



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 01st OCTOBER, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 01st October, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-170/2021/5571.— The Khyber Pakhtunkhwa Employees Social Security Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24th August, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 09th September, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA EMPLOYEES SOCIAL SECURITY ACT, 2021.
(KHYBER PAKHTUNKHWA ACT NO. XX OF 2021)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 01st October, 2021).

AN ACT

to provide benefits to certain employees and their dependents in the event of sickness, maternity, employment, injury or death

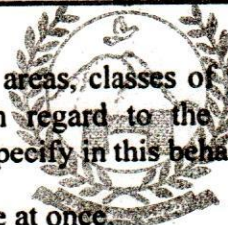
WHEREAS it is expedient to provide benefits to certain employees and their dependents in the event of sickness, maternity, employment injury or death and for matters connected therewith and ancillary thereto;

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

CHAPTER-1 **PRELIMINARY**

1. **Short title, extend, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Employees Social Security Act, 2021.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.



(3) It shall apply to such areas, classes of persons, industries or establishments from such date or dates, and with regard to the provisions of such benefits as the Commissioner may, by notification, specify in this behalf.

(4) It shall come into force at once.

2. **Definitions.**—(1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) “appointed day” means in relation to any area, class of persons, industries, establishments or benefits, the day on which this Act is applied to such area or in respect of such class of persons, industries, establishments or benefits;
- (b) “Chairperson” means the Chairperson of the Governing Body;
- (c) “Chief Minister” means the Chief Minister of the Province of Khyber Pakhtunkhwa;
- (d) “Collector Grade-1” means the Collector Grade-1 as defined in the West Pakistan Land Revenue Act, 1967 (W.P. Act No. XVII of 1967);
- (e) “Commissioner” means the Commissioner of the Institution;
- (f) “confinement” means labour resulting in the issue of a living child or labour after twenty-six weeks of pregnancy resulting in the issue of a child, whether alive or dead;
- (g) “contribution” means the sum of money payable to the Institution by an employer in respect of an employee in accordance with the provisions of this Act;
- (h) “dependent” means the spouses, parents and the unmarried children under the age of twenty-one years, dependent upon the secured person:
 Provided that such age limit shall not apply to the unmarried dependent daughters;
- (i) “disablement” means a condition caused by an employment injury which, as certified by a medical practitioner authorized for the purpose as provided in the regulations, has permanently reduced or is likely to be reduced permanently a secured person’s earning capacity, and disablement shall be “minor” where the loss of earning capacity is less than twenty per centum, “partial” where the loss of earning capacity ranges from twenty-one per centum to sixty-six per centum, and “total” where the loss of earning capacity is in excess of sixty-six per centum;
- (j) “domestic servants” means any person working for at least eight (8) hours a day and twenty-six (26) days a month in connection with the work of any household for any consideration, whether in cash or in kind.

- (k) "employee" means any person employed, whether directly or through any other person for wages or otherwise to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection with, the affairs of an industry or establishment, under any contract of service or apprenticeship, whether written or oral, expressed or implied, but does not include:
- (a) persons in the service of the State, including members of the Armed Forces, Police Force and Railway servants;
 - (b) persons employed in any undertaking under the control of any Defense Organization or Railway Administration;
 - (c) persons in the service of a local council, a municipal committee, cantonment board or any other local authority;
 - (d) person in the service of his father, mother, wife, son or daughter, or of her husband; and
 - (e) person employed on wages exceeding the amount sixty percent higher than the minimum wages duly notified by Government or determined under section 12 of this Act;
- Provided that an employee once become a secured person shall not ceased to be a secured person for the reason that his monthly wages exceed the amount sixty percent higher than the minimum wages duly notified by Government or determined under section 12 of this Act;
- (l) "employer" means in the case of works executed or undertakings carried out by any contractor or licensee on behalf of the State, the contractor or licensee working for the State, and in every other case, the owner of the industry, business, undertaking or establishment in which an employee works and also includes any agent, a manager or representative of the owner;
 - (m) "employment injury" means an injury to a secured person caused by an accident or by such occupational disease as may be specified in the regulations, arising out of, and in the course of his employment;
 - (n) "establishment" means an organization, whether industrial, commercial, agricultural or otherwise;
 - (o) "Fund" means the Employees Social Security provided under section 29 of this Act;
 - (p) "Governing Body" means the Governing Body of the Institution;
 - (q) "Government" means Government of the Khyber Pakhtunkhwa;
 - (r) "social security area" means an area to which this Act has been applied under sub-section (2) of section 1 of this Act;

- (r) "Industry" means any business, trade, undertaking, manufacturer or calling of employers, and includes any calling, service, employment, handicraft, industrial occupation or avocation of workmen;
- (s) "Institution" means the Khyber Pakhtunkhwa Employees' Social Security Institution, re-organized under section 3 of this Act;
- (t) "Labour Court" means the Labour Court established under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010);
- (u) "Medical Advisor" means the Medical Advisor appointed under section 16 of this Act;
- (v) "Medical Board" means a Board consisting of two or more medical practitioners, appointed under section 18 of this Act;
- (w) "medical practitioner" means a medical practitioner appointed by the Institution under section 18 of this Act;
- (x) "medical unit" means hospital, polyclinic, medicare centre, dispensary and medical posts etc; established by the Institutions from time to time;
- (y) "member" means a member of the Governing Body;
- (z) "minimum wages" means minimum wages notified by Government under the Khyber Pakhtunkhwa Minimum Wages Act, 2013 (Act No. XII of 2013);
- (aa) "prescribed" means prescribed by rules or regulations;
- (ab) "Province" means the Province of the Khyber Pakhtunkhwa;
- (ac) "registered trade union" means a trade union registered under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010);
- (ad) "regulations" mean regulations made under this Act;
- (ae) "repealed Ordinance" means the Provincial Employees' Social Security Ordinance, 1965 (W.P Ordinance No. X of 1965) as repealed under sub-section (1) of section 78 of this Act;
- (af) "rules" mean rules made under this Act;
- (ag) "secured person" means a person in respect of whom contributions are or were payable under this Act;
- (ah) "sickness" mean a condition which requires medical treatment or necessitates abstention from work on medical grounds;
- (ai) "social security area" means an area to which this Act has been applied under sub-section (2) of section 1 of this Act;

- (aj) "strike" and "lock-out" shall have the same meanings as are respectively assigned to them in the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010);
- (ak) "wages" means remuneration for service, paid or payable in cash or in kind, to a secured person, not less than remuneration based on the minimum rates notified under the Khyber Pakhtunkhwa Minimum Wages Act, 2013 (Khyber Pakhtunkhwa Act No. XII of 2013), without taking into account of deductions for any purpose, under a contract of service or apprenticeship, expressed or implied, and shall be deemed to include any dearness allowance or other additions in respect of the cost of living and any payment by the employer to a secured person for any period of authorized leave, illegal lock-out or legal strike; but does not include-
- (i) any payment for overtime; or
 - (ii) any sum paid to the person employed to defray special expenses entailed by the nature of his employment; or
 - (iii) any gratuity payable on discharge; or
 - (iv) any sum paid as bonus by the employer; and
- (al) "week" means a period of seven days commencing at midnight between Sunday and Monday.

(2) Words and expressions used in this Act but not defined herein shall have the same meanings as assigned to them in the relevant labour laws of the Province.

CHAPTER II **ORGANISATION**

3. Re-organization of the Institution.--- (1) Soon after the commencement of this Act, the Employees' Social Security Institution, established under section 3 of the repealed Ordinance, shall be reorganized in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Employees Social Security Institution.

(2) The Institution shall be a body corporate having perpetual succession and a common seal, with power, to acquire, hold and dispose of property, both movable and immovable, and shall by the aforesaid name sue and be sued.

(3) The head office of the Institution shall be at Peshawar, however, the Governing Body may transfer the head office of the Institution to such other place as may be specified in the notification published in the official Gazette in this behalf.

4. The Governing Body.--- (1) The Governing Body of the Institution shall be as follows:

- | | | |
|-----|--|----------------------|
| (a) | Minister for Labour, Khyber Pakhtunkhwa; | Chairperson |
| (b) | a representative from Labour Department not below the rank of Deputy Secretary; | Member |
| (c) | a representative from Industries Department, not below the rank of Deputy Secretary; | Member |
| (d) | a representative from Health Department, not below the rank of Deputy Secretary; | Member |
| (e) | a representative from Finance Department, not below the rank of Deputy Secretary; | Member |
| (f) | two persons to represent employers; | Members |
| (g) | two persons to represent secured persons; | Members |
| (h) | Medical Advisor of the Institution ; and | Member |
| (i) | Commissioner. | Member-cum-Secretary |

(2) The members under clauses (f) and (g) of sub-section (1), shall be appointed by the Chief Minister from a list of names submitted by the organizations of employers and employees recognized by Labour Department.

(3) Subject to the other provisions of this Act, a member under clauses (f) and (g) of sub-section (1) shall hold office for a period of three years.

5. Management.--- (1) The general control and superintendence of the affairs of the Institution shall vest in the Governing Body which, with the assistance of a Commissioner, may exercise all powers and do all acts and things which may be exercised or done by the Institution.

(2) In discharging its functions, the Institution shall be guided by such instructions on policy as may be given to it from time to time by Government, which shall be the sole judge as to whether such instructions are in line with the policy or not.

6. Power and functions of the Governing Body.--- The Governing Body shall, in addition to the powers conferred on, and the function entrusted to it by the other provisions of this Act or rules, have the powers to,-

- (a) approve the budget estimates, the audited accounts and the annual report of the Institution for submission to Government in accordance with the provisions of this Act; and
- (b) call for any information or direct any research to be made for the furtherance of the objects of this Act.

7. Meeting of the Governing Body.---(1) The meetings of the Governing Body shall be held at such date, time and place as may be prescribed by regulations.

(2) Meetings of the Governing Body shall be presided over by the Chairperson, and in his absence by the Secretary to Government Labour Department.

(3) Five members shall constitute quorum for a meeting of the Governing Body.

(4) Each member of the Governing Body shall have one vote and, all the decisions of the Governing Body shall be taken by the majority of the members present and voting, but the Chairperson shall not vote except in the case of equality of votes.

(5) The minutes of the meeting shall be recorded by the Secretary of the Governing Body.

8. Resignation.--- The members at clauses (f) and (g) of sub-section (1) of section 4, may resign from his office by addressing in writing to Chief Minister, and his seat shall fall vacant on the date of acceptance of the resignation.

9. Filling of casual vacancies.--- Any vacancy caused due to death, resignation or removal of any member under clause (f) and (g), of sub-section (1) of section 4, shall be filled in for the un-expired term of his predecessor.

10. Disqualification.--- No person shall be or shall continue to be a member, if he-

- (a) has been convicted of an offence involving moral turpitude; or
- (b) is declared to be of unsound mind by a competent Court; or
- (c) is an undischarged insolvent; or
- (d) has any direct or indirect interest in a contract with, or in any work being done for, the Institution, except as a shareholder not being a Director of a company; or
- (e) owes to the Institution contributions to the extent specified in the regulations; or
- (f) has lost the capacity by virtue of which he was appointed as a member; or
- (g) has failed to attend three consecutive meetings of the Governing Body.

11. Fees and allowances.---All the members of the Board including the Chairperson shall receive such fees, remunerations and allowances as may be prescribed by regulations.

12. Review and modification of wage limits, contribution and benefits.---(1) Governing Body may review the wage limits for the purpose of payment of contribution, the rates of contribution and benefits provided under this Act or in light of any changes in the wage levels or living costs and shall submit a report thereon together with its recommendations to the Government.

(2) Government may, after considering the said report and recommendations, by notification in the official Gazette, enhance or reduce the wage limits or the rates of benefits payable under this Act.

13. Delegation of powers.--- Governing Body may delegate any of its powers and functions to the Commissioner or any other officer of the Institution, subject to such conditions as may be specified by the Governing body.

14. Protection of proceedings of the Governing Body.--- No act or proceeding of the Governing Body shall be invalid or questioned merely on the ground of any vacancy therein or of any defect in the constitution thereof.

15. Commissioner and Vice Commissioner of the Institution.--- (1) The Secretary to Government Labour Department shall be the Commissioner of the Institution.

(2) The Commissioner shall be the Chief Executive Officer of the Institution and shall be responsible to the Governing Body in respect of all matters relating to the structure, administration and employees of the Institution. The Commissioner shall act as Secretary to the Governing Body.

(3) The Commissioner shall have such powers regarding appointment, transfer, promotion, dismissal and other matters affecting the staff of the Institution as may be by regulations.

(4) The Commissioner shall be the Principal Accounting Officer of the Institution.

(5) The Vice Commissioner of the Institution shall be posted by transfer on deputation from amongst PMS or PAS officers of BPS-19.

(6) The Vice Commissioner shall perform the duties of the Commissioner when the latter is absent or prevented by a sufficient cause from acting as Commissioner. The Commissioner may also assign responsibilities or delegate any of his power under this Act, the rules and regulations to the Vice Commissioner.

16. Medical Advisor.--- The Institution shall appoint a Medical Advisor on such terms and conditions, as may be prescribed by regulations.

17. Duties of Medical Advisor.---The Medical Advisor shall,-

- (a) advise the Governing Body on matters relating to the administration of medical care and the prevention and treatment of diseases among secured persons; and
- (b) perform such other duties in connection with medical care as may be specified in the regulations.

18. Medical practitioners and Medical Board.---The Institution shall appoint Medical Practitioners and Medical Board in social security areas, in such manner and on such terms and conditions having such qualification, experience and exercise the powers and function as may be prescribed by regulations.

19. Officers and staff of the Institution.---The Institution may employ such officers, advisors and other employees for the administration of the affairs of the Institution, on such terms and conditions, having such qualification and experience as may be prescribed by regulations.

CHAPTER III
CONTRIBUTIONS

20. Amount and payment of contributions.--- (1) Subject to the other provisions of this Act, the employer shall, in respect of every employee, pay to the Institution a contribution, at the rate of six per centum of their wages at such time, and subject to such conditions as may be prescribed by regulations:

Provided that no contribution shall be payable on that amount of an employee's wages which is in excess of the minimum wages or determined under section 12 of this Act.

(2) The employer shall not be entitled to deduct share of contribution from the employee's wages or otherwise to recover from him any portion of the contribution, notwithstanding any agreement to the contrary.

(3) For the purpose of determining the amount of contribution payable, daily wages shall be calculated in such manner as may be prescribed by regulations.

(4) In case of construction work, the owner of the building shall guarantee the payment of contributions by the contractors.

(5) In case of construction works executed, undertakings or carried out on behalf of the Government or the Federal Government, as the case may be, by a contractor or licensee, the relevant public authority shall, before final settlement of the claims of the contractor or licensee arising out of the contract, require the production of a certificate from the Institution showing that the necessary contributions have been paid, and in default of such certificate it shall deduct from the amount otherwise payable in settlement of such claim, the appropriate amount of the contribution payable, and pay such amount direct to the Institution.

21. Increase of unpaid contributions and recovery of contributions, etc, as arrears of land revenue.---(1) If any employer fails to pay, the contributions payable by him under sub-section (1) of section 20 of this Act, the due payable amount shall be increased by such percentage or fixed amount as may be prescribed by regulations:

Provided that in no case, such increase shall exceed fifty per centum of the amount due:

Provided further that no part of such increase shall be payable by the employees or no liability to pay such increase shall be passed on, by the employer to his employees.

(2) Without prejudice to any other remedy, the amount of the contributions due, together with the increase provided for under sub-section (1), may be recovered as arrears of land revenue.

22. Registration of establishment and employees.---(1) Every employer shall before the expiration of sixty days from the date on which this Act becomes applicable to the Industry or establishment in respect of which he is the employer, communicate to the Institution the name and other particulars of the Industry or establishment and of every secured person employed in the Industry or establishment in the manner as may be prescribed by regulations.

(2) Every employer shall keep such records and shall submit to the Institution such returns, at such times, in such form and containing such particulars relating to persons employed by him, as may be prescribed by regulations.

(3) Every secured person may also communicate his name and other particulars to the Institution.

(4) On receipt of a communication under sub-section (1) or sub-section (3), the Institution shall register the name of the Industry or establishment or the secured person in such manner and issue to the secured person registration card in such form as may be prescribed by regulations.

(5) Any employer who fails to register his Industry or establishment and employees as required under sub-section (1) shall be punishable with imprisonment for a term which may extend to one month or fine which may extend to two hundred thousand rupees but not less than twenty thousand rupees or with both.

23. Officials of the Institution to check employer's books of records.---(1) Any official of the Institution, duly authorized, may for the purpose of inquiring into the correctness of any of the particulars stated in the records or returns referred to in sub-section (2) of section 22 of this Act, or for the purpose of ascertaining whether any of the provisions of this Act have been complied with,-

- (a) require an employer to furnish to him such information as he may consider necessary; or
- (b) at any reasonable time, enter any establishment or other premises, presumed to be occupied by such employer and require any person found incharge thereof to produce and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages, or to furnish to him any such information consider necessary; or
- (c) examine, with respect to any matter relevant to the purposes aforesaid, the employer, his agent or any person found in such establishment or other premises, or any other person to whom said official has reasonable cause to believe to be a secured person.

(2) If an employer fails to maintain records or to submit returns as required under the regulations or otherwise fails to comply with the provisions of sub-section (1) and thereby makes it difficult to ascertain the identity of persons required to be secured or the amount of contribution payable, the contribution shall be assessed on the basis of such evidence as the Institution may find satisfactory for this purpose.

24. Safeguard of secured persons rights in default of payment of contributions by employer.--- In the event of default in payment of contributions by the employer, in respect of a secured person, such secured person shall, unless he has connived at such default have and may enjoy, the same rights under this Act as if no such default had occurred.

25. Return of contributions paid erroneously.---An employer shall be entitled to the refund of any contribution paid to the Institution under the erroneous belief that it was payable under the provisions of this Act, and shall be entitled to the refund of the excess amount of the contribution where such contribution had been paid at a higher rate than the rate prescribed by regulations:

Provided that where a contribution was paid under the erroneous belief that a person was a secured person, any sum paid to such person or his dependents by way of benefits shall, in so far as possible, be deducted from the amount of such refund:

Provided further that no contribution or excess amount of any contribution shall be refunded unless an application for such refund is made within six months of the date on which the contribution was paid.

26. Increase of contributions where safety rules not observed.---If an employer fails to observe rules of safety or hygiene prescribed by regulations or under any enactment applicable to his establishment, the Commissioner may, subject to regulations, by order in writing, increase the employer's rate of contribution:

Provided that such increase shall not exceed twenty per centum of the contribution otherwise payable:

Provided further that if the employer enhanced the safety or hygiene conditions as per relevant applicable law, then the increased rate of contribution shall be ceased.

27. Extinguishment of claims to contributions.--- Any claim of the Institution for unpaid contributions shall be extinguished by the Commissioner or any other officer of the Institution authorized by the Commissioner, in the manner as may be prescribed by regulations.

28. Payment of contribution as a debt.--- In any proceedings of insolvency against a person or proceedings for the winding up of a company, any contribution or other amount payable under this Act by such person or company shall be deemed to be included among debts to be paid on priority to all other debts.

CHAPTER IV **FINANCE AND AUDIT**

29. Employees Social Security Fund.---(1) The Institution shall have its own Fund, to be known as the Employees Social Security Fund. The necessary expenditure of the Institution may incur out of the said Fund.

(2) All contributions paid under this Act, and all other money received by or on behalf of the Institution shall be paid into the Fund, which shall be held and administered by the Institution for the purposes of this Act.

(3) The Institution may, for all or any of the purposes of this Act, as the case may be, accept grants, donations and gifts from the Federal Government or the Government, local authority, public or private body or person, as the case may be.

(4) All money accruing or payable to the Fund shall be paid into such scheduled bank as may be approved by the Governing Body, or to any office of the Institution in the manner as may be prescribed by regulations.

(5) As soon as after the commencement of this Act, the Institution shall digitize its record of accounts, all contributions received, medical care and cash benefits provided, registration of establishment and secured person in such manner as may be prescribed by regulations.

(6) Subject to the provision of this Act, the Institution shall maintain separate accounts for administrative expenses, and for such branches of social security and such other purposes as may be prescribed by regulations.

30. Investments and loans.---(1) Subject to the provisions of this Act and the rules made there under, the Institution may, from time to time, invest money in the Province which is not immediately required for payments under this Act, and may reinvest or realize such investments.

(2) The Institution may, with the previous sanction of Government, and on such terms as it may specify, raise loans and take measures for discharging such loans.

31. Budget.--- (1) The Institution shall, before such date and in such manner as may be prescribed by regulations, draw up estimates for the ensuing year in the following manner, namely:

- (a) administrative expenses of the Institution;
- (b) expenditure to be incurred under each of the branch of social security and other purposes for which separate accounts are maintained in accordance with sub-section (5) of section 29, of this Act; and
- (c) income of the Institution from contributions and other sources, if any.

(2) The Institution shall allocate the estimated income from contribution and other sources towards meeting capital expenditure and after allocating sufficient amount of the estimated income from contributions and other sources, if any, to cover the estimated administrative expenses, shall allocate the remainder of such estimated income among the branches of social security and other purposes referred to in clause (b) of sub section (1) above.

(3) Such estimates and allocations shall, before such date as may be prescribed by regulations be submitted to the Governing Body and, when approved by it, shall constitute the budget of the Institution for the ensuing year.

(4) If meeting of the Governing Body has not been held to approve such estimate and allocations before the commencement of the financial year to which such estimates relate, the Commissioner shall provisionally approve the estimates and allocations for the first quarter of the financial year, for smooth functioning of the affairs of the Institution and such estimates alongwith the estimates for the remaining financial year shall be placed before the Governing Body for final approval.

(5) If it appears that expenditure under any budgetary head is likely to exceed the budget provision, the Commissioner may increase such budget provision by re-appropriation stating cogent reasons thereto from any other budgetary head, any amount not required or not expected to be required under such head.

(6) Notwithstanding the application of the provisions of sub-section (5), it appears that expenditure under any budgetary head is likely to exceed the corresponding budget provision, or that income under any budgetary head is likely to fall short of the corresponding budget provision, the expected excess or deficiency, as the case may be, shall be reported to the Governing Body, which shall take such action, if any, as may deem appropriate:

Provided that no payment to which a claimant is entitled under this Act shall be withheld pending such action.

32. Account and audit.--- (1) The Institution shall maintain accounts of its income and expenditure of its assets and liabilities in such form and manner as may be prescribed by regulations.

(2) The Institution shall appoint an internal auditor who shall perform such duties and exercise such powers as may be provided by the regulations.

(3) The accounts of the Institution shall be audited by an external auditor appointed by Government at such times and in such manner as may be prescribed by rules.

(4) The external auditor shall have access to the books, accounts and other documents of the Institution at all reasonable times and may call for such explanations and information as he may require.

(5) The external auditor shall forward his report to Government together with an audited copy of the accounts of the Institution.

33. Annual reports.---(1) The Institution shall, within six months after the closing of a financial year, submit to Government an annual report of its work and activities during that financial year, and such report shall cover such matters as may be prescribed by regulation.

(2) The annual report, together with the audited accounts of the Institution, shall be published and copies thereof shall be made available for sale to the public.

34. Valuation of assets and liabilities.---The Institution shall, at intervals of not more than five years, have an actuarial valuation made of its assets and liabilities:

Provided that Government may direct a valuation to be made at such other times as it may consider necessary.

CHAPTER V
BENEFITS

35. Sickness benefit.---(1) A secured person, who is certified, by a medical practitioner in the manner as may be prescribed by the regulations, to be incapable of attending to his work on account of sickness shall, subject to regulations, be entitled to receive sickness benefit at such rate as may be fixed by the Governing Body, during the six calendar months immediately preceding the date on which his incapacity of work was so certified, contributions in respect of him were paid or payable for not less than ninety days.

(2) A secured person shall be entitled to receive sickness benefits throughout the period of sickness:

Provided that during a continuous period of three hundred and sixty five days such benefit shall not be allowed for a period exceeding-

- (a) three hundred and sixty five days, in case he has been suffering from tuberculosis or cancer which render an employee incapable to earn his livelihood; and
- (b) one hundred and twenty one days, in case he has been suffering from any other disease:

Provided that he shall not be entitled to receive such benefit for the first two days of his sickness if such sickness does not, within fifteen days, follow the previous period of sickness for which he received or was entitled to receive such benefit.

36. Maternity benefit.--- Subject to the provisions of this Act and the regulations made there under, a secured woman shall be entitled to receive maternity benefit at such rate as may be fixed by the Governing Body, if contributions in respect of her were paid or payable for not less than one hundred and eighty days during the twelve calendar months immediately preceding the expected date of her confinement as certified by the medical practitioner, and such benefit shall be paid for all days on which she does not work for remuneration during a period of twelve weeks, of which not more than six weeks shall precede the expected date of confinement.

37. Funeral grant.--- On the death of a secured person receiving or entitled to receive injury or sickness benefits, or disablement pension, or medical care at the time of his death, his legal heirs shall, subject to regulations made under this Act, be entitled to receive a funeral grant at such rate as may be fixed by the Governing Body.

38. Medical care of dependents after death of secured person.---Where a secured person dies, his dependents shall, subject to the regulations, be entitled to medical care for one year from the date of death of the secured person:

Provided that the deceased secured person had been in continuous employment of an establishment for not less than twelve months immediately preceding his death:

Provided further that where the deceased secured person was a seasonal employee, his dependents shall be entitled to medical care for six months from the date of death of such secured person:

Provided also that the deceased had been in employment of an establishment for not less than six months for two continuous seasons immediately preceding his death.

39. Iddat benefit.--- In case of divorce and death of husband of a secured woman, she shall, subject to the regulations, be entitled to receive iddat benefit during the period of her iddat, at such rate as may be fixed by the Governing Body:

Provided that a secured woman being a seasonal employee shall be entitled to receive iddat benefit in the same manner and to the same extent, notwithstanding termination of seasonal employment, during the period of iddat:

Provided further that no employer shall refuse leave for the period of iddat and such leave shall not be accounted towards leave provided under any other law for the time being in force.

40. Injury benefits.--- A secured person shall, subject to regulations, be entitled to receive injury benefit at such rate as may be fixed by Governing body by notification, in respect of any day including the day on which, as a result of an employment injury, a secured person is certified by a medical practitioners authorized by the institution in the manner provided in the regulations to give such a certificate to be incapable of work, but for not more than one hundred and eighty days.

41. Disablement pension.--- Where the secured person shall, upon the expiration of the injury benefit, having the certificate of medical board to receive injury benefit at such rate as may be fixed by the Governing Body sustains total or partial disablement, be entitled, subject to regulations made in this behalf, to disablement pension, at such rates for different categories of disablement as fixed by the Governing Body from time to time:

Provided that the disablement pension shall upon certificate of Medical Board be terminated when disablement ceases or upon the death of the recipient:

Provided further that if disablement pension has been paid for five years, it shall be payable for life time of the recipient.

42. Disablement gratuity.---(1) A secured person, who sustains minor disablement shall, subject to regulations and be entitled to a disablement gratuity at such rates for different degrees of disablement as may be fixed by the Governing Body by notification.

(2) Where a person receiving disablement pension ceases to suffer from total or partial disablement but continues to suffer from minor disablement as certified by the medical practitioner. He shall, on the termination of his disablement pension, be also entitled to disablement gratuity under this section.

43. Survivor's pension.---(1) Where a secured person dies as a result of employment injury, a survivor's pension shall, subject to the regulations and at the rate as fixed by the Governing Body from time to time, be payable to each of his dependents in the following manner:

- (a) to the widows, or widower, during life, at a rate equal to three fifths of the rate of total disablement pension to which the secured person was, or would have been entitled, and where there are two or more widows, the pension shall be divided equally between them; and
- (b) to each dependent child, at a rate equal to one fifth of the rate of such total disablement pension:

Provided that if the child is a full orphan, the rate shall be two fifths of the rate of total disablement pension:

Provided further that if and so long as the total survivor's pensions would otherwise exceed the rate of such total disablement pension, the pension of each of the survivors shall be reduced proportionately so that the total pensions payable to them do not exceed the rate of said total disablement pension.

(2) In case the deceased person does not leave a widows or widower, a survivor's pension shall be payable for life time to a dependent father, if he be alive, and if he as the case may be not alive, to a dependent mother, if she be alive, at a rate equal to one fifth of the rate of the total disablement pension to which the secured person was or would have been entitled.

(3) Where only father or mother is receiving the survivor's pension and the recipient dies leaving behind the other parent, such surviving parent shall be also entitled to the survivor's pension subject to the condition that the surviving parent is the real father or mother of the deceased secured person.

(4) Survivor's pensions shall be payable upon the death of the secured person and shall terminate-

- (a) upon the death of the survivor; or
- (b) where the survivor is a widow, upon her remarriage; or
- (c) where the survivors is a dependent child, upon his attaining the age of twenty one years:

Provided that such age limit shall not apply to dependent unmarried daughters and in any such case the pension of the remaining survivors shall, if necessary, be adjusted within the maximum limit as laid down in the second provision of sub-section (1).

44. Medical care during sickness and maternity.---(1) A secured person and his dependents shall be entitled to receive medical care to the extent and in the manner as may be prescribed by regulations.

(2) A secured woman shall, subject to regulations, be entitled to prenatal confinement and post-natal medical care, if she is entitled to maternity benefit under section 36 or if, during six calendar months immediately preceding her claim, contributions in respect of her shall be paid or payable for not less than ninety days.

45. Medical care in the case of employment injury.---(1) When medical care is required as a result of an employment injury-

- (a) no conditions as regards payment of contributions shall apply; and
- (b) it shall include dental care in addition to the services referred to in section 48 of this Act.

(2) A secured person who is in receipt of injury benefit or disablement pension for loss of earning capacity less than fifty per centum of a survivor's pension shall be entitled to medical care for so long as the injury benefit continue, and, in the case of a disablement pension being received by the secured person, for six months after the termination of the pension.

46. Extent of medical care.--- Medical care shall include:

- (a) general practitioner care, including domiciliary visiting;
- (b) specialist care in hospitals for in patients and out patients and such specialist care as may be available outside hospitals;
- (c) essential pharmaceutical supplies as prescribed by a medical practitioner;
- (d) hospitalization where necessary, including cases of pregnancy and confinement; and
- (e) pre-natal confinement and post-natal care, either by medical practitioners or by qualified midwives.

47. Manner of providing medical care.---(1) The medical care shall be provided to the secured persons in the manner as may be prescribed by regulations.

(2) The Institution may, with the approval of Governing Body, establish and maintain such medical units and other facilities as it finds necessary for providing medical care in pursuance of the provisions of this Act.

(3) Institution may buy or import and dispense pharmaceutical supplies to the secured persons through its medical units.

(4) The Institution, with the approval of Governing Body, may enter into agreements with Government, any local authority, private body or individual in regard to the provision of medical care to persons entitled to it under this Act.

(5) The Institution may enter into an agreement with an employer who maintains a medical unit for the benefit of his employees for the utilization of such medical unit for the purposes of the Institution and such agreement may, among other things, specify the persons to whom medical care shall be provided, the type of benefit to be made available, the minimum level of such benefit, the conditions under which such benefit shall be provided, the extent of supervision which the Institution may exercise over the medical unit, the submission of reports to the Institution by the employer, and the extent and manner of payment of contribution to the Institution and cash benefits to secured persons and their dependents.

48. Institution's power to promote measures for health, welfare etc, of secured persons.---The Institution, with the approval of Governing Body, may in addition to the benefits specified in this Act, undertake other measures for improving the health and welfare of secured persons and for the rehabilitation and settlement of such secured persons as may have been disabled or injured and may for that purpose incur expenditure from the Fund.

49. Manner of claiming benefit.--- (1) All claims for benefits under this Act shall be made within such times, in such a form and manner, and shall be accompanied by such documents, information and evidence as to the entitlement as may be prescribed by regulations.

(2) Payment in respect of benefits shall be made in such a manner, and at such times and places as may be prescribed by regulations.

50. Benefit not assignable or attachable.---(1) The right to receive any payment in respect of any benefit under this Act shall not be transferable or assignable.

(2) No benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court.

51. Bar on benefits under other law.---When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to any similar benefit under any other law.

52. Suit for damages in a Civil Court.---No suit for damages shall be instituted by a secured person against the employer in any Civil Court in respect of employment injury covered by this Act.

53. Non duplication of benefits.---(1) A secured person shall not be paid, for the same period, more than one of the benefits referred to in sections 35,36 and 40, and where any person is entitled to more than one of these benefits shall be given the one with the higher or highest of such benefits.

(2) No person shall be entitled to sickness benefit or maternity benefit or injury benefit for any day for which he receives wages.

54. Repayment of benefit improperly received.---(1) Where any person has received a benefit or payment under this Act to which he is not lawfully entitled, he shall be liable to repay to the Institution the value of the benefit or the amount of such payment, and, in the case of his death, his legal heirs shall be liable to repay the same from the assets of the deceased:

Provided that the Institution may waive off the repayment where there was no misrepresentation on the part of the beneficiary and the repayment would cause undue hardship to him, or as the case may be, to his survivors.

(2) For the purposes of this section, the value of any benefit received otherwise than in cash shall be determined in accordance with the regulations prescribed for that purpose.

55. Institution's right to recover damages from employer in certain cases.---Where, according to the finding of a Court, an employment injury was sustained by a secured person by reason of a wrongful act or omission of the employer or his agent, the employer or his agent shall reimburse to the Institution the actuarial present value of any periodical payment or the amount of any lump sum payment which the Institution is liable to make under this Act.

56. Institution's right to be indemnified in certain cases.---Where a secured person is entitled to receive or to recover, but has not received or recovered, from any person, compensation or damages in respect of any sickness or employment injury caused under circumstances creating a liability on some person other than, in case of employment injury, the Institution shall be entitled to be indemnified by the person so liable.

57. Extent of benefits, etc.---Notwithstanding anything contained in this Chapter, so much of wages of a secured person as are in excess of minimum wages determined by Government or determined under section 12 of this Act, shall not be accounted for the purpose of determining the rate of benefits provided under sections 35, 36, 37, 39, 40, 41, 42, 43, and 44 of this Act.

58. Medical treatment of domestic servants.---Every employer of a domestic servant shall be liable to provide at his own cost to the domestic servant medical care to the extent mentioned in section 46.

CHAPTER VI **DETERMINATION OF QUESTIONS AND CLAIMS**

59. Assessment of disablement.--- All questions as to the assessment of the degree of disablement shall be determined by a Medical Board or Medical Practitioner appointed under section 18 of this Act.

60. Decisions on complaints, question and disputes.---If any complaint is received or any question or dispute arises as to-

- (a) whether any person is a secured person within the meaning of this Act; or
- (b) the rate of wages or average daily wages of a secured person for the purposes of this Act; or
- (c) the rate of contribution payable by an employer in respect of an employee; or
- (d) the person who is or was the employer in respect of a secured person; or
- (e) any benefit and the amount and duration thereof; or

- (f) any other matter in respect of any contribution or benefit or other dues payable or recoverable under this Act.

The above mentioned question shall be decided by the Vice-Commissioner, in such a manner, and within such a time as may be prescribed by regulations and the Institution shall inform the person or persons concerned, in writing, stating therein the reason or reasons for its decisions:

Provided that where the question or dispute relates to demand or assessment of social security contribution, the complainant shall deposit twenty five percent of the demand or assessment to the Institution.

61. Appeal.---(1) Any person aggrieved of the decision under section 60 of this Act may, within thirty days, file an appeal to the Commissioner who, after giving to the person or persons concerned an opportunity of being heard and adducing evidence in support of or against the decision, as the case may be, shall decide the appeal in the manner as may be prescribed by regulations.

- (2) The decision made under sub-section (1), shall be final.

CHAPTER VII **OFFENCES AND PENALTIES**

62. Offences.--- If any person-

- (a) for the purpose of obtaining the allowance or denial of any payment or benefit under this Act, whether for himself or some other person, or for the purpose of avoiding any payment to be made by himself or any other person under this Act-
- (i) knowingly makes or causes to be made any false statement or false representation; or
- (ii) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular; or
- (b) fails to pay any contribution for which he is liable to pay under this Act; or
- (c) recovers or attempts to recover from a secured person, or deducts or attempts to deduct from his wages the whole or any part of the contribution; or
- (d) fails or refuses to submit any return required by regulations or makes a false return; or

- (e) obstruct any official of the Institution in discharge of his duties; or
- (f) is guilty of any contravention of, or non-compliance with, any of the requirements of this Act or the rules or regulations, made there under, he shall, without prejudice to any action to which, he may be liable under section 21 or any other provision of this Act, be punished with imprisonment which may extend to three months, or with fine fifty thousand rupees or with both.

63. Prosecution.---(1) No prosecution under this Act shall be instituted except with the previous sanction of the Commissioner or of an officer authorized by him in this behalf in writing.

(2) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

(3) No Court shall take cognizance of any offence under this Act except on a complaint made in writing within six months of the date on which the offence was discovered.

CHAPTER VIII MISCELLANEOUS

64. Recovery of amounts due.--- Any amount recoverable by the Institution under this Act may be recovered as arrears of land revenue.

65. Recovery Officers.--- (1) The Commissioner may by notification, authorize any Officer of the Institution not below the rank of BPS-19 as Recovery Officer for such area or areas as specified in the notification for the purpose of recovery of social security dues recoverable under this Act.

(2) Where more than one Recovery Officer has been notified for any area, the Commissioner may, by general or special order, regulate the distribution of business among them.

(3) The Recovery Officer, authorized under sub-section (1) shall have the powers of Collector Grade-1 and may exercise such powers for the purpose of this Act.

66. Appeal to Labour Court.---(1) An appeal against a decision made by the Recovery Officer notified under sub-section (1) of section 65 of this Act may be preferred within thirty days of the date on which the decision was made before the Labour Court constituted under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010), within whose jurisdiction the cause of action to which the appeal relates arose:

Provided that in case the appeal relates to demand or assessment of the social security contribution, the appellant shall deposit fifty percent of the demand or assessment with the Institution.

(2) In deciding appeals, the Labour Court shall adopt such procedure and exercise such powers as given under the Khyber Pakhtunkhwa Industrial Relation Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010).

67. Stay of payment in pending appeals.---Where the Institution has appealed against an order of a Labour Court that Court may, and, if so directed by the High Court shall, pending the decision of the appeal, direct that the payment of any sum required to be paid by the order appealed against shall be withheld.

68. Exemption from stamp duty.--- Notwithstanding anything to the contrary contained in the Stamp Act, 1899 (Act No. II of 1899), stamp duty shall not be chargeable upon any draft or order receipt in respect of any benefit payable under this Act.

69. Exemption from taxes.--- Notwithstanding anything contained in any other law, the income of the Institution shall be exempted from any tax, rate or duty leviable by the Government or by a local authority under the control of the Government.

70. Supersession of certain laws, etc.--- Worker compensation and maternity benefit payable under the Khyber Pakhtunkhwa Workers Compensation Act, 2013 (Khyber Pakhtunkhwa Act No. XIX of 2013), the Mines Maternity Benefit Act, 1941 (Act No. XIX of 1941), the Khyber Pakhtunkhwa Maternity Benefit Act, 2013 (Khyber Pakhtunkhwa Act No. XVIII of 2013), or under any other law shall not be payable in respect of any employment on or after the appointed day in respect of such employment and the enactments and laws aforesaid shall, in so far as they are inconsistent with the provisions of this Act, cease to have effect.

71. Removal of difficulties.--- (1) If any difficulty arises in giving effect to the provisions of Chapters III and V of this Act, the Governing Body may make such provision or give such direction not inconsistent with the provisions of this Act as appears to it to be necessary for the removal of the difficulty.

(2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith in any rules or regulations.

72. Employers not to dismiss or punish employee during the period of sickness, etc.---

(1) No employer shall dismiss, discharge or reduce or otherwise punish an employee during the period in which the employee is in receipt of sickness benefit, maternity benefit, injury benefit or medical care.

(2) Notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be void and unoperative.

73. Discriminations.---No discrimination shall be made on the basis of gender, religion, sect, colour, caste, creed, ethnic back ground and political affiliation with regard to the observation of this Act.

74. Indemnity.---No suit, prosecution or other legal proceedings shall lie against the Institution, the Governing Body, Officers, Servants, Advisors or Consultants of the Institution in respect of anything done in good faith under this Act or the rules and regulations made there under.

75. Power to make rules.--- Government may, make rules to carry out the purposes of this Act.

76. Power to make regulations.--- (1) Governing Body may, subject to the conditions of previous publication, by notification, make regulations not inconsistent with the provisions of this Act or the rules made therein.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

- (a) the manner in which medical practitioners shall be authorized to give certificates required under any of the provisions of this Act, the form of such certificates and the duties of medical practitioners in that regard;
- (b) occupational diseases which may cause employment injury;
- (c) qualifications which a person practicing medicine shall possess for appointment as a medical practitioner under section 18 or to be authorized to give certificates under sections 35, 36 and 40 or for recognition for any other purpose under this Act;
- (d) times and places at which meetings of the Governing Body shall be held;
- (e) amount of contributions owed to the institution which shall disqualify a person from being or continuing to be a member of the Governing Body;
- (f) duties of Medical Advisor in connection with medical care;
- (g) powers, functions, fees and allowances of medical practitioners and medical board and the areas for which and the manner in which they shall be appointed;
- (h) powers of the Governing Body to employ officers and staff for administration of the affairs of the institution;
- (i) method of recruitment, pay and allowances, superannuation benefits and other conditions of service of officers and servants of the Institution;
- (j) powers of the Commissioner with regard to appointment, transfer, promotion, dismissal and other matters affecting the staff of the Institutions;
- (k) the manner in which daily wages shall be calculated for the purpose of determining the contribution payable;
- (l) determination of wages for computation of contributions where the mode of payment of remuneration, in cash or in kind, makes such computation difficult;

- (m) records to be kept and returns to be submitted by employers, time at which and the form in which such returns are to be submitted, and the particulars relating to employees to be stated in such returns;
- (n) form of certificate authorizing an official of the Institution to exercise the powers of inspection under section 23;
- (o) the manner in which any claim of the Institution for unpaid contributions may be extinguished;
- (p) powers and duties of internal auditor;
- (q) conditions of entitlement to receive sickness, maternity and injury benefit, disablement pension, disablement gratuity, death grant, survivor's pension and medical care;
- (r) the items of medical care in respect of specified disease to which a secured person shall be entitled;
- (s) the manner in which medical care shall be provided;
- (t) arrangements under which beneficiaries shall share the costs of certain kind of medical care and the manner in which such cost shall be determined;
- (u) the form and manner in which claims for benefits shall be preferred, and the documents, information and evidence which shall accompany such claims;
- (v) the manner in which and the times and places at which payment in respect of benefits shall be made;
- (w) determination, for the purpose of repayment to the Institution, of the value of and benefit received otherwise than in cash;
- (x) determination of the actuarial present value of any periodical payment for which the Institution becomes liable by reason of a wrongful act or omission of the employer or his agent; the manner in which and the time within which complaints, question and disputes shall be decided;
- (y) the circumstances and manner in which, on new facts coming to light, the Institution may reopen cases and review decisions;
- (z) the manner in which supplies for the use of the Institution shall be obtained and immovable property hired or acquired, and in which such supplies or property shall be sold or otherwise disposed of; and
- (aa) any other matter not provided for in this Act or the Rules and necessary to give effect to the provisions of this Act.

77. **Officers and officials of the Institution to be public servants.**--- The officers and officials of the Institution shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

78. **Repeal and saving.**---(1) The Provincial Employees' Social Security Ordinance, 1965 (Ordinance No. X of 1965), is hereby repealed.

(2) Notwithstanding the repeal envisaged by sub-section (1),-

- (a) all the employees assets, property, rights, and interests of whatever kind used, enjoyed, possessed, owned by, vested in or held interest by for the institution established under the repealed Ordinance and all liabilities legally subsisting against the institution shall be transfer in the Institution re-organized under section 3 of this Act;
- (b) everything done, contribution received, benefits released, action taken, obligations or liabilities incurred, rights and assets acquired, persons appointed or authorized, jurisdiction or powers conferred, funds or trusts created, donations or grants made, and orders issued under any of the provisions of the repealed Ordinance and other legislative instruments or, the regulations and the rules made or deemed to have been made there under, shall , if not inconsistent with the provisions of this Act or the regulations or the rules made under this Act, be continued and, so far as may be, be deemed to have been respectively done, received, released, taken, incurred, acquired, appointed, authorized, conferred, created, made, instituted, granted and issued under this Act;
- (c) any documents referring to any of the provisions of the repealed Ordinance, other legislative instruments or the regulations and the rules first referred shall, so far as may be, considered to refer to the corresponding provisions of the rules or the regulations, made under this Act; and
- (d) rules and the regulations framed and notifications and order issued under the repealed Ordinance, shall continue to remain enforce until altered, repealed or amended by the competent authority.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa