

ÉIRE

BILLE UM LAETHANTA SAOIRE (FOSTAITHE), 1938. HOLIDAYS (EMPLOYEES) BILL, 1938.

*Mar do ritheadh ag dhá Thigh an Oireachtais.
As passed by both Houses of the Oireachtas.*

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[No. 28*d* of '38.]

ÉIRE

BILLE UM LAETHANTA SAOIRE (FOSTAITHE), 1938.
HOLIDAYS (EMPLOYEES) BILL, 1938.

BILL

entitled

5

AN ACT TO MAKE PROVISION FOR THE ALLOWANCE OF
HOLIDAYS TO CERTAIN EMPLOYED PERSONS, AND
TO PROVIDE FOR CERTAIN OTHER MATTERS CON-
NECTED WITH THE MATTER AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:— 11

Definitions
generally.

1.—(1) In this Act—

the expression “ the Act of 1936 ” means the Conditions of
Employment Act, 1936 (No. 2 of 1936);

the expression “ the Minister ” means the Minister for Industry
and Commerce; 15

the word “ employ ” means employ, under a contract of service
(whether the contract is expressed or implied or is oral or in
writing) or a contract of apprenticeship, and cognate words
shall be construed accordingly;

the word “ day ” means, in relation to a person whose spell of 20
work begins on one day and ends on the next, a period of twenty-
four hours commencing at the time at which such spell of work
begins;

the word “ week ” means any period of seven consecutive days;
the word “ month ” means any period of thirty consecutive 25
days;

the expression “ industrial work ” has the same meaning as in
the Act of 1936;

the expression “ offence under any section of this Act ” includes
an offence under any sub-section of a section of this Act; 30

the word “ prescribed ” means prescribed by regulations made
by the Minister under this Act.

(2) A person in the service of a local authority shall be
deemed for the purposes of this Act to be employed by such
local authority. 35

Workers

2.—(1) In this Act—

the word “ worker ” means any person of the age of fourteen years
or upwards who is employed, other than—

(a) a person whose rate of remuneration exceeds in value three
hundred and fifty pounds per annum, or 40

- 5 (b) a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles, or
- (c) a person who is a member of the staff of a shop within the meaning of the Shops (Conditions of Employment) Act, 1938 (No. 4 of 1938), or
- (d) a person who is a railway refreshment-car attendant, or
- 10 (e) a person who is an agricultural worker within the meaning of this section, or
- (f) a person who is employed as the master or a member of the crew of any sea-going vessel (other than a barge or a hopper), whether publicly or privately owned, engaged in the transport of cargo or passengers, or
- 15 (g) a person who is employed on a lighthouse or lightship, or
- (h) a person who is a clergyman in Holy Orders, or
- (i) a person who is a member of any religious order or community, or
- 20 (j) a person—
- (i) who is the wife, husband, father, mother, grandfather, grandmother, step-father or step-mother of, or who is a son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother or half-sister of, the person by whom he is employed, and
- 25 (ii) who is maintained by and dwells in the house of such last-mentioned person, or
- (k) a person who is employed in extracting from a mine any substance (other than coal, fireclay, slate, gypsum, stone or any prescribed substance), or
- 30 (l) a person who is employed by or under the State other than—
- (i) a person so employed to whom, by virtue of section 6 of the Act of 1936, the Act of 1936 applies, or
- 35 (ii) a person so employed as a porter, doorkeeper, messenger, night-watchman, charwoman, cleaner, or labourer or in other subordinate duties, or
- (iii) a person so employed in an unestablished capacity as an artisan or other skilled labourer, or
- 40 (m) a person employed as a fisherman, or
- (n) a person who—
- (i) is employed on any work or scheme of works the expenses of which are in whole or in part met from moneys provided by the Oireachtas for the provision of employment and the relief of distress, and
- 45 (ii) is so employed for a period of time during which, in accordance with a pre-arranged system, he works for an aggregate number of days not exceeding five times the number of weeks during which the employment continues, or
- 50

- (o) any person who belongs to an excluded class within the meaning of this section;

the expression "domestic worker" means a person who—

- (a) is a worker, and
- (b) is not an industrial worker, and 5
- (c) either—
 - (i) is entitled under his contract of service to free lodgings either in his employer's house or elsewhere, or
 - (ii) does work of a personal or domestic nature in or about the dwelling-house of his employer; 10

the expression "non-domestic worker" means a worker who is not a domestic worker;

the expression "industrial worker" means a worker, other than an outworker within the meaning of the Act of 1936, who does industrial work for a salary or wages or for the purpose of learning any trade or calling; 15

the expression "non-working day" means in relation to a worker a day on which such worker does not under his contract of service normally work; 20

the expression "a full day's pay" when used in relation to a worker means the amount payable to such worker under his contract of service in respect of a normal full working day.

(2) For the purposes of sub-section (1) of this section the expression "agricultural worker" means a person who is employed by the occupier of agricultural land and is so employed wholly or mainly on work (including industrial work) connected with the user of such land, but does not include— 25

- (a) a gamekeeper, or
- (b) a stableman, or 30
- (c) a groomsman, or
- (d) a person wholly or mainly employed in work connected with any part of such land which is maintained as an amenity to a residence on such land, or
- (e) any person belonging to a class (defined in such manner and by reference to such things as the Minister thinks fit) of workers declared by regulations made by the Minister (which regulations the Minister is hereby authorised to make) and for the time being in force to be a class of non-agricultural workers for the purposes of this Act. 35
40

In this sub-section the expression "agricultural land" means land used for tillage, dairy farming, poultry farming, market gardening, or horticulture or used as grazing, meadow or pasture land but does not include osier land or woodland or land used as a nursery ground. 5

(3) The Minister may, whenever and so often as he thinks fit, by order declare that any particular class (defined in such manner and by reference to such things as the Minister thinks proper) of employed persons shall be an excluded class for the purposes of this section, and whenever any such order is made then so long as such order is in force, the class of employed persons to which such order relates shall be an excluded class for the purposes of this section. 50

(4) The Minister may revoke or amend any order made under this section (including this sub-section). 55

3.—(1) The following provisions shall apply in respect of any worker employed in a mine to which the Coal Mines Act, 1911, applies, that is to say:—

Employer of worker in mines to which the Coal Mines Act, 1911, applies.

5 (a) in case such mine is required by that Act to have a manager—

(i) the owner, the agent and the manager of such mine shall each be deemed, for the purposes of this Act, to be the employer of such worker,

10 (ii) where proceedings for any offence under this Act are taken against the owner (not being the manager) or the agent (not being the manager) of such mine, it shall be a good defence to such proceedings if such owner or agent proves to the satisfaction of the court—

15 (I) that he was not in the habit of taking and did not in respect of the matters in question take any part in the management of such mine, and

20 (II) that he made all financial and other provision necessary to enable the manager to carry out his duties, and

(III) that the offence was committed without his knowledge, consent or connivance;

25 (b) in case such mine is not required by that Act to have a manager, the owner and the agent of such mine shall each be deemed, for the purposes of this Act, to be the employer of such worker.

(2) In this section the words “owner”, “agent” and “manager” when used in relation to a mine have the same respective meanings as in the Coal Mines Act, 1911.

30 4.—(1) Where the employment of a worker with a particular employer is interrupted by reason of the illness of such worker, the temporary cessation of the work on which he is so employed, the temporary reduction of the weekly quantity of such work, or any other temporary cause not due to the act or default of such
35 worker, such worker shall, for the purpose of reckoning any period of continuous employment with such employer within the meaning of this Act, be deemed to have been in the employment of such employer during such interruption if, but only if, the following conditions are complied with, that is to say:—

Continuous employment.

40 (a) at the end of such interruption such worker returns to employment with the employer with whom he had been employed immediately before such interruption, and

(b) the duration of such interruption does not exceed one month.

45 (2) Where a worker who is a member of the Reserve Force of the Defence Forces of Ireland is absent from his employment for the purpose of attending and performing his duty as such member at any initial training, annual training, or test mobilisation, such worker shall, for the purpose of reckoning any
50 period of employment or of continuous employment within the meaning of this Act, be deemed to have been in his said employment during his said absence, and accordingly the period of his said absence shall for the purposes of this Act be reckoned in the said period of employment or continuous employment.

“ Employment
year ” and
“ employment
half-year ”.

5.—(1) In this Act—

the expression “ employment year ” when used in relation to a worker means a period of three hundred and sixty-five days (excluding any day which is the 29th day of February) commencing on the day on which such worker last entered the employment in relation to which the expression is used or on any anniversary of that day; 5

the expression “ the first half ” when used in relation to an employment year of a domestic worker means a period of one hundred and eighty-three days commencing on the first day of such employment year; 10

the expression “ the second half ” when used in relation to an employment year of a domestic worker means so much of such employment year as is not included in the first half of such employment year; 15

Where a worker entered on employment on the 29th day of February he shall for the purposes of the interpretation of the definition of the expression “ employment year ” be deemed to have entered that employment on the next following day.

(2) Where— 20

(a) the ownership of any business, whether carried on for profit or gain or not, is transferred by act of the parties or by operation of law during the currency of an employment year of any worker who immediately before such transfer was employed by the person carrying on such business, and 25

(b) such worker continues after such transfer to be employed by the person (in this sub-section referred to as the new employer) to whom such ownership is transferred, the following provisions shall have effect, that is to say:— 30

(i) such worker shall, for the purposes of this Act (including sub-section (1) of this section but excluding section 9 (which relates to rights of non-domestic workers in respect of public holidays) of this Act in respect of any public holidays previous to such transfer), be deemed to have been in the employment of the new employer as on and from the beginning of such employment year; 35

(ii) if such worker has been allowed before such transfer annual leave or, in case such worker is a domestic worker, annual leave or semi-annual leave during such employment year, such annual leave or semi-annual leave shall, for the purposes of this Act, be deemed to have been allowed by the new employer. 40 45

(3) In this section the word “ business ” includes any profession, office, establishment or trade of whatsoever kind.

Construction of
expression
“ allow a whole
holiday ”.

6.—A person shall be deemed, for the purposes of this Act, to allow a worker employed by him a whole holiday on a particular day if, but only if, such person does not permit such worker to do on that day any work for him. 50

Public holidays
as respects
industrial
workers.

7.—Each day which is, by virtue of section 7 of the Act of 1936, a public holiday, for the purposes of the Act of 1936, in respect of an industrial worker shall, for the purposes of this Act, be also a public holiday in respect of such worker, and in this Act the expression “ public holiday ” when used in relation to an industrial worker shall be construed accordingly. 55

8.—(1) Subject to the provisions of this section each of the following days shall, in respect of non-domestic workers who are not industrial workers, be for the purposes of this Act, a public holiday, that is to say:—

Public holidays
as respects
non-domestic
workers who are
not industrial
workers.

- 5 (a) Christmas Day when it falls on a weekday or, when it falls on a Sunday, the 27th day of December, and
- (b) St. Stephen's Day when it falls on a weekday or, when it falls on a Sunday, the next following Monday, and
- 10 (c) St. Patrick's Day when it falls on a weekday or, when it falls on a Sunday, the next following Monday, and
- (d) Easter Monday, Whit Monday, and the first Monday in August.

(2) Whenever in any year a day is appointed under the Public Holidays Act, 1924 (No. 56 of 1924) to be a bank holiday instead of a day mentioned in the next preceding sub-section of this section, the day so appointed shall in that year be deemed to be substituted throughout the said sub-section for the day so mentioned and the said sub-section shall be construed and have effect accordingly.

(3) The employer of any non-domestic worker, other than an industrial worker, may substitute for any public holiday (other than Christmas Day or St. Patrick's Day) falling in a calendar year either—

- 25 (a) the Church holiday falling in that calendar year immediately before such public holiday by giving to such non-domestic worker not less than fourteen days before such Church holiday notice of his intention to effect such substitution, or
- 30 (b) the Church holiday falling in that calendar year immediately after such public holiday or, if such public holiday is a day which is a public holiday by virtue of paragraph (b) of sub-section (1) of this section, the 1st day of January next following by giving to such non-domestic worker not less than fourteen days before such public holiday notice of his intention to effect such substitution,
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and whenever such notice is given the Church holiday so substituted for a public holiday shall in respect of such non-domestic worker be a public holiday for the purposes of this Act instead of the day for which it is so substituted.

40 For the purposes of this sub-section each of the following days shall be a Church holiday, that is to say:—

- (i) the 1st day of January, except when it falls on a Sunday,
- 45 (ii) the 6th day of January, except when it falls on a Sunday,
- (iii) Ascension Thursday,
- (iv) the Feast of Corpus Christi,
- (v) the 29th day of June, except when it falls on a Sunday,
- 50 (vi) the 15th day of August, except when it falls on a Sunday,
- (vii) the 8th day of December, except when it falls on a Sunday.

(4) A railway company which employs any person who is a non-domestic worker and is not an industrial worker may also substitute for Easter Monday the previous Good Friday by giving to such person not less than fourteen days before such Good Friday notice of its intention to effect such substitution and whenever any such notice is given the Good Friday so substituted shall in respect of such person be a public holiday for the purposes of this Act instead of the Easter Monday for which it is so substituted.

(5) The notice mentioned in sub-section (3) or in sub-section (4) of this section shall be in writing and may be given to any person by handing a copy thereof to him personally or by posting a copy thereof in a conspicuous position in the place where such person is employed.

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(6) In this Act the expression "public holiday" when used in relation to a non-domestic worker who is not an industrial worker shall be construed in accordance with the foregoing provisions of this section.

Rights of
non-domestic
workers in respect
of public
holidays.

9.—(1) Where—

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- (a) a non-domestic worker is in the employment of a person on a public holiday, and
- (b) such worker has worked for such person for not less than one hundred and fifty hours at any time during the period of five weeks immediately preceding such public holiday, and
- (c) either—
 - (i) such worker has been allowed (whether in compliance with sub-section (1) of section 49 of the Act of 1936 or otherwise) by such person a whole holiday on such public holiday, or
 - (ii) such public holiday falls on a non-working day and such worker does not work for such person on such public holiday,

such person shall, subject however to the provisions of sub-section (7) of this section, pay to such worker in respect of such public holiday a sum equivalent to a full day's pay.

(2) Where—

- (a) a non-domestic worker is in the employment of a person on a public holiday, and
- (b) such worker has worked for such person for not less than one hundred and fifty hours at any time during the period of five weeks immediately preceding such public holiday, and
- (c) such worker has worked on such public holiday for such person, and
- (d) such worker has not received in respect of such public holiday a full day's pay increased by twenty-five per cent.,

the following provisions shall, subject however to the provisions of sub-section (7) of this section, have effect, that is to say :—

- (e) if such worker does not cease to be in the employment of such person before the expiration of one month after such public holiday, then—
 - (i) such person shall allow to such worker a whole holiday on a working day before such expiration and shall, if he so allows such whole holiday, pay to such worker in respect thereof a sum equivalent to a full day's pay,
 - (ii) if such person fails so to allow such worker such whole holiday, such person shall be guilty of an offence under this sub-section and shall be liable on

summary conviction thereof to the penalties mentioned in the Schedule to this Act, and shall (whether proceedings for such offence have or have not been taken) pay to such worker in respect of such public holiday a sum equivalent to a full day's pay, but proceedings for such offence or to recover such sum shall not be instituted until the expiration of the employment year of such worker within which such public holiday falls, or, in case such worker has been allowed annual leave, the expiration of such annual leave, or the cesser of his employment (whichever first happens);

(f) if such worker ceases to be in the employment of such person before the expiration of such month and has not been allowed a whole holiday on some working day between such public holiday and such cesser and been paid in respect of such whole holiday a sum equivalent to a full day's pay, such person shall upon such cesser pay to such worker, in addition to any wages then due him, a sum equivalent to a full day's pay.

(3) Where—

(a) a non-domestic worker in the employment of a person has worked for such person for not less than one hundred and fifty hours at any time during the period of five weeks immediately preceding a public holiday, and

(b) the services of such worker with such person are terminated by such person before such public holiday,

such person shall upon such termination, but subject however to the provisions of sub-section (7) of this section, pay to such worker, in addition to any wages then due him, a sum equivalent to a full day's pay.

(4) Where—

(a) a non-domestic worker in the employment of a person has worked for such person for not less than one hundred and fifty hours at any time during the period of five weeks immediately preceding an appointed holiday, and

(b) a day (in this sub-section referred to as the substituted day) is substituted, in case such worker is an industrial worker, under section 7 of the Act of 1936, or, in any other case, under the next preceding section of this Act, for such appointed holiday, and

(c) the substituted day falls after such appointed holiday, and

(d) the services of such worker with such person are terminated by such person before the substituted day,

such person shall upon such termination, but subject however to the provisions of sub-section (7) of this section, pay to this worker, in addition to any wages then due him, a sum equivalent to a full day's pay.

In this sub-section the expression "appointed holiday" means—

(a) in relation to a person who is an industrial worker, a day which is a public holiday by virtue of sub-section (1) or sub-section (2) of section 7 of the Act of 1936;

(b) in relation to a person who is not an industrial worker, a day which is a public holiday by virtue of sub-section (1) or sub-section (2) of the next preceding section of this Act.

(5) The Minister may, whenever and so often as he so thinks 5
proper, make regulations varying in respect of all or any particular class or classes (defined in such manner and by reference to such things as the Minister thinks proper) of non-domestic workers the period of one hundred and fifty hours mentioned in sub-sections (1), (2), (3) and (4) of this section by substituting for 10
such period either such other number of hours or such number of days as the Minister thinks proper, and whenever any such regulations are in force the said sub-sections shall have effect, in respect of the non-domestic workers or the class or classes of 15
non-domestic workers to which such regulations apply, as if the said period was varied in the manner stated in such regulations. 15

(6) In the application of the five next preceding sub-sections to workers who are industrial workers and are under the age of eighteen years, the period of one hundred and twenty hours shall be substituted for the period of one hundred and fifty hours, and 20
the said five next preceding sub-sections shall have effect in relation to such workers accordingly.

(7) Where a non-domestic worker is during any employment year of such worker allowed by his employer annual leave under the next following section and is, in addition to, and immediately 25
following, such annual leave, allowed by such employer on a working day or working days a number of whole holidays (in this section referred to as extra holidays) which if more than one are consecutive or would but for the intervention of non-working days or short days (if any) be consecutive, the following provisions shall 30
have effect, that is to say:—

(a) if six or more extra holidays are allowed and such worker is paid by such employer, in respect of each of six of such extra holidays, a sum equivalent to a full day's pay, neither sub-section (1) nor sub-section (2) nor 35
sub-section (3) nor sub-section (4) of this section shall apply as regards such worker in respect of any public holiday falling within such employment year;

(b) if less than six extra holidays are allowed and such worker is paid by such employer, in respect of each day of the extra holidays so allowed, a sum equivalent to a full day's pay, such employer may, at the time at which he gives such worker notice of his intention to allow such annual leave, also give to such worker notice in writing 45
stating—

(i) if five extra holidays are allowed, that such extra holidays are in lieu of his rights in respect of each of such five public holidays (falling within such employment year) as such employer may select and specify in such notice, 50

(ii) if four extra holidays are allowed, that such extra holidays are in lieu of his rights in respect of each of such four public holidays (falling within such employment year) as such employer may select and specify in such notice, 55

(iii) if three extra holidays are allowed, that such extra holidays are in lieu of his rights in respect of each of such three public holidays (falling within such employment year) as such employer may select and specify in such notice, 60

5 (iv) if two extra holidays are allowed, that such extra holidays are in lieu of his rights in respect of each of such two public holidays (falling within such employment year) as such employer may select and specify in such notice,

10 (v) if one extra holiday is allowed, that such extra holiday is in lieu of his rights in respect of such public holiday (falling within such employment year) as such employer may select and specify in such notice,

and in any such case neither sub-section (1) nor sub-section (2) nor sub-section (3) nor sub-section (4) of this section shall apply as regards such worker in respect of any public holiday specified in such notice.

15 (8) In this section—
the expression “short day” means in relation to a worker a day on which such worker under his contract of service normally works for less than a full day;

20 the expression “working day” means in relation to a worker a day which—

(a) is a week-day, and

(b) is not—

(i) a public holiday, or

25 (ii) a day within which any period of twenty-four consecutive hours of rest required to be allowed to such worker under any other enactment falls, or

(iii) a non-working day, or

(iv) a short day.

(9) Where—

30 (a) a payment is made to a non-domestic worker under this section by his employer in respect of a public holiday, and

(b) the services of such worker are terminated before such public holiday,

35 such worker shall not, for the purposes of the Unemployment Insurance Acts, 1920 to 1933, be deemed to have been in the employment of such employer on such public holiday.

40 **10.—(1)** Every person who employs a non-domestic worker shall, in every employment year of such non-domestic worker during which he has been continuously in the employment of such person and has worked in such employment for not less than eighteen hundred hours, allow at such time as such person thinks fit to such worker seven consecutive whole holidays (in this Act referred to as annual leave).

Annual leave of non-domestic workers.

45 (2) Where a non-domestic worker is allowed annual leave the employer of such worker shall pay to such worker in respect of such annual leave—

50 (a) in case the ordinary remuneration of such worker is wholly calculated by reference to time, a sum equivalent to the amount (exclusive of pay for over-time) which such worker received from such employer as salary or wages in respect of the week preceding such annual leave during which such worker worked the normal number of hours on the normal maximum number of days under his contract of service, and

55 (b) in any other case, a sum equivalent to the amount of his average weekly earnings (exclusive of pay for overtime) for the six months immediately preceding such annual

leave if he has been so long employed by such employer but if not, then for any less period during which he has been employed by such employer.

(3) Where—

- (a) a non-domestic worker employed by a person ceases, at any time other than the end of an employment year of such worker, to be in the employment of such person, and 5
- (b) such worker has been in the employment of such person during not less than one month in such employment year and has worked not less than one hundred and fifty hours in such month, and 10
- (c) such person has not allowed such worker before such cesser annual leave in respect of the portion of such employment year during which he was so employed,

such person shall pay to such worker at such cesser— 15

- (i) in respect of the first month in the said portion of such employment year during which he has worked for not less than one hundred and fifty hours, a sum equivalent to a full day's pay, and
- (ii) in respect of each period (excluding the said first month) of two months in the said portion of such employment year during which he has worked for not less than three hundred hours, a sum equivalent to a full day's pay. 20

(4) The Minister may, whenever and so often as he so thinks proper, make regulations varying in respect of all or any particular class or classes (defined in such manner and by reference to such things as the Minister thinks proper) of non-domestic workers all or any of the periods of eighteen hundred hours, three hundred hours, or one hundred and fifty hours mentioned in sub-sections (1) and (3) of this section by substituting for such period or periods either such other number of hours or such number of days as the Minister thinks proper, and whenever any such regulations are in force the said sub-sections shall have effect, in respect of the non-domestic workers or the class or classes of non-domestic workers to which such regulations apply, as if the said periods or such of them as are affected by such regulations were varied in the manner stated in such regulations. 25 30 35

(5) In the application of this section to workers who are industrial workers and are under the age of eighteen years— 40

- (a) the period of fifteen hundred hours shall be substituted in sub-sections (1) and (4) for eighteen hundred hours, and
- (b) the several periods of two hundred and fifty hours and one hundred and twenty hours shall respectively be substituted in sub-sections (3) and (4) for the several periods of three hundred hours and one hundred and fifty hours, 45

and this section shall have effect in relation to such workers accordingly.

(6) Where any non-working day or any two or more consecutive non-working days falls or fall immediately before or immediately after a day on which an employer has allowed a non-domestic worker a whole holiday, such non-working day or each of such consecutive non-working days (as the case may be) shall, if such worker does not work thereon for such employer, be deemed for the purposes of this section to be a day on which such employer has allowed such worker a whole holiday. 50 55

(7) No day which is a public holiday nor a day on which such non-domestic worker is allowed, in pursuance of the immediately preceding section of this Act, a whole 65

holiday shall be reckoned as a day of annual leave, but if any such day intervenes between days of annual leave, such days shall be deemed to be consecutive notwithstanding such intervention.

5 (8) This section shall apply to the employment year current at the commencement of this Act of every person who is a non-domestic worker at such commencement, and this section shall have effect in respect of such employment year and such person as if this section had been in force at the beginning of such
10 employment year, but subject to the modifications that—

(a) if such employment year expires within one month after such commencement, the employer of such person shall be deemed to have complied with this section if he allows to such person not later than three months
15 after the expiration of such employment year, such annual leave as such person may be entitled to under this section in respect of such employment year, and

(b) if such employer has before such commencement allowed to such person in such employment year one or more whole holidays which would be annual leave for the purposes of this section but for the fact that such whole holidays were less than seven or were not consecutive or were both less than seven and not consecutive, the
20 said whole holidays so allowed shall be deemed to be annual leave for the purposes of this section and such person shall only be entitled in respect of such employment year to such number (if any) of consecutive whole holidays after such commencement as is equal to the number (if any) of days by which the
25 number of whole holidays so allowed is less than seven.
30

(9) If the employer of a non-domestic worker fails to allow annual leave to such worker in respect of an employment year of such worker in accordance with this section, the following provisions shall have effect, that is to say:—
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(a) such employer shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to the penalties mentioned in the Schedule to this Act;

(b) such employer shall (whether proceedings have or have not
40 been taken under paragraph (a) of this sub-section) pay to such worker a sum equivalent to the amount which, under sub-section (2) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker such annual leave and such annual
45 leave had been allowed during the last seven days of such employment year.

(10) Where a person who employs a non-domestic worker proposes to grant such non-domestic worker annual leave in pursuance of this section—

50 (a) such person shall not later than fourteen days before the day on which such annual leave is to commence give notice of his intention to grant such annual leave and of the day on which it will begin;

(b) if such person fails to comply with paragraph (a) of this
55 sub-section, such person shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to a fine not exceeding five pounds.

(11) If the employer of a non-domestic worker allows to such worker in any employment year a period of annual leave earlier
60 than the last seven days (being days which are reckonable as days of annual leave for the purposes of this section) of such employment year and such worker leaves the employment of such

employer before the termination of such employment year, such employer shall not be entitled in respect of such allowance of annual leave to reduce the period of notice required for terminating such employment, nor the pay nor other emoluments to which such worker may be entitled at the time of leaving such employment. 5

Restriction on work by industrial worker during annual leave.

11.—(1) It shall not be lawful for any industrial worker, during any period of annual leave, to do for reward any industrial work.

(2) If any industrial worker acts in contravention of this section, such worker shall be guilty of an offence under this section and shall be liable on summary conviction thereof to the penalties mentioned in the Schedule to this Act. 10

Annual leave of domestic workers.

12.—(1) Every person who employs a domestic worker shall, in every employment year of such domestic worker during which such domestic worker has been continuously in the employment of such person and has worked in such employment for not less than three hundred days, allow at such time as such person thinks fit to such domestic worker fourteen consecutive whole holidays (in this Act also referred to as annual leave). 15

(2) Where a person allows to a domestic worker in his employment seven consecutive whole holidays (in this Act referred to as semi-annual leave) in the first half of an employment year of such domestic worker and also allows to such domestic worker semi-annual leave in the second half of such employment year, the provisions of sub-section (1) of this section shall not apply as regards such domestic worker in respect of such employment year. 20 25

(3) Where a domestic worker is allowed annual leave or semi-annual leave, the employer of such worker shall pay to such worker in respect of such annual leave or semi-annual leave a sum equivalent to the amount which such worker received from such employer as salary or wages in respect of— 30

(a) in case such worker is allowed annual leave, the two consecutive weeks preceding such annual leave during which such worker worked the normal number of hours on the maximum number of days under his contract of service, 35

(b) in case such worker is allowed semi-annual leave, the week preceding such semi-annual leave during which such worker worked the normal number of hours on the maximum number of days under such contract. 40

(4) Where—

(a) a domestic worker is employed by a person under a contract of service which includes lodgings, and

(b) such person has given to such worker notice of intention to allow to such worker annual leave or semi-annual leave during a particular period, and 45

(c) such worker, with the consent of such person, remains at work with such person during such period,

such person shall, if, in addition to the wages for that period, he pays to such worker a sum equal to the amount of such wages, be deemed to have allowed to such worker a whole holiday on each of the days falling within such period. 50

(5) Where—

(a) a domestic worker ceases to be in the employment of a person during the currency of the first half of an employment year of such worker, and 55

(b) such worker has worked in such employment for not less than one hundred and fifty days in such first half, and

(c) such worker has not before such cesser been allowed during such first half either annual leave or semi-annual leave,

such person shall pay to such worker at such cesser a sum equivalent to the amount which, under sub-section (3) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker semi-annual leave during such first half and such semi-annual leave had been allowed during the seven days preceding such cesser.

(6) Where a domestic worker ceases to be in the employment of a person during the currency of the second half of an employment year of such worker and such worker has not before such cesser been allowed either annual leave in respect of such employment year or semi-annual leave in respect of both the first half of such employment year and such second half, the following provisions shall have effect, that is to say :—

(a) if such worker has worked in such employment for not less than one hundred and fifty days in such first half and also for not less than one hundred and fifty days in such second half, such person shall on such cesser pay to such worker a sum equivalent to the amount which, under sub-section (3) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker such annual leave and such annual leave had been allowed during the fourteen days preceding such cesser;

(b) if—

(i) such worker has worked in such employment for not less than one hundred and fifty days in such first half, but for less than one hundred and fifty days in such second half, and

(ii) such worker has before such cesser not been allowed semi-annual leave during such first half,

such person shall pay to such worker on such cesser a sum equivalent to the amount which, under sub-section (3) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker semi-annual leave during such first half and such semi-annual leave had been allowed during the last seven days of such first half;

(c) if—

(i) such worker has worked in such employment for less than one hundred and fifty days in such first half, but for not less than one hundred and fifty days in such second half, and

(ii) such worker has not been allowed before such cesser semi-annual leave during such first half or such second half,

such person shall pay to such worker on such cesser a sum equivalent to the amount which, under sub-section (3) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker semi-annual leave during such second half and such semi-annual leave had been allowed during the last seven days of such second half.

(7) The Minister may, whenever and so often as he so thinks proper, make regulations varying in respect of all or any particular class or classes (defined in such manner and by reference to such things as the Minister thinks proper) of domestic workers all or any of the periods of three hundred days or one hundred and fifty days mentioned in sub-sections (1), (5), and (6) of this section by substituting for such period or periods such other number of days as the Minister thinks proper, and whenever any such regulations are in force the said sub-sections shall have effect, in respect of the domestic workers or the class or classes of domestic workers to which such regulations apply, as if the said periods or such of them as are affected by such regulations were varied in the manner stated in such regulations.

(8) Where any non-working day or any two or more consecutive non-working days falls or fall immediately before or after a day on which an employer has allowed a domestic worker a whole holiday, such non-working day or each of such consecutive non-working days (as the case may be) shall, if such worker does not work thereon for such employer, be deemed for the purposes of this section to be a day on which such employer has allowed such worker a whole holiday. 5

(9) This section shall apply to the employment year current at the commencement of this Act of every person who is a domestic worker at such commencement, and this section shall have effect in respect of such employment year and such person as if this section had been in force at the beginning of such employment year but subject to the modifications that— 10

(a) if such employment year expires within one month after such commencement, the employer of such person shall be deemed to have complied with sub-section (1) of this section if he allows to such person, not later than three months after the expiration of such employment year, such annual leave as such person may be entitled to under this section in respect of such employment year, and 15 20

(b) if such employer has before such commencement allowed to such person in such employment year one or more whole holidays which would be annual leave for the purposes of this section but for the fact that such whole holidays were less than fourteen or were not consecutive or were both less than fourteen and not consecutive the said whole holidays so allowed shall be deemed to be annual leave for the purposes of this section and such person shall only be entitled in respect of such employment year to such number (if any) consecutive whole holidays after such commencement as is equal to the number (if any) of days by which the number of whole holidays so allowed is less than fourteen. 25 30 35

(10) If the employer of a domestic worker fails to allow annual leave to such worker in respect of an employment year of such worker in accordance with this section, the following provisions shall have effect, that is to say :—

(a) such employer shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to the penalties mentioned in the Schedule to this Act; 40

(b) such employer shall (whether proceedings have or have not been taken under paragraph (a) of this sub-section) pay to such worker a sum equivalent to the amount which, under sub-section (3) of this section, he would have been liable to pay to such worker if he had in fact allowed such worker such annual leave and such annual leave had been allowed during the last fourteen days of such employment year. 45 50

(11) Where a person who employs a domestic worker proposes to grant such domestic worker any whole holidays in pursuance of this section—

(a) such person shall not later than fourteen days before the day on which such whole holidays are to commence give notice of his intention to grant such whole holidays and of the day on which they will begin; 55

(b) if such person fails to comply with paragraph (a) of this sub-section, such person shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to a fine not exceeding five pounds. 60

(12) For the purposes of this section a domestic worker shall be deemed to have worked in the employment of a particular person on any day on which such domestic worker has been available for service at such person's request for a period of two or more hours.

5 **13.—(1) Where—**

Payment in lieu of board and lodgings during leave.

(a) a worker is allowed by his employer annual leave or semi-annual leave, and

(b) such worker was, immediately before such annual leave or semi-annual leave, entitled as part of his remuneration to accommodation,

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such employer shall, in addition to any sum payable to such worker under this Act in respect of such annual leave or semi-annual leave, pay to such worker, in respect of any day falling within such annual leave or semi-annual leave during which he does not receive accommodation, in case such worker is employed in a county borough or the borough of Dun Laoghaire, the sum of one shilling or, in any other case, the sum of sevenpence.

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(2) In this section the expression "accommodation" means—

(a) in relation to a worker who is entitled to board only, board;

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(b) in relation to a worker who is entitled to lodgings only, lodgings;

(c) in relation to a worker who is entitled to board and lodgings, board and lodgings.

25 **14.—**If the employer of a worker fails to pay to such worker any moneys which become payable by such employer to such worker under any provision contained in this Act—

Penalties for non-payment and recovery of moneys due to workers.

(a) such employer shall be guilty of an offence under this section and shall be liable on summary conviction thereof to the penalties mentioned in the Schedule to this Act;

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(b) such worker may (whether proceedings have or have not been taken under paragraph (a) of this section) recover from such employer such moneys as a simple contract debt in a court of competent jurisdiction.

35 **15.—(1)** The Minister may whenever and so often as he thinks fit by order (in this Act referred to as a records order) require records to be kept by employers of workers or any class of employers of workers of any matter or thing a record of which is in the opinion of the Minister necessary for the enforcement of this Act and if he so thinks fit prescribe the form of any such records.

Records.

40 (2) The Minister may under this section make different records orders in respect of different classes of employers of workers.

(3) The Minister may by order under this section amend or revoke any order made under this section or sub-section.

45 (4) The Minister may, if he so thinks fit, by any order made under this section prescribe the place or places where the records prescribed by such order shall be kept and may make such regulations as to the production and inspection of such records as he may think fit.

50 (5) If whenever a records order is in force any employer fails, neglects or refuses to comply with the requirements of such order or makes in any record which such employer is required by such order to keep any entry which is false in any material respect knowing the same to be false such employer shall be guilty of an offence under this section and shall be liable on summary conviction thereof to the penalties mentioned in the Schedule to this Act.

55

16.—(1) An inspector may for the purposes of enforcing the provisions of this Act do all or any of the following things, that is to say:—

- (a) subject to the provisions of this section, enter at all reasonable times any premises or place where he has reasonable grounds for supposing that any workers are employed, 5
- (b) make such examination or enquiry as may be necessary for ascertaining whether the provisions of this Act are complied with in respect of any worker employed in any such premises or place, 10
- (c) require the employer of any worker or the representative of such employer to produce to him any records which such employer is required by a records order to keep and inspect and take copies of entries in such records, 15
- (d) examine with respect to any matters under this Act any person whom he has reasonable cause to believe to be or to have been a worker or the employer of any worker and require such person to answer such questions (other than questions tending to incriminate such person) as such inspector may put touching such matters and to sign a declaration of the truth of the answers to such questions. 20

(2) The powers conferred on an inspector by paragraph (a) of sub-section (1) of this section shall not be exercisable in respect of any private dwelling-house unless the Minister or an officer of the Minister appointed by the Minister for the purpose certifies that he has reasonable grounds for believing that an offence under this section in relation to any worker employed in such house has been committed by the employer of such worker, and such inspector on applying for admission to such house produces such certificate. 25 30

(3) If any person—

- (a) obstructs or impedes an inspector in the exercise of any of the powers conferred on such inspector by this section, or 35
- (b) refuses to produce any record which an inspector lawfully requires him to produce, or
- (c) produces or causes to be produced or knowingly allows to be produced to an inspector any record which is false in any material respect knowing the same to be false, or 40
- (d) prevents, or attempts to prevent any person from appearing before or being questioned by an inspector, or 45
- (e) wilfully fails or refuses to comply with any lawful requirement of an inspector under paragraph (d) of sub-section (1) of this section,

such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds. 50

(4) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Act shall if so required produce the said certificate to the occupier and to any person being examined by him. 55

(5) In this section the word "inspector" means a person appointed by the Minister to be an inspector for the purposes of this section.

17.—(1) Where a contract for the execution of any work was entered into before the commencement of this Act and is at such commencement not fully carried out, and the person liable under such contract to execute such work claims either or both of the following things, that is to say:— 60

(a) that, by reason of the obligations imposed on employers by this Act, a limitation of time contained in such contract for the doing of any particular thing has become unreasonable and should be extended, or

5 (b) that, by reason of the said obligations, any particular price or other payment fixed by such contract has become unreasonable and should be increased,

then and in every such case, such claim shall, in default of agreement between the parties concerned, be referred, on the demand of
10 any such party, to arbitration under this section.

(2) Where a claim is referred under this section to arbitration, the following provisions shall have effect, that is to say :—

15 (a) such arbitration shall be heard and determined by one arbitrator who, in default of agreement between the parties concerned, shall be appointed by the Minister on the application of any such party;

20 (b) in the case of a claim for the extension of a limitation of time, the arbitrator shall determine whether such extension should or should not be made and (if he determines that such extension should be made) the amount of such extension;

25 (c) in the case of a claim for the increase of a price or other payment, the arbitrator shall determine whether such increase should or should not be made and (if he determines that such increase should be made) the amount of such increase;

30 (d) the arbitrator shall be paid such fee for acting as arbitrator as shall, in default of agreement, be fixed by the Minister, and such fee and all other general costs and expenses of the arbitration shall be paid by such one or more of the parties to the arbitration and, if by more than one of such parties, in such proportions as the arbitrator shall direct;

35 (e) the arbitrator shall determine how the costs and expenses incurred by each of the parties to the arbitration of or incidental to appearing and being heard thereat shall be borne;

40 (f) if the arbitrator determines that a limitation of time should be extended or that a price should be increased, the arbitrator shall amend the contract which is the subject of the arbitration in such manner as he shall think proper in order to give effect to such determination;

45 (g) the determination of the arbitrator shall be final and conclusive and shall be binding on all parties concerned.

18.—Where an offence under any section of this Act was committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any
50 neglect on the part of, any director, manager, secretary or other officer of such body corporate, such director, manager, secretary or other official shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Offences by
bodies corporate.

19.—(1) An offence under any section of this Act may be pro-
55 secuted by the Minister.

Prosecution of
offences.

(2) An offence under any section of this Act committed by the employer of a worker may be prosecuted by such worker or by any official of a registered trade union of which such worker is a member.

(3) A prosecution for an offence under any section of this Act may be instituted within twelve months after the commission of such offence.

Emergency as defence.

20.—Where a person is charged with an offence under any section of this Act it shall be a good defence to such charge if such person proves to the satisfaction of the Court before which such offence is tried that the alleged contravention of such section was rendered necessary or reasonably proper by the actual occurrence or the threat or reasonable anticipation of fire, flood, storm, violence, a breakdown of plant or machinery, or any other emergency. 5 10

Regulations.

21.—The Minister may make regulations in relation to any matter or thing referred to in this Act as prescribed or to be prescribed.

Laying of orders and regulations before Houses of the Oireachtas.

22.—Every order and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling such order or regulation is passed by either such House within the next subsequent twenty-one days on which such House has sat after such order or regulation is laid before it, such order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under such order or regulation. 15 20

Expenses.

23.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 25

Repeal of certain provisions of the Conditions of Employment Act, 1936.

24.—The following provisions of the Conditions of Employment Act, 1936 (No. 2 of 1936) are hereby repealed, that is to say, sections 5, 24, 25, 26 and 27, and sub-sections (5), (6), (7) and (8) of section 49. 30

Short title and commencement.

25.—(1) This Act may be cited as the Holidays (Employees) Act, 1939.

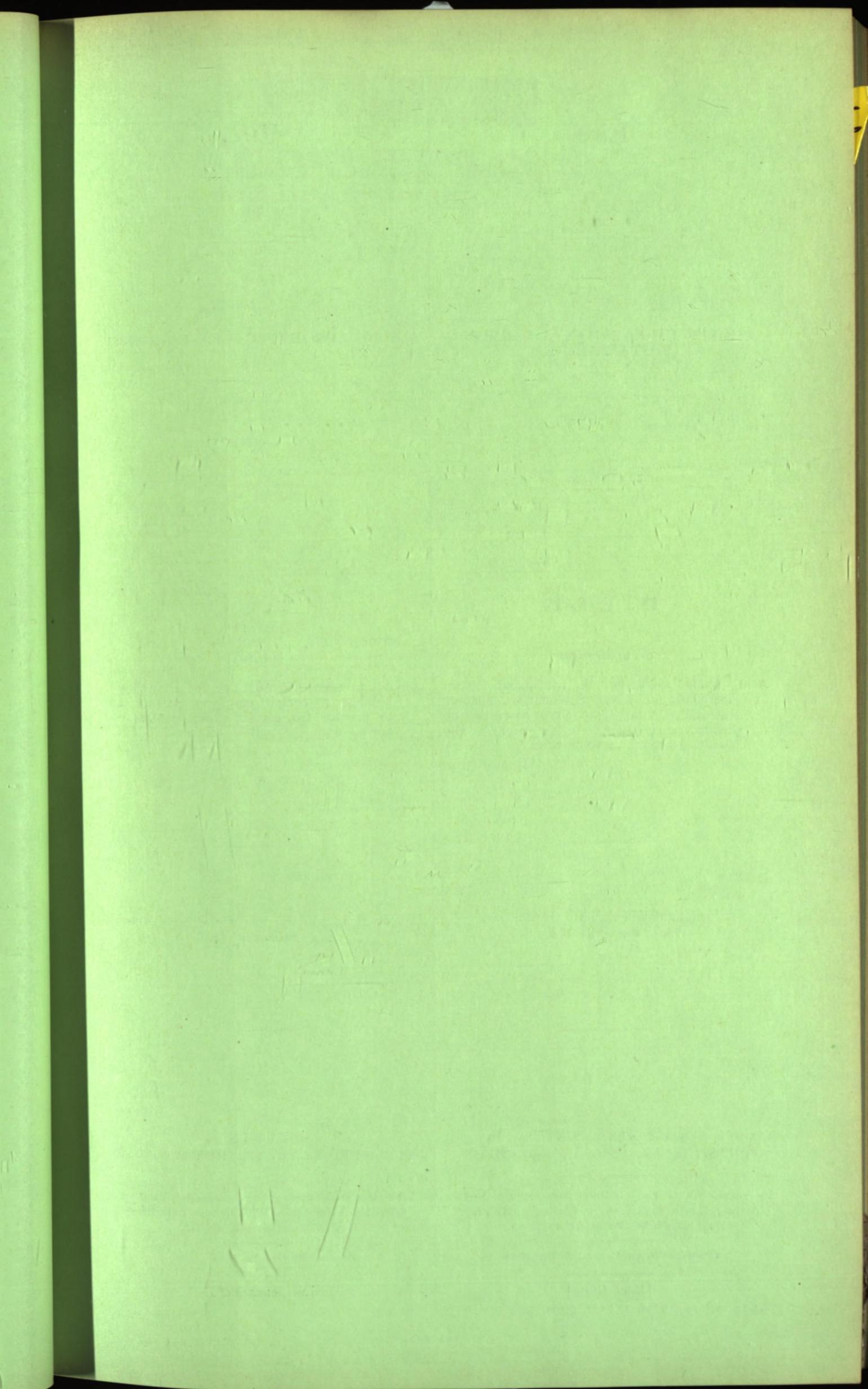
(2) This Act shall come into operation on such day as shall be fixed for the purpose by order of the Minister.

SCHEDULE.

35

PENALTIES FOR CERTAIN OFFENCES.

In the case of a first offence under the relevant section or sub-section a fine not exceeding ten pounds or in the case of any subsequent such offence a fine not exceeding twenty-five pounds.



Éire.

BILLE UM LAETHANTA SAOIRE
(FOSTAITHE), 1938.

BILLE

dá ngairmtear

Acht chun socrúithe do dhéanamh chun laetheanta saoire do thabhairt do dhaoine fostúithe áirithe, agus chun socrúithe do dhéanamh i dtaobh nithe áirithe eile bhaineas leis an ní roimhráite.

*Ritithe ag dhá Thigh an Oireachtais,
9adh Feabhra, 1939.*

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Éire.

HOLIDAYS (EMPLOYEES) BILL, 1938.

BILL

entitled

An Act to make provision for the allowance of holidays to certain employed persons, and to provide for certain other matters connected with the matter aforesaid.

*Passed by both Houses of the Oireachtas,
9th February, 1939.*

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