such employer;

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(c) where the worker attains the minimum retirement age prior to the date of conviction of such employer, pay to the worker the wages, benefits or compensation until the date on which he attains the minimum retirement age.

(4) Any sum which an employer is liable to pay under paragraph (b) of subsection (3) may be recovered by the Order of the Court by which such employer was convicted as if it were a fine imposed on the employer by that Court and the amount so recovered shall be paid to the worker.

13. Where any offence under this Act is committed by a body of persons, then, if such body –

Offences
committed
by a body of
persons

- (a) is a body corporate, every director and officer of that body corporate;
- (b) is a firm, every partner of that firm ;
- (c) if such body of persons is a trade union, every officer of that trade union; and
- (d) is a body other than a firm or trade union and unincorporated, the president, manager, secretary and every officer of such body,

shall be deemed to be guilty of that offence:

Provided that, no such person shall be deemed to be guilty of an offence under this Act, if such person proves that such offence was committed without his knowledge or he exercised all due diligence to prevent the commission of such offence.

14. Where any person –

Contempt
against the
Commissioner-
General

(a) insults or intimidates the Commissioner-General during the progress of any inquiry conducted by the Commissioner-General under this Act; or

5 (b) interferes with the lawful process of such inquiry, conducted by the Commissioner-General,

such person commits the offence of contempt against the Commissioner-General.

15 **15.** Every offence under this Act shall be triable summarily by a Magistrate having jurisdiction in the division of the place where the worker was last employed.

Offences under this Act to be tried summarily

16. The proceedings at any inquiry held by the Commissioner-General for the purposes of this Act shall be conducted by the Commissioner-General in any manner not inconsistent with the principles of natural justice.

Proceedings of inquiry by the Commissioner-General to be not inconsistent with the principles of natural justice

15 **17.** (1) Where any employer is charged with an offence under this Act, such employer shall upon complaint duly made by him in accordance with the provisions of section 136 of the Code of Criminal Procedure Act, No.15 of 1979 and on giving to the prosecution not less than three days' notice of his intention, be entitled subject to the provisions of Chapter XIV of that Act to have any other person whom he charges as the actual offender, brought before the court, and if after commission of the offence by such other person has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Act and that such other person has committed the offence without his knowledge, consent or connivance, then, that such other person shall be convicted of the offence and the employer shall be exempt from any punishment in respect of the offence.

Special defense open to a person charged with an offence under this Act

(2) Where in any case referred to in subsection (1), a complaint is made by an employer against any other person –

- (a) the prosecution against such other person shall be conducted by or on behalf of the employer;
- 5 (b) any witness called by the prosecution in the proceedings against such other person may be cross examined by any officer authorized in that behalf by the Commissioner-General; and
- 10 (c) pending the determination of the proceedings against such other person, the proceedings in the prosecution of the employer shall be adjourned.

18. In this Act, unless the context otherwise requires – Interpretation

15 “Commissioner-General” means the Commissioner-General of Labour and includes any Additional Commissioner-General of Labour, Commissioner of Labour, Deputy Commissioner of Labour, an Assistant Commissioner of Labour or any Labour Officer;

20 “employer” means any person who employs any worker or causes to be employed any worker on behalf of any other person and includes a body of employers whether such body is a firm, company, corporation, trade union or a body unincorporated, but does not include any such
25 other person or such body which are excluded from any provision or any regulation made under the provisions of this Act;

30 “employment of casual nature” means an employment of a worker not in excess of thirty six days in any one calendar year;

- 5 "fixed term employment" means a written contract of employment for a fixed term of time, specified in days, months or years between an employer and a worker and includes a consecutive fixed term contract entered into with the same individual where such contract is specifically linked to the performance of a particular task or project and the employer retains the services of such worker after the end of such fixed term contract without entering into a new employment for more than six calendar months, which shall be deemed to have extended for a length of time identical to the existing fixed term employment contract;
- 10
- 15 "probationary worker" means a worker who works for a period of not exceeding 180 days within which such period the employer has the sole discretion to decide whether such worker is suitable for a particular position and if not may
- 20 decide to extend such period for a maximum period of ninety days, and does not include a worker if such worker has been employed in the same post or performed the same work previously on any contract of service with that
- 25 employer;
- "seasonal employment contract" means a written contract of employment between an employer and a worker in respect of a specified seasonal work for a time to be specified in such contract
- 30 in days or months and entered into on an actual or other basis and which shall not be deemed indefinite term contract if the time of engagement in each twelve month period shall not exceed six months;
- 35 "worker" shall have the same meaning assigned to the term "workman" in the Industrial Disputes Act (Chapter 131);

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”wages” means the basic salary or salary and the cost of living allowance or any other similar allowance.

- 5 **19.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.
- Sinhala text to prevail in case of inconsistency

SCHEDULE I section 2

Age of worker as at the date of coming into operation of the Minimum Retirement Age of Workers Act *Minimum Retirement Age*

54 or above and below 55 years	57 years
53 or above and below 54 years	58 years
52 or above and below 53 years	59 years
Below 52 years	60 years

SCHEDULE II section 3(1)

1. Any employer or worker in the Government sector.
2. Any worker in any statutory body established under written law.
3. Any worker of Government owned business undertakings registered under the Companies Act, No. 7 of 2007.
4. Any worker in any Provincial Council or Local Authority.
5. Any worker recruited by any registered society within the meaning of the Cooperative Societies Law, No. 5 of 1972.
6. Any worker of a charitable institution that has been identified by section 68 of the Inland Revenue Act, No. 24 of 2017.

7. Any foreign worker who is not a citizen of Sri Lanka.
8. Any worker entered into any contract of service for training in any trade or occupation.
9. Any apprentice or trainee in any wages board established under the Wages Boards Ordinance (Chapter 136).
10. Any apprentice or trainee covered by the Tertiary and Vocational Education Act, No. 20 of 1990 or the Employment of Trainees (Private Sector) Act, No. 8 of 1978.
11. Any worker who enters into and works under a fixed term employment contract or casual employment contract.
12. Any worker who enters into and works under a contract of fixed term employment with an employer.
13. Any worker who enters into and works under a seasonal employment contract with an employer.
14. Any part time worker who enters into contract of service with an employer.
15. Any probationary worker who enters into contract of service with an employer.
16. Any daily paid worker who engages in an employment of casual nature.
17. Any student who serves under a contract for a temporary term of employment during study leave.
18. Any domestic service.
19. Any worker who serves under a contract for an assignment basis employment, entered into with an employer.

