

## BECHUANALAND PROTECTORATE.

No. 56 of 1941.

(Promulgated 22nd August, 1941.)

### PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER  
Entitled the Bechuanaland Protectorate Native  
Labour Proclamation, 1941.

Whereas it is expedient to amend and consolidate the law relating to the recruitment and contracts of employment of native workers in the Bechuanaland Protectorate, hereinafter referred to as "the Territory":

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. In this Proclamation, unless the context **Definitions.** otherwise requires—

"Employer" includes any public authority, individual, company or association, whether non-indigenous or indigenous;

"Labour Agent" means any person who shall himself or through runners or messengers, in his own name or otherwise, engage in recruiting, but does not include a native employed by a licensed labour agent as a runner or messenger under the authority of such a permit as is hereinafter mentioned;

"Native" means any aboriginal native belonging to any tribe of Africa, and includes persons of mixed race living as members of any native community, tribe, kraal or location in the Territory;

"Non-adult" means a person under the apparent age of eighteen years;

"Prescribed" means prescribed by Regulations under section *forty-one*;

"Recruiting" includes all operations undertaken with the object of obtaining or supplying the labour of natives who do not spontaneously offer their services at the place of employment or at a public emigration or employment office or at an office conducted by an employers' organisation and supervised by the Resident Commissioner or some other officer authorised thereto;

"Worker" means any native worker.

CHAPTER I.  
RECRUITING.

Repeal of laws.

2. Proclamations Nos. 45 of 1907, 7 of 1909, 10 of 1912, 45 of 1919, 62 of 1921, 33 of 1931 and 21 of 1935 are hereby repealed:

Provided, however, that such repeal shall be without prejudice to any act done under any of the said Proclamations, and shall not affect any proceeding pending under any of the said Proclamations at the date of the commencement of this Proclamation or any penalty which under any of the said Proclamations may be imposed in any such proceeding; and any licence or permit duly granted under any of the said Proclamations shall remain of full force and effect for the period for which it was issued, unless the same shall be cancelled under the provisions of this Proclamation.

Exemptions.

3. The following classes of recruiting are exempted from the provisions of this Chapter:—

- (a) Operations undertaken to recruit natives for employment within the Territory by or on behalf of employers who do not employ more than fifty natives;
- (b) Operations for the engagement of personal and domestic servants and of non-manual workers for work within the Territory;
- (c) Operations undertaken under section *twenty-two* of the Bechuanaland Protectorate Native Administration Proclamation, 1934.

Restrictions on recruitment.

4. (1) Public officers shall not recruit for private undertakings either directly or indirectly, except when the recruited workers are to be employed on works of public utility for the execution of which private undertakings are acting as contractors for a public authority.

(2) Chiefs or Headmen of any native tribe shall not—

- (a) act as labour agents or runners;
- (b) exercise pressure upon possible recruits; or
- (c) receive from any source whatsoever any special remuneration or other special inducement for assistance in recruiting.

Labour agents to be licensed.

5. No person shall act as a labour agent within the Territory unless he is the holder of a current licence for that purpose, issued to

him by the Resident Commissioner or by some officer duly authorised by the Resident Commissioner to issue such licences. Such licences shall be in such form as the Resident Commissioner may from time to time prescribe and shall not be transferable. Every such licence shall be for a period not exceeding one year, and shall expire on the thirty-first day of December in the year for which it is granted, and the amount payable for every such licence shall be the sum of twenty-five pounds:

Provided that for licences issued after the first day of July in any year one-half only of such amount shall be payable.

6. Every labour agent's licence shall be issued subject to such limitations and qualifications, whether in respect of the local limits within which recruiting may be carried on, the number of native labourers to be recruited, or otherwise, as shall appear on the face of such licence, and a licensed labour agent shall not act as a labour agent otherwise than in the manner authorised by his licence and in accordance with the limitations thereby imposed.

Limitations and conditions of licences.

7. (1) Every licensed labour agent may employ one or more natives as runners or messengers to procure, ply or seek for, engage or collect on his behalf native labourers to be employed or engaged in work or labour of any kind. No such runner or messenger shall be employed unless such labour agent has, in writing, made application for, and has obtained from the Resident Commissioner or other authorised officer, a permit for each runner or messenger authorising such employment. The amount payable for such permit shall be twenty shillings for each year or portion of a year ending on the thirty-first day of December:

Employment of runners.

Provided that for permits issued after the first day of July in any year one-half of such amount shall be payable:

Provided further that any such permit shall only authorise the employment of such runner or messenger so long as the licence held by the labour agent, at whose request such permit is issued, is in force or until such labour agent shall, during the currency of his licence, deliver such permit to the Resident Commissioner or other authorised officer who issued it together with an application in writing for its cancellation.

(2) The Resident Commissioner or other authorised officer may at any time cancel any permit issued under the provisions of subsection (1) if the runner or messenger referred to in such permit shall, in the opinion of the Resident Commissioner or other authorised officer, have been guilty of misconduct rendering it undesirable that he should continue to be employed as a runner or messenger, or if for any reason the Resident Commissioner or other authorised officer shall so think fit; and any permit so cancelled shall be forthwith delivered up to the officer demanding the same.

Acting as  
runner  
without  
permit.

8. Any person procuring, plying or seeking for, engaging or collecting native labourers to be employed in work or labour of any kind on behalf of any labour agent without being authorised so to act by such a permit as is in the last preceding section mentioned shall for the purpose of this Proclamation be deemed and taken to be exercising the calling of a labour agent as defined in section one of this Proclamation.

Labour  
agent liable  
for acts of  
his runners.

9. For the purpose of this Proclamation any representations made or any act or thing done in connection with the procuring, plying or seeking for, engaging or collecting of native labourers to be employed in any kind of labour or work by any runner or messenger whose employment is authorised by such a permit as is in section seven of this Proclamation mentioned shall be deemed to have been made or done by the labour agent at whose request such permit was issued to such runner or messenger, and such labour agent shall be liable to any penalty provided by this Proclamation in respect of the making of any such representation or the doing of any such act or thing:

Provided always that any permit authorising the employment of such person as runner or messenger shall upon conviction of such labour agent *ipso facto* become void and shall be delivered up for cancellation.

Particulars  
to be given  
when  
licence  
applied for.

10. Every application for a labour agent's licence or for the renewal thereof shall be accompanied by a statement in writing signed by the proposed employer giving the following particulars:—

(a) The name and address of the employer or employers for whom it is proposed to procure native labourers;

- (b) The nature of the proposed employment;
- (c) The rate of wages at which the native labourers are to be engaged;
- (d) Any further particulars as to the proposed terms of service which the officer issuing the licence may demand.

11. No licensed labour agent shall attempt to procure native labourers within any district of the Territory until he has deposited with the District Commissioner of such district a copy of the statement upon which his licence was granted or renewed.

Deposit  
of  
statement.

12. The issue or renewal of any licence may be refused by the Resident Commissioner or any officer authorised to issue licences without any reason being given for such refusal.

Right to  
refuse  
issue or  
renewal of  
licence.

13. (1) Before issuing any licence to a labour agent and before renewing any such licence the Resident Commissioner or officer duly authorised by the Resident Commissioner to issue such licence shall—

Essentials  
for issue of  
licence and  
duties of  
licensee.

- (a) satisfy himself that the applicant for a licence is a fit and proper person;
- (b) require the applicant for a licence to furnish financial or other approved security for proper conduct as a licensee to the extent of one hundred pounds, and such security shall be kept up to the full value of one hundred pounds as long as the applicant remains licensed;
- (c) require the applicant for a licence, if an employer, to furnish financial or other security for the payment of wages due;
- (d) satisfy himself that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited and for their protection in accordance with the provisions of Chapter II of this Proclamation.

(2) Licensees shall keep, in such form as the Resident Commissioner may prescribe, records from which the regularity of every recruiting operation can be verified and every recruited worker can be identified.

(3) A licensee shall wherever possible receive a fixed salary, and in any case in which he receives remuneration calculated at a rate per head of workers recruited such remuneration shall not exceed a maximum to be prescribed by the Resident Commissioner.

Cancellation of licences.

14. (1) It shall be lawful for the Resident Commissioner to cancel any labour agent's licence issued under this Proclamation if it is proved to his satisfaction that the person holding such licence has--

- (a) failed to furnish financial or other approved security to the extent of one hundred pounds when called upon to do so under the provisions of sub-section (1) (b) of the last preceding section or to keep the same up to the full value; or
- (b) been guilty of any misconduct which in the opinion of the Resident Commissioner renders it undesirable that he should be allowed to continue to carry on the calling of a labour agent under the provisions of this Proclamation:

Provided always that such cancellation shall not take effect until the same shall have been notified either to the labour agent himself personally or by the exhibition of a notice thereof publicly at the Resident Commissioner's office during seven consecutive days.

(2) Any person holding a labour agent's licence which shall have been cancelled under the last preceding sub-section shall, upon demand of the Resident Commissioner or of any District Commissioner or Police Officer, deliver up such licence together with any permits for runners or messengers still in force, which may have been issued on his application, to the officer demanding the same.

Production of licence and permits may be demanded.

15. It shall be lawful for any District Commissioner or Police Officer or any other person authorised thereto in writing by the Resident Commissioner at any time to demand the production by any person exercising the calling of a labour agent or of a runner or messenger employed by a licensed labour agent, of his licence or permit, as the case may be, and every such person shall upon such demand produce such licence or permit for the inspection of the officer demanding the same.

Purpose of security.

16. If any native who has been induced to enter into an agreement with a labour agent for service shall sue such labour agent or his employers in any competent court within the Territory, and shall recover any sum, whether in satisfaction of debt or by way of damages or costs, or if any labour agent shall fail to pay or satisfy any fine imposed upon

him under the provisions of this Proclamation, the said security in terms of section *thirteen*, or such portion thereof as may be sufficient, shall be applied in satisfaction of the judgment of such court or such fine, and thereupon such labour agent shall renew the security so that the same shall be kept up to the full value thereof as provided in section *thirteen* of this Proclamation.

17. No person shall by any representation as to terms or conditions of employment which he knows to be false, or by any promise as to terms or conditions of employment which he knows himself to be unable to fulfil or has no intention of fulfilling, induce or attempt to induce any native to work or labour.

False  
representations.

18. No person shall directly or indirectly, either by himself or by an agent, by any means cause, induce or persuade or attempt to cause, induce or persuade any native servant to leave his employer's service in violation of any agreement of service.

Inducement  
to leave  
employment.

19. It shall be lawful for any officer authorised to issue labour agents' licences and permits for runners or messengers to issue a licence and permits without the payment of any fees to any labour agent who may be employed to recruit exclusively for the service of the Government of Southern Rhodesia, Northern Rhodesia, the Union of South Africa, or any British Colony or Territory in South Africa, but any such labour agent shall in all other respects be subject to the provisions of this Proclamation.

Issue of  
free  
licences and  
permits.

20. (1) Where the circumstances make the adoption of such policy practicable and necessary, the Resident Commissioner shall, in order to safeguard the population concerned against any untoward consequences of the withdrawal of adult males, fix the maximum number of adult males who may be recruited in any district or reserve in such manner that the number of adult males remaining in the said district or reserve does not fall below a prescribed percentage of the normal proportion of adult males to women and children.

Fixation of  
maximum  
recruitment  
and  
grouping of  
recruited  
workers at  
place of  
employment.

(2) Where the circumstances make the adoption of such a policy practicable and desirable the Resident Commissioner may make it a condition of permitting recruiting that the recruited workers shall be grouped at the place of their employment under suitable ethnical conditions.

## CHAPTER II.

### CONTRACTS OF EMPLOYMENT.

Applica-  
tion of this  
Chapter.

21. (1) This Chapter applies to contracts of employment by which a native enters the service of an employer as a manual worker for remuneration in cash or in any form whatsoever.

(2) The following classes of employment are exempted from the application of this Chapter:—

- (a) employment of labour within the Territory by or on behalf of indigenous employers who do not employ more than fifty natives;
- (b) employment of personal and domestic servants and of non-manual workers for work within the Territory;
- (c) employment within the Territory under which the only or principal remuneration granted to the native is the occupancy or use of land belonging to his employer;
- (d) apprenticeship.

Contracts  
to be in  
writing.

22. Every contract which—

- (a) is made for a period of or exceeding six months or a number of working days equivalent to six months, or
- (b) stipulates conditions of employment which differ materially from those customary in the district of employment for similar work,

shall be in writing.

General  
provisions  
relating to  
contracts.

23. (1) Every labour agent who engages or procures any native for any employment and for any period whatsoever and every employer who engages or procures any native for employment under conditions falling within the scope of the preceding section shall bring such native before a District Commissioner, Assistant District Commissioner, Police Officer or other official appointed for the purpose by the Resident Commissioner, in order that he may sign in the presence of such official a form of contract containing the particulars set out in sub-section (2) of this section, and any such other particulars as to the terms of his employment as the Resident Commissioner may from time to time prescribe.

(2) The particulars to be contained in the contract shall in all cases include—

- (a) the name of the employer or group of employers and, where practicable, of the undertaking and of the place of employment;
- (b) the name of the native, the place of engagement and if possible his place of origin, and any other particulars necessary for his identification;
- (c) the nature of the employment;
- (d) the duration of the employment and the method of calculating this duration;
- (e) the rate of wages and the method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
- (f) the conditions of repatriation; and
- (g) any special conditions of the contract.

(3) It shall be the duty of any such official to satisfy himself before any such contract is signed in his presence by a native that the terms thereof have been fully understood by such native, that the provisions of this Proclamation have been observed, and in particular that the native has not been subjected to coercion or undue influence or recruited by misrepresentation or mistake, and is not bound by any previous engagement.

(4) A copy of each contract executed shall be deposited with the attesting officer.

(5) Recruited natives shall be brought before such an officer as near as may be convenient to the place of recruiting or, in the case of workers recruited in the Territory for employment in a territory under a different administration, at latest at the place of departure from the Territory.

(6) Upon every such contract as is referred to in sub-section (1) of this section there shall be paid by the labour agent a fee of two shillings in respect of each native indentured. Such fee shall be paid by affixing to the said contract a revenue stamp or stamps to that amount which shall be cancelled by the attesting officer.

(7) A contract which such officer has refused to attest shall have no further validity.

(8) The maximum period of service that may be stipulated in any contract shall be the period of one year, and the maximum period that may be stipulated in any re-engagement contract made on the expiry of a contract shall be nine months :

Provided that where the period of service to be stipulated in any re-engagement contract, together with the period already served under the expired contract, involves the separation of any native from his family for more than eighteen months, the native shall not begin the service stipulated in the re-engagement contract until he has had the opportunity to return home at the employer's expense :

Provided, however, that the Resident Commissioner may grant exemption from this provision whenever its application is impracticable or undesirable.

(9) Every labour agent shall prepare, fill in, and sign a pass in such form as the Resident Commissioner may from time to time prescribe in respect of every native labourer engaged or produced by him for employment, and shall produce such pass to the official before whom the labourer signs the form of contract mentioned in the preceding sections, and such official after counter-signing such pass shall cause the same to be handed to the labourer.

(10) If a contract which is required by section *twenty-two* of this Proclamation to be made in writing has not been made in writing it shall not be enforceable except during the maximum period permissible for contracts not made in writing, but each of the parties shall be entitled to have it drawn up in writing at any time prior to the expiry of the period for which it was made.

(11) If the omission to make the contract in writing was due to the wilful act or the negligence of the labour agent or employer, the worker shall be entitled to apply to the Resident Commissioner for the cancellation of the contract and, in appropriate cases, to sue for damages.

**Perfor-  
mance of  
contract.**

24. (1) No contract shall be deemed to be binding on the family or dependants of the worker unless it contains an express provision to that effect.

(2) The employer shall be responsible for the performance of any contract made by any person acting on his behalf.

25. The attesting officer shall satisfy himself, by the issue to the worker of a copy of the contract, of a work book, or of an equivalent document or token, or in such other manner as he may deem appropriate, that the worker is able—

Issue of  
work book.

- (a) to prove the existence and terms of the contract; and
- (b) to verify at any time the terms of the contract.

26. (1) Any labour agent or employer bringing a native labourer before a District Commissioner, Assistant District Commissioner, Police Officer or other official for the purpose of signing a form of contract of employment in accordance with the terms of sub-section (1) of section *twenty-three* shall produce a certificate signed by a medical practitioner registered in the Territory certifying that the said medical practitioner has examined such native labourer and has found him to be in a sound state of health and physically capable of performing the contract in question.

Medical  
examina-  
tion of  
natives.

(2) Where the worker has been recruited for employment at a distance from the place of recruiting or has been recruited in the Territory for employment in a territory under a different administration, the medical examination shall take place as near as may be convenient to the place of recruiting or, in the case of workers recruited in the Territory for employment in a territory under a different administration, at latest at the place of departure from the Territory.

(3) The Resident Commissioner may empower public officers before whom workers are brought in pursuance of sub-section (1) of section *twenty-three* to authorise the departure, prior to medical examination, of workers in whose case he is satisfied—

- (a) that it was and is impossible for the medical examination to take place near to the place of recruiting or at the place of departure;
- (b) that the worker is fit for the journey and the prospective employment; and
- (c) that the worker will be medically examined on arrival at the place of employment or as soon as possible thereafter.

(4) The Resident Commissioner may, particularly when the journey of the recruited workers is of such duration and takes place

under such conditions that the health of the workers is likely to be affected, require recruited workers to be examined both before departure and after arrival at the place of employment.

(5) The Resident Commissioner may exempt from the requirements of medical examination workers entering into contracts for—

(a) employment in agricultural undertakings;

(b) employment in the vicinity of the workers' homes—

(i) in agricultural work, and

(ii) in non-agricultural work which the Resident Commissioner is satisfied is not of a dangerous character or likely to be injurious to the health of the workers.

**Non-adults  
not  
capable of  
entering  
into  
contracts.**

27. A non-adult person shall not be capable of entering into a contract:

Provided that the Resident Commissioner may permit a non-adult to enter into a contract with the consent of his parents for employment upon light work subject to adequate safeguards for his welfare.

**Transfer  
of contract  
to another  
employer.**

28. (1) The transfer of any contract from one employer to another shall be subject to—

(a) the consent of the worker, and

(b) the endorsement of the transfer upon the contract by an officer referred to in sub-section (1) of section *twenty-three*.

(2) Before endorsing the transfer upon the contract the officer aforesaid shall—

(a) ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(b) satisfy himself that the requirements of sub-section (2) of section *twenty-three* have been fulfilled.

**Termination  
of  
contract.**

29. (1) A contract shall be terminated—

(a) by the expiry of the term for which it was made; or

(b) by the death of the worker before the expiry of the term for which it was made.

(2) The termination of a contract by the death of a worker shall be without prejudice to the legal claims of his heirs or dependants.

30. (1) If the employer is unable to fulfil the contract or if owing to sickness or accident the worker is unable to fulfil the contract, the contract shall be subject to termination under conditions to be prescribed by the Resident Commissioner, which shall include provisions safeguarding in such cases the right of the worker to any wages earned, any deferred pay due to him, any compensation due to him in respect of accident or disease, and his right (if any) to repatriation.

Conditions  
of termina-  
tion.

(2) A contract shall be subject to termination by agreement between the parties under the following conditions and such other conditions as may be prescribed by the Resident Commissioner—

(a) safeguarding the worker from the loss of his right to repatriation unless the agreement for the termination of the contract otherwise provides; and

(b) assuring that—

(i) the worker has freely consented to the agreement and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation, or mistake; and

(ii) all monetary liabilities between the parties have been settled.

(3) A contract shall be subject to termination on the application of either party in the cases and under conditions to be prescribed by the Resident Commissioner, which shall include provisions prescribing—

(a) the period of notice, if any, to be given by the party wishing to terminate the contract; and

(b) an equitable settlement of monetary and other questions arising from such termination, including the question of repatriation.

(4) The cases in which a contract shall be subject to termination in accordance with the last preceding sub-section shall include cases of ill-treatment of the worker by the employer.

(5) The Resident Commissioner may prescribe other cases in which a contract shall be subject to termination.

31. (1) The labour agent or employer shall whenever possible provide transport to the place of employment for workers, and for their repatriation.

Transportation of  
natives and  
safeguards.

(2) The labour agent or employer shall take all necessary measures to ensure—

- (a) that the vehicles or vessels used for the transport of workers are suitable for such transport, are in good sanitary condition, and are not overcrowded;
- (b) that when it is necessary to break the journey for the night, suitable accommodation is provided for the workers;
- (c) that in the case of long journeys all necessary arrangements are made for medical assistance and for the welfare of the workers;
- (d) that when the workers have to make long journeys on foot—
  - (i) the length of the daily journey is compatible with the maintenance of the health and strength of the workers; and
  - (ii) where the extent of the movement of labour makes this necessary, rest camps or rest houses are provided at suitable points on main routes and are kept in proper sanitary condition and have the necessary facilities for medical attention;
- (e) that when the workers have to make long journeys in groups they shall be convoyed by a responsible person.

**Expenses of  
journey and  
supplies.**

32. (1) The expenses of the journey of workers to the place of employment, including all expenses incurred for their protection during the journey, shall be borne by the labour agent or employer:

Provided that where this requirement is not in accordance with local custom it may be waived by the Resident Commissioner if he is satisfied that the employers have in fixing wage rates made reasonable allowance for the expenses of the workers in connection with their journey.

(2) The labour agent or employer shall furnish workers with everything necessary for their welfare during the journey to the place of employment, including particularly, as local circumstances may require, adequate and suitable supplies of food, drinking water, fuel and cooking utensils, clothing and blankets.

33. It shall not be lawful for any labour agent or employer in the Territory to make any advance to any native in excess of the sum or value of two pounds exclusive of any charges for transport or any amount due for any native tax or fine advanced by the labour agent or employer, and no interest shall be charged by the labour agent on any advance made.

Limitation  
of advances  
to natives.

34. (1) Any recruited worker who—

Repatriation  
of  
natives.

- (a) becomes incapacitated by sickness or accident during the journey to the place of employment;
- (b) is found on medical examination to be unfit for employment;
- (c) is not engaged after recruiting for a reason for which he is not responsible; or
- (d) is found by the Resident Commissioner to have been recruited by misrepresentation or mistake;

shall be repatriated at the expense of the labour agent or employer.

(2) Where the families of recruited workers have been authorized to accompany the workers to the place of employment the labour agent or employer shall take all necessary measures for safeguarding their health and welfare during the journey and more particularly:—

- (a) sections *thirty-one* and *thirty-two* shall apply to such families;
- (b) in the event of the worker being repatriated in virtue of sub-section (1) of this section his family shall also be repatriated at the expense of the labour agent or employer; and
- (c) in the event of the death of the worker during the journey to the place of employment, his family shall be repatriated at the expense of the labour agent or employer.

35. (1) Every worker who is a party to a contract and who has been brought to the place of employment by the employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or

Repatriation  
in  
certain  
events.

engagement, whichever is the nearer to the place of employment, in the following cases:—

- (a) on the expiry of the period of service stipulated in the contract;
- (b) on the termination of the contract by reason of the inability of the employer to fulfil the contract;
- (c) on the termination of the contract by reason of the inability of the worker to fulfil the contract owing to sickness or accident;
- (d) on the termination of the contract by agreement between the parties unless the agreement otherwise provides;
- (e) on the termination of the contract on the application of either of the parties, unless the Resident Commissioner otherwise decides.

(2) Where the family of the worker has been brought to the place of employment by the employer or by any person acting on behalf of the employer, the family shall be repatriated at the expense of the employer whenever the worker is repatriated or in the event of his death.

(3) The expenses of repatriation shall include—

- (a) travelling and subsistence expenses during the journey; and
- (b) subsistence expenses during the period, if any, between the date of expiry of the contract and the date of repatriation.

(4) The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of the worker has been delayed—

- (a) by the worker's own choice; or
- (b) for reasons of *force majeure*, unless the employer has been able during the said period to use the services of the worker at the rate of wages stipulated in the expired contract.

(5) If the employer fails to fulfil his obligations in respect of repatriation of a worker or his family in cases where the place of employment is in the Territory, the said

obligations shall be discharged by the Government of the Territory which shall have the right to sue for and recover such expenses, and disbursements, as may have been so incurred from the employer.

36. The Resident Commissioner may exempt the employer from liability for repatriation expenses in the following cases—

**Exemption from liability for repatriation.**

- (a) when he is satisfied—
  - (i) that the worker, by a declaration in writing or otherwise, has signified that he does not wish to exercise his right to repatriation; and
  - (ii) that the worker has been settled at his request or with his consent at or near the place of employment;
- (b) when he is satisfied that the worker, by his own choice, has failed to exercise his right to repatriation before the expiry of three months from the date of expiry or termination of the contract;
- (c) when the contract has been terminated by him in consequence of a fault of the worker;
- (d) when the contract has been terminated otherwise than by reason of the inability of the worker to fulfil the contract owing to sickness or accident and he is satisfied—
  - (i) that in fixing the rates of wages proper allowance has been made for the payment of repatriation expenses by the worker; and
  - (ii) that suitable arrangements have been made by means of a system of deferred pay or otherwise to ensure that the worker has the funds necessary for the payment of such expenses.

37. (1) The Resident Commissioner shall, where necessary, require concise summaries of the Regulations relating to contracts to be printed in English and Setswana and shall make such summaries available to the employers and workers concerned.

**Printing of regulations in native language.**

(2) Where necessary the employer shall be required to post such summaries in conspicuous places.

(3) Where the circumstances make the adoption of such a provision practicable and necessary, the Resident Commissioner may require the issue to each recruited worker who is not engaged at or near the place of recruiting of a document in writing such as a memorandum of information, a work book or a provisional contract containing such particulars as the Resident Commissioner may prescribe, as for example particulars of the identity of the workers, the prospective conditions of employment, and any advances of wages made to the workers.

### CHAPTER III.

#### GENERAL.

Contracts entered into before the commencement of this Proclamation.

38. This Proclamation shall not apply to contracts entered into before the commencement of this Proclamation.

Penalties.

39. (1) Any person who contravenes any provision of this Proclamation or omits to do any act required of him by this Proclamation shall be guilty of an offence and shall, on conviction before a Subordinate Court, be liable—

(a) if the contravention or omission is of a provision of sub-section (2) of section *four*, sub-section (2) of section *thirteen*, of section *fourteen*, of section *fifteen* or section *thirty-seven*, to a fine not exceeding twenty-five pounds, or to imprisonment with or without hard labour for a period not exceeding three months, or to both such fine and imprisonment;

(b) if the contravention or omission is of a provision of sections *five*, *six*, *seven*, *eight*, *eleven*, *seventeen*, *eighteen*, *twenty-two*, *twenty-three*, *twenty-six*, sub-section (1) of section *twenty-eight*, *thirty-one*, *thirty-two*, *thirty-three*, *thirty-four* or *thirty-five*, to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for a period not exceeding twelve months, or to both such fine and imprisonment.

(2) Any person who contravenes any provision of this Proclamation or of any Regulation made thereunder, or who makes default in complying with any provision of this Proclamation or any Regulation made thereunder with which it is his duty to comply, where such contravention or default is not elsewhere in this Proclamation or in such Regulation declared an offence, shall be guilty of an offence and shall, if no penalty is specially prescribed in this Proclamation or in the Regulations, as the case may be, for the contravention or default, be liable on conviction before a Subordinate Court to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for a period not exceeding one month, or to both such fine and imprisonment.

40. (1) Any native—

Desertion.

- (a) who having entered into a contract for employment and signed such contract as provided by section *twenty-three* without lawful cause deserts from his place of employment or fails to enter upon or carry out the terms of his contract of employment; or
- (b) who after having in the Territory entered into a written agreement with a labour agent and having received an advance in respect thereof accepts another advance from another labour agent in consideration of entering upon any other contract of service before he has completed his term of service under the first mentioned agreement;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding two months.

(2) In any proceedings under the last preceding sub-section a copy of any contract duly signed as provided by section *twenty-three* which is certified as a correct copy by any such officer as is therein mentioned may be produced and shall thereupon be *prima facie* evidence of the terms of the contract.

Regulations.

41. The Resident Commissioner, with the prior approval of the High Commissioner, may make, alter, vary and cancel Regulations not inconsistent with the provisions of this Proclamation for the better carrying out of the objects and purposes of this Proclamation. All such Regulations shall be published in the *Gazette*.

Short title and commencement.

42. This Proclamation may be cited as the Bechuanaland Protectorate Native Labour Proclamation, 1941, and shall have force and take effect from the first day of January, 1942.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Sixteenth day of August, One thousand Nine hundred and Forty-one.

HARLECH,  
High Commissioner.

By Command of His Excellency  
the High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.