

New Zealand.



ANALYSIS.

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1927, No. 53.

Title.

AN ACT to amend the Shops and Offices Act, 1921-22.

[24th November, 1927.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. (1) This Act may be cited as the Shops and Offices Amendment Act, 1927, and shall be read together with and deemed part of the Shops and Offices Act, 1921-22 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of February, nineteen hundred and twenty-eight.

Section 2 of principal Act amended.

2. Subsection two of section two of the principal Act is hereby amended by repealing the definition of the term "florist," and substituting the following definition:—

“‘Florist’ means a person whose business is to sell flowers, whether fresh-cut or made up, artificial flowers, pot-plants, raffia, and florists’ requisites.”

3. Section three of the principal Act is hereby amended by repealing subsection three, and substituting the following subsection:—

Section 3 of principal Act amended.

“(3) Notwithstanding anything contained in this Act, no assistant who is a boy under the age of eighteen years or a female shall in any circumstances be employed in connection with the business of a shop after the hour of half past nine o’clock in the evening, except on Christmas Eve and New Year’s Eve:

“Provided that any such assistant who is regularly employed in a shop wherein is carried on the business of a restaurant combined with that of a baker or confectioner may be employed in that shop in the sale of meals or refreshments until the hour of half past ten.”

4. Section four of the principal Act is hereby repealed, and the following section substituted therefor:—

Repeal.

“4. (1) No shop-assistant shall be employed in connection with the business of any shop before the hour of three o’clock in the morning in the case of milkmen, or before the hour of four o’clock in the morning in the case of butchers or bakers, or before the hour of seven o’clock in the morning in any other case.

Hour of commencement of employment.

“(2) Notwithstanding anything contained in the last preceding subsection, no boy or girl under the age of sixteen years shall be employed as aforesaid before the hour of seven o’clock in the morning.”

5. Section five of the principal Act is hereby amended by omitting the words “completing any work commenced prior to such time,” and substituting the words “attending to customers arriving in the shop prior to such time and of completing any work incidental thereto, or for the balancing of the cash for the day.”

Section 5 of principal Act amended.

6. (1) Where the number of women employed in a shop (other than those who can reasonably obtain their meals at their places of residence within the time at their disposal for that purpose) is six or more the occupier shall provide a suitable dining and cloak room therein, which shall be furnished to the satisfaction of the Inspector, and which shall not be used by the occupier for any other purpose:

Dining- and cloak-room provision for women employed in shops.

Provided that the Inspector may exempt any shop from the requirements of this section in any case where he is satisfied that the provision of such a room is not reasonably necessary.

(2) This section shall in its application to any shop be read subject to any award or industrial agreement requiring the provision of dining-room and cloak-room accommodation for women employed in such shop.

7. The second proviso to section eight of the principal Act is hereby amended by inserting, before the words “an allowance,” the words “such allowance for meals as may be provided for such cases by any award or industrial agreement, and where no such provision is made by award or industrial agreement.”

Section 8 of principal Act amended.

8. (1) Notwithstanding anything to the contrary in the principal Act or in any award, any shop wherein telephonic, telegraphic, or postal business is carried on on behalf of the Postmaster-General may be opened for the purpose of such business at any time when for other purposes it is required to be closed, provided that it is again closed immediately on the conclusion of such business.

Shops may be opened for telephonic, telegraphic, or postal business at any hour.

(2) Nothing in the last preceding subsection shall apply to the statutory closing-day, and the provisions of subparagraph (iii) of paragraph (d) of section twenty-one of the principal Act shall continue to apply with respect thereto.

Section 14 of principal Act amended.

9. Subsection two of section fourteen of the principal Act is hereby amended by adding to the proviso the words "save that this power shall not be exercised in any week in which pursuant to any other provision of this Act he is required to close his shop on the afternoon of Saturday, unless provision therefor is made in an award or industrial agreement relating to such shop or to the assistants employed therein."

Section 21 of principal Act amended.

10. Section twenty-one of the principal Act is hereby amended as follows:—

(a) By inserting in paragraph (a), after the words "railway-station or wharf," the words "and in the case of any shop wherein is exclusively carried on the business of selling motor-spirit, petrol, or oil":

(b) By adding to paragraph (b) thereof the following additional proviso,—

"Provided further that unless provision to the contrary is made in any award or industrial agreement relating to such shop, or to the assistants employed therein, the half-holiday shall not be so changed to a day on which such occupier is required to close such shop pursuant to any other provision of this Act."

Section 26 of principal Act amended.

11. Subsection three of section twenty-six of the principal Act is hereby amended by omitting the words "two days," and substituting the words "two working-days."

Section 30 of principal Act amended.

12. Section thirty of the principal Act is hereby amended by adding the following words: "and the shop is sufficiently subdivided for the purposes of each such class of business to the satisfaction of the Inspector."

Section 32 of principal Act amended.

13. Subsection one of section thirty-two of the principal Act is hereby amended by omitting the words "the district of any local authority," and substituting the words "any separate or combined district."

Minister may apply section 31 of principal Act to certain districts.

14. The Minister may at any time, by notice in the *Gazette*, declare that the provisions of section thirty-one of the principal Act shall apply to any combined district or separate district having a population of five thousand or upwards mentioned in such notice, and thereupon the said section shall apply to such district as if it were one of the districts mentioned in the Second Schedule to that Act. Any declaration under this section may at any time be in like manner revoked in whole or in part.

Provision for fixing hours on Sunday during which chemists' shops shall be closed.

15. Any requisition under section thirty-two of the principal Act in respect of the closing-hours of chemists' shops may, in addition to providing for any of the matters mentioned in that section or in section thirty-five of that Act, provide for the hours during which all chemists' shops in the district to which the requisition relates shall be closed on Sundays, and for exemptions, pursuant to the said section thirty-five, from such closing-hours.

Section 35 of principal Act amended.

16. Subsection one of section thirty-five of the principal Act is hereby amended by omitting all words after the words "this section shall

not" down to and including the word "Inspector," and substituting the words "while medicines and surgical appliances are obtainable from any such exempted shop, apply to any chemist's shop in the district which, by the nearest route as determined by the Inspector, is within such distance (not exceeding two miles and a half in any case) as may be set out in the requisition."

17. (1) Section sixty-nine of the principal Act is hereby amended by repealing subsection one, and substituting the following subsection:—

Section 69 of
principal Act
amended.

"(1) In any award relating to the employment of shop-assistants in any district to which section thirty-one hereof applies the Court of Arbitration may, having regard to the convenience of the public in that district, fix the hour of closing on any working-day of any shop occupied by a party to the award in such district irrespective of whether or not any assistants are employed in that shop, and may also fix the hour of closing on any working-day of any shop outside such district occupied by a party to the award in any case where it is satisfied that it is expedient so to do for the purpose of securing fair competition between all such shops within and outside such district:

"Provided that the Court shall not in the case of any shop fix such a closing-hour as will—

"(a) Restrict the right of the occupier under any provision of this or any other Act to elect which working-day in any week he will observe as the statutory closing-day, or require him to close his shop on the day so elected earlier than the hour at which he would be required to close it for the purposes of the statutory closing-day on any other day of the week; or

"(b) Require an occupier to close his shop for the afternoon on more than one working-day in any week. For the purposes of this paragraph a day required to be observed substantially as a whole holiday shall not be regarded as a working-day."

(2) For the purposes of subsection one of the said section sixty-nine as set out in the last preceding subsection every occupier of a shop, whether employing assistants or not, shall be deemed to be an employer within the meaning of the Industrial Conciliation and Arbitration Act, 1925.

(3) Where the closing-hours of any shops in any district other than a district to which section thirty-one of the principal Act applies are on the commencement of this Act fixed by a provision in any award, such provision shall cease to operate. With respect to districts to which section thirty-one of the principal Act applies the hours so fixed by any award shall (subject to the proviso to subsection one of section sixty-nine of the principal Act as set out in subsection one of this section) continue to be observed during the currency of the award, and any exemptions therefrom granted before the commencement of this Act shall, subject to section nineteen hereof, enure while such closing-hours continue to be so observed.

(4) While the closing-hours of any shops in any industry in any district are fixed by an award nothing in section thirty-two of the principal Act shall apply to shops in such industry in such district.

Restriction on occupier of a shop in one district from delivering goods after working-hours in any other district.

Exemptions from closing-hour provisions may be granted by Magistrates.

18. Where any goods are delivered by or on behalf of the occupier of a shop in any separate district or combined district other than that in which the shop is situated the occupier shall be liable to the same penalties (if any) as if his shop were situated within such separate district or combined district.

19. (1) The occupier of any shop the closing-hours of which have been fixed by or pursuant to section thirty-one, section thirty-two, or section sixty-nine of the principal Act or section twenty-five of this Act may, in the prescribed manner, apply to a Magistrate for total or partial exemption from the application of the statutory provision, notice, or award fixing such closing-hours.

(2) The Magistrate shall direct notice of such application and of the day fixed for the hearing thereof to be published in one or more newspapers circulating in the district.

(3) At the hearing of any such application any occupier of a shop affected shall be entitled to appear and to be heard.

(4) If the Magistrate is of opinion that the exemption applied for will not substantially affect the business of any other shop he shall by order grant such exemption.

(5) If the Magistrate is satisfied in the case of an application by the occupier of a shop for exemption from any closing-hours fixed by an award that all the provisions of such award are not binding on the employers of a majority of the shop-assistants employed in any particular trade within the industry or industries to which the award relates in the separate district or combined district, as the case may be, in which such shop is situated, he shall by order exempt the occupiers of all shops in such trade in such district from the closing-hours so fixed.

(6) Notwithstanding anything contained in the two last preceding subsections, if the Magistrate is satisfied in any other case that it is desirable in the public interest that any application for exemption as aforesaid should be granted either wholly or partially he may by order grant such exemption accordingly, subject to such terms and conditions as he may think fit, having regard to the interests of the occupier of any other shop that may be affected by such exemption.

(7) Any such order may at any time be cancelled or varied by the same or any other Magistrate on the application of any occupier affected by such order, and all the provisions of this section relating to an application for exemption shall, with the necessary modifications, apply to an application under this subsection.

(8) While any order made under the foregoing provisions of this section is in force the occupier of any shop wholly or partially exempted thereby shall, to the extent of such exemption, not be bound by any notice under section thirty-three of the principal Act prohibiting the sale of any of the goods comprised in the principal business of such shop.

(9) Subsection four of section thirty-one of the principal Act is hereby repealed, but every exemption granted under that subsection shall remain in force in the same manner in all respects as if it had been granted by order under this section, and shall be deemed to have been so granted.

Repeal.

20. (1) The authority conferred on Magistrates by the last preceding section is hereby extended to enable a Magistrate to grant exemption from the prohibition against the sale of any goods imposed by a notice pursuant to section thirty-three of the principal Act to any occupier of a shop who is not bound to observe the closing-hours fixed in respect of shops the principal business of which is the sale of the goods specified in such notice.

Exemption from prohibition against sale of goods imposed by section 33 of principal Act on certain occupiers.

(2) The provisions of the last preceding section with respect to applications for exemption and to cancellation and variation of orders made under that section shall apply with respect to applications and orders under this section.

21. In determining whether a requisition or a petition pursuant to section thirty-two or section thirty-three of the principal Act, as the case may be, is signed by a majority of the occupiers of the shops concerned the Minister may, if he thinks fit, exclude from computation any occupier to whom has been granted any exemption from the closing-hours fixed in respect of his shop.

Persons exempted may be deemed not to be occupiers of shops for purposes of requisitions or petitions.

22. Notwithstanding anything to the contrary in the principal Act or in any award or industrial agreement, the Minister may, on the application of the local authority, in any special case direct with respect to any specified locality the observance in any particular week of the statutory closing-day on some other day of that week and the giving of the weekly half-holiday to assistants on such other day, and make such consequential adjustment as may be necessary of the closing-hours of and the hours of employment in shops in such locality during such week.

Alteration of statutory closing-day in any particular week.

23. (1) Every fruiterer's shop in which two or more persons are engaged, whether as assistants or not, shall be registered in the prescribed manner in the name of one proprietor as occupier, and no alteration in the name of the registered occupier shall be made except with the approval of the Inspector.

Registration of fruiterers' shops where two or more persons engaged.

(2) Every person engaged in any such shop except the registered occupier thereof and the wife or husband, as the case may be, of such occupier shall for all the purposes of the principal Act be deemed to be a shop-assistant.

(3) The registered occupier of every shop to which this section applies shall, when requested so to do by the Inspector, keep posted up in a conspicuous place in the shop where it may at all times be readily seen by the Inspector and the assistants a time-table in English in the prescribed form showing the working-hours of each shop-assistant engaged in the shop, and no such assistant shall be employed or engaged in the business of the shop otherwise than during the working-hours so shown with respect to him. A copy of such time-table shall be forthwith furnished to the Inspector. Any alteration made in the hours of the assistants from time to time shall be entered on the time-table, and a notice of the alteration shall be forwarded to the Inspector.

24. For the purposes of subsection one of section thirty-two and of subsection one of section thirty-three of the principal Act the term "occupier" shall not include any person who is not a British subject, or any hawker or other person who carries on business by selling or offering for sale by retail any goods elsewhere than in a shop.

Certain persons not entitled to sign requisitions or petitions under sections 32 and 33 of principal Act.

Special provisions as to sale of tobacco, &c., by persons other than tobacconists.

25. (1) Where in any district to which section thirty-one of the principal Act applies a notice is hereafter gazetted under section thirty-two of that Act pursuant to a requisition signed by not less than two-thirds of the occupiers of tobacconists' shops in such district, all other shops in such district in which smoking requisites are sold shall be closed at the hour or hours set out in such notice :

Provided that nothing in this section shall require any such last-mentioned shop to be closed earlier than the hour or hours specified in the said section thirty-one with respect to shops subject to that section.

(2) As soon as practicable after publication in the *Gazette* of any such notice as aforesaid, every occupier of a shop which is required to be closed in accordance with the requirements of this section shall notify the Inspector that he sells smoking requisites, and every occupier of a shop who thereafter commences the sale of such goods in such district while such notice is in force shall thereupon so notify the Inspector.

(3) The foregoing provisions of this section shall not apply to hotels, private hotels, or boardinghouses :

Provided that the occupier of an hotel, private hotel, or boarding-house shall not sell smoking requisites to any person other than a *bona fide* lodger therein after the hour or hours set out in the notice referred to in subsection one hereof.

Section 40 of principal Act amended.

26. Section forty of the principal Act is hereby amended by omitting the words "woman or girl," and inserting the words "female assistant."

Correction of references in sections of the principal Act.

27. The references in subsection one of section two and in subsection one of section twenty-nine of the principal Act to the Factories Act, 1903, shall be deemed to be, and at all times since the passing of the principal Act to have been, references to the Factories Act, 1921-22.

Section 72 of principal Act amended.

28. Subsection one of section seventy-two of the principal Act is hereby amended by adding thereto the following additional proviso:—

"Provided further that where the sole business of any shop is the sale of motor-spirits, petrol, or oil, the provisions of this Act with respect to the closing of shops shall not apply to such shop, nor shall the provisions of subsection one of section three or of section four of this Act apply to male assistants employed therein."

Mode of determining whether building or place is a shop or a restaurant.

29. For the purpose of determining whether or not any building or place is a shop or a restaurant within the meaning of the principal Act no account shall be taken of any business carried on therein which is not subject to that Act.

Modifying application of section 40 of principal Act to certain female assistants.

30. Nothing in section forty of the principal Act shall apply to any female assistant over the age of twenty-one years employed in connection with any dance, banquet, or other social function, or the supplying of refreshments to patrons in any public dance-hall, if provision to the satisfaction of the Inspector is made for the conveyance to her home of such assistant on the completion of her work.