

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 27 May 1977.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 5 July 1977

Words struck out by the Committee are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

Hon. Mr Gordon

SHOP TRADING HOURS

ANALYSIS

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A BILL INTITULED

An Act to regulate the trading hours of retail shops

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

1. Short Title and commencement—(1) This Act may be cited as the Shop Trading Hours Act (1976) 1977.

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(2) This Act shall come into force on the 1st day of 10 October 1977.

*New*

(2) Subject to subsection (3) of this section, this Act shall come into force on the 1st day of October 1977.

(3) Section 19A of this Act shall come into force on the 1st day of January 1978.

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**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Approved goods” means goods declared to be approved goods pursuant to section 5 (1) of this Act:

*New*

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“Area” includes the district of one or more territorial local authorities, a defined part of any such district, a mall, and a street:

*Struck Out*

“Associate member” means an associate member of the Commission, appointed pursuant to section 13 (1) of this Act, and includes a temporary associate member of the Commission appointed pursuant to section 13 (3) of this Act:

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“Commission” means the Shop Trading Hours Commission established by (~~section 12 (1)~~) section 4A (1) of this Act:

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*New*

“Commissioner” means the member of the Commission appointed pursuant to section 4A (2) (a) of this Act:

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“Goods” includes all personal chattels other than liquor (within the meaning of the Sale of Liquor Act 1962), money, and things in action:

*Struck Out*

“Goods” includes all personal chattels other than money or things in action:

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“Inspector” means an Inspector of Factories appointed under the Factories Act 1946:

“Market” means a place or building in which goods are sold or exposed for sale in barrows, stalls, or other such subdivisions, whether or not the dimensions or situations of those subdivisions are fixed, and whether or not the lease of, or licence or permission to use, those subdivisions is granted by one or more of the operators thereof or by some other person:

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“Minister” means the Minister of Labour:

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- 5 “Occupier”, in relation to any building or place used or intended to be used as a shop, or that an Inspector has reasonable cause to believe to be used as a shop or to have a shop within its premises, means the person occupying that building or place; and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of any such building or place; and where any 10 such building or place is occupied by a body of persons, whether incorporated or not, also extends to the working manager; and the term “occupier” also has the extended meaning assigned to it by subsection (2) of this section:
- 15 “Pharmacist” and “pharmacy” have the meanings assigned to them by the Pharmacy Act 1970:
- “Place” includes a barrow, a boat, a caravan, a trailer, and a vehicle:
- 20 “Restricted goods” means goods that are not approved goods:
- “Secretary” means the Secretary of Labour:
- “Shop” means any building, place, or part thereof, where goods are kept, exposed, or offered for sale by retail, and includes an auction mart, but does not include—
- 25 (a) A private dwelling in which the household effects of the owner or occupier are being sold by auction or otherwise; or
- (b) A building or place in which is carried on exclusively the business of selling by auction agricultural or pastoral products, including livestock; or
- 30 (c) A warehouse;
- and also has the extended meaning assigned to it by section 4 (1) of this Act:
- 35 “Special goods” means goods declared to be special goods pursuant to section 5 ((3)) (1) of this Act:
- “Warehouse” means any building or place in which is carried on exclusively the business of selling goods to persons who are dealers therein and who buy to sell again.
- 40 (2) For the purposes of this Act, whenever a hawker or other person who carries on business by selling or exposing goods for sale by retail otherwise than in a shop so sells or

offers for sale, or delivers to a customer, any goods, he shall be deemed to keep a shop open and to be the occupier thereof.

Cf. 1921-22, No. 46, ss. 2, 28, 29, 36; 1927, No. 53, s. 29; 1936, No. 11, ss. 2, 12; 1951, No. 11, s. 2; 1955, No. 32, s. 2

*Struck Out*

**3. Act not to apply to hotels or restaurants**—Subject to section 292 (6) of the Sale of Liquor Act 1962, this Act shall not apply to hotels or restaurants.

Cf. 1921-22, No. 46, s. 37; 1936, No. 11, s. 11; 1945, No. 38, s. 2 (a); 1955, No. 32, s. 19

**4. Special provisions relating to markets**—(1) Every barrow, stall, or other such subdivision within a market is hereby declared to be a shop.

(2) The person by whom leases of, or licences or permissions to use, barrows, stalls, or other such subdivisions within a market are granted shall allocate a different number to each person to whom he has granted any such lease, licence, or permission, and shall keep an accurate record of the name and address of, and the number allocated to, each such person; and upon demand by an Inspector shall forthwith make that record available to him for inspection and the taking of extracts.

(3) The occupier of every such barrow, stall, or other such subdivision shall display prominently thereon, so that it may conveniently be read by any member of the public, accurate details of his name and address and the number allocated to him pursuant to subsection (2) of this section.

*New*

**4A. Shop Trading Hours Commission**—(1) There is hereby established a commission to be called the Shop Trading Hours Commission.

(2) The Commission shall comprise—

(a) One member who shall be a barrister or solicitor of the Supreme Court of New Zealand of at least 7 years practice; and

(b) Two other members,—

all of whom shall be appointed by the Governor-General on the recommendation of the Minister.

(3) Subject to subsections (4) and (5) of this section, every member of the Commission shall hold office for a term of 3 years from the date of his appointment, but may from time to time be reappointed.

*New*

(4) Any member of the Commission may at any time resign his office by delivering a notice in writing to that effect to the Minister.

5 (5) The Governor-General may at any time remove any member of the Commission from office for disability, bankruptcy, neglect of duty, or misconduct.

Cf. 1955, No. 32, s. 10

10 **4b. Exercise of powers of Commission—**(1) Subject to subsection (2) of this section, every decision of the Commission shall be the decision of 2 or more of the members of the Commission.

15 (2) The Commissioner acting alone shall have and may exercise the powers of the Commission in relation to any application under ~~(section 16A (1))~~ section 17 (1) of this Act.

20 **4c. Remuneration of members of Commission—**(1) There shall be paid to members of the Commission, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly.

25 (2) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

30 **4d. Administrative and secretarial services—**The Department of Labour shall provide for the Commission such administrative and secretarial services as may be necessary to enable it to exercise its functions and powers, and perform its duties, under this Act.

35 **4e. Annual report—**As soon as is practicable after the 31st day of March in every year the Commissioner shall furnish to the Minister a report of the proceedings of the Commission during the year that ended with the preceding 31st day of December, together with any recommendations that he may have relating to the trading hours of retail shops.

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**5. Approved and special goods**—(1) On the recommendation of the Minister, the Governor-General may, by Order in Council, declare that goods of any class are approved goods; and may in like manner amend or revoke any such Order in Council. 5

(2) Until an Order in Council is made pursuant to subsection (1) of this section, goods belonging to the classes specified in the First Schedule to this Act shall be deemed to be approved goods. 10

(3) On the recommendation of the Minister, the Governor-General may, by Order in Council, declare that goods of any class are special goods and may be sold during hours and on days specified therein; and may in like manner amend or revoke any such Order in Council. 15

(4) Until an Order in Council is made pursuant to subsection (3) of this section, goods belonging to any class specified in the first column of the Second Schedule to this Act shall be deemed to be special goods that may be sold during the hours specified opposite that class in the second column of that Schedule on the days specified opposite that class in the third column of that Schedule. 20

Cf. 1955, No. 32, s. 6

*New*

**5. Approved and special goods**—(1) The Governor-General may from time to time on the advice of the Minister, by Order in Council, declare that goods of a specified class are approved or special goods. 25

(2) In the case of an Order in Council declaring that goods of a specified class are special goods, there shall also be specified the hours during and the days on which those goods may be sold. 30

(3) The Minister may from time to time direct the Commission to call for and consider submissions from the public, and to make recommendations, on the need for all those goods that are approved or special goods to continue to be approved or special goods, and on the need for any other goods to become approved or special goods; and **((no Order in Council shall be made))** the Minister shall not advise the Governor-General to make an Order in Council under this section except on the recommendation of the Commission. 35 40

(4) Until an Order in Council is made pursuant to this section,—

(a) Goods belonging to the classes specified in the First Schedule to this Act shall be deemed to be approved goods; and 45

*New*

- 5 (b) Goods belonging to any of the classes specified in the first column of the Second Schedule to this Act shall be deemed to be special goods that may, during the hours specified in the second column of that schedule opposite the reference to the class concerned, be sold on the days specified in the third column of that schedule opposite the reference to the class concerned.
- 10 **5A. Individual items**—(1) Notwithstanding section 5 (3) of this Act, but subject to subsection (2) of this section, the Governor-General may from time to time on the advice of the Minister given on the recommendation of the Commission, by Order in Council, declare that individual items are
- 15 approved goods.
- (2) Where the Commission intends to recommend that any individual items be declared to be approved goods (*and, in the opinion of the Commission there may be any serious objection to those items so being declared, the Commission*
- 20 *may advertise that intention, in such manner as it thinks fit, and in that case*) it shall advertise that intention, in such manner as it thinks fit, and shall not so recommend until it has considered all objections received by it within one month of so advertising.
- 25 **6. Opening of shops**—(1) Subject to the provisions of this Act, no shop shall be open between the hours of 9 p.m. and 7 a.m., or on any day that is a Saturday, a Sunday, New Year's Day, the day after New Year's Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's
- 30 Birthday, Labour Day, Christmas Day, Boxing Day, or the day observed in the locality in which the shop is situated as Anniversary Day.

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- 35 Provided that if Christmas Day or New Year's Day falls on a Saturday or a Sunday, the foregoing reference to that day shall be deemed to be a reference to the following Monday; and if Boxing Day falls on a Saturday or a Sunday, the foregoing reference to that day shall be deemed to be a reference to the day after the day following that day.
- 40 (2) For the purposes of subsection (1) of this section, a shop shall be deemed to be open if it is not locked or otherwise effectually closed against the admission of the public; or if any person therein is engaged in the sale of goods,

canvassing for orders, or delivering goods to customers:

Provided that where a shop has a common entrance with a factory or warehouse it shall be sufficient if the entrance is closed but not locked:

Provided also that a shop that is an auction mart shall not be deemed to be open by reason only of the fact that it is open for the admission of the public to attend a sale by auction of property other than goods.

(3) Notwithstanding subsection (1) of this section, a shop may be open at any time if all restricted goods in it are then, to the satisfaction of an Inspector, out of sight of the public or kept in a part of the shop that is closed off.

(4) During the hours and on the days specified in the Order in Council declaring them to be special goods, special goods shall, for the purposes of subsection (3) of this section and section 21 (2) of this Act, be deemed not to be restricted goods.

Cf. 1921-22, No. 46, s. 30; 1927, No. 58, s. 12; 1955, No. 32, s. 5

*New*

6A. Public holidays—(1) Except in the case of a shop that is authorised, pursuant to section 19 of this Act, to be open on a Saturday, if Christmas Day, Boxing Day, New Year's Day, or the day after New Year's Day falls on a Saturday, the reference to that day in section 6 (1) of this Act shall be deemed to be a reference to the following Monday.

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(2) Except in the case of a shop that is authorised, pursuant to section 19 of this Act, to be open on a Sunday, if Christmas Day, Boxing Day, New Year's Day, or the day after New Year's Day falls on a Sunday, the reference to that day in section 6 (1) of this Act shall be deemed to be a reference to the following Tuesday.

*New*

(2) Except in the case of a shop that is authorised, pursuant to section 19 of this Act, to be open on a Sunday,—

(a) If Christmas Day or New Year's Day falls on a Sunday, the reference to that day in section 6 (1) of this Act shall be deemed to be a reference to the following Monday:

(b) If Boxing Day or the day after New Year's Day falls on a Sunday or a Monday, the reference to that day in section 6 (1) of this Act shall be deemed to be a reference to the following Tuesday.

(3) For the purposes of this section, every order and exemption to which section 25 (1) of this Act applies shall be deemed to be an order under section 19 of this Act.



7. **Pharmacies**—(1) The occupier of a pharmacy may open it at any time to sell medicines and surgical appliances that are urgently required if—

- (a) The pharmacy is opened for that purpose only;
- 5 (b) The pharmacy is closed immediately after the sale is made; and
- (c) Except for the admission and exit of the purchaser, the door of the pharmacy is kept locked.

(2) The Secretary may, by writing under his hand, issue  
10 an authority for the opening of any specified pharmacy (for so long as it remains a pharmacy) at such times and on such days, and subject to such conditions, as he thinks fit, and may similarly revoke or vary any such authority; and that pharmacy may be open accordingly.

15 (3) Without limiting the generality of subsection (2) of this section, it is hereby declared that any authority under that subsection may be issued subject to the condition that a specified roster involving pharmacists from other specified  
20 pharmacies be observed in the pharmacy in respect of which it is issued.

Cf. 1921–22, No. 46, s. 35 (4); 1955, No. 32, s. 7

8. **Postal business**—The occupier of a shop where telephonic, telegraphic, or postal business is transacted on behalf of the Postmaster-General may open it at any time if—

- 25 (a) The shop is open for that purpose only;
- (b) The shop is closed immediately after the business has been transacted; and
- (c) Except for the admission and exit of the customer, the door of the shop is kept closed.

30 Cf. 1927, No. 53, s. 8 (1); 1955, No. 32, s. 9

9. **Bookstalls**—The Secretary may by writing under his hand issue an authority for the opening of any specified bookstall at any public passenger transport terminal, or station where public passenger transport services are running,  
35 at such times and on such days, and subject to such conditions, as he thinks fit, and may similarly revoke or vary any such authority; and that bookstall may be open accordingly.

40 Cf. 1927, No. 35, s. 18 (4), (4A), (5); 1949, No. 40, s. 13 (6); 1949, No. 51, s. 42; 1955, No. 32, s. 11

10. Bazaars, etc., not affected—Section 6 (1) of this Act shall not apply to any bazaar, sale of work, or other like method of raising money, carried on exclusively for religious, public, or charitable purposes for any period not exceeding 2 weeks. 5

Cf. 1921–22, No. 46, s. 54; 1955, No. 32, s. 31

11. Commercial travellers—Section 6 (1) of this Act shall not apply to the sale or exposure for sale of any goods by persons employed principally as *bona fide* commercial travellers, meaning thereby persons employed by merchants as commercial travelling agents for the purpose of selling goods to or seeking orders for goods from persons who are dealers therein and who buy to sell again. 10

Cf. 1921–22, No. 46, s. 71; 1955, No. 32, s. 32

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12. Shop Trading Hours Commission—(1) There is hereby established a commission to be called the Shop Trading Hours Commission.

(2) The Commission shall comprise a Commissioner, appointed by the Governor-General on the recommendation of the Minister, who shall be a barrister and solicitor of the Supreme Court of New Zealand of at least 3 years' practice and, subject to this section, shall hold office for a term of 3 years from the date of his appointment but may from time to time be reappointed. 20

(3) The Commissioner may at any time resign his office by delivering a notice in writing to that effect to the Minister. 25

(4) The Governor-General may at any time remove the Commissioner from office for disability, bankruptcy, neglect of duty, or misconduct. 30

Cf. 1955, No. 32, s. 10

13. Associate members—(1) Notwithstanding section 12 of this Act, the Governor-General may from time to time appoint to be an associate member of the Commission a suitable person who shall hold office at the pleasure of the Governor-General but may at any time resign his office by delivering a notice in writing to that effect to the Minister: 35

Provided that there shall be no more than one such associate member at any one time.

(2) The office of associate member may be held concurrently with any other office or offices. 40

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(3) If the Commissioner or associate member for the time being is sick, incapacitated, absent, or for any other reason unable to carry out his functions, the Minister may appoint  
5 a temporary associate member to act in his place, either for a specified period or for the period needed to hear and determine a specified application or group of applications.

(4) The appointment of a temporary associate member pursuant to subsection (3) of this section shall not be called  
10 into question on the ground that the occasion for the exercise of the power of appointment by the Minister had not arisen at the time of the appointment, or had ceased at that time; nor shall the continuance of such an appointment be called into question on the ground that the circumstances  
15 that occasioned the exercise of that power no longer exist.

(5) Subject to any directions of the Commissioner as to the applications he should hear, any associate member may exercise all the powers of the Commission.

**14. Remuneration of Commission—**(1) There shall be paid  
20 to the Commissioner and any associate member, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act  
25 shall apply accordingly.

(2) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

**15. Administrative and secretarial services—**The Depart-  
30 ment of Labour shall provide for the Commission such administrative and secretarial services as may be necessary to enable it to exercise its functions and powers, and perform its duties, under this Act.

**16. Annual report—**As soon as is practicable after the  
35 31st day of March in every year the Commissioner shall furnish to the Minister a report of the proceedings of the Commission during the year that ended with the preceding 31st day of December, together with any recommendations that he may have relating to the trading hours of retail  
40 shops or to the categories of approved goods and special goods.

*Struck Out***17. Authority for extended opening of specified shop—**

(1) The occupier of any shop may apply to the Commission for authority to open it during hours or on days specified in section 6 (1) of this Act. 5

(2) Every such application shall be filed in the office of the Magistrate's Court nearest the shop to which the application relates, and shall specify the name of the applicant, the name and location of the shop, the nature of the business carried on there, the times and days when it is proposed to be open, and the reasons for the application. 10

(3) Notice of the date and place of the hearing of the application shall be given to the applicant by the Registrar of the Court where the application is filed at least 14 days before the date fixed for the hearing; and within 3 days of the notice being given to him the applicant shall cause to be published in some newspaper approved for the purpose by the Registrar, and to be sent to an Inspector, to every industrial union of workers registered in respect of shop assistants employed in the locality in shops carrying on the trade carried on in the shop in respect of which the application is made, and to every industrial union of employers registered, or organisation of employers functioning, in respect of shops of that kind, a notice of the application and of the matters specified in subsection (2) of this section. 25

Cf. 1955, No. 32, s. 10A

**18. District and group applications—**(1) The occupiers of the majority of the shops in any district or area may apply to the Commission for authority to open, during hours or on days specified in section 6 (1) of this Act, all the shops in that district or area; and sections 17 and 19 of this Act, with the necessary modifications, shall apply to any such application. 30

(2) Where a local authority is satisfied that authority to open during hours or on days specified in section 6 (1) of this Act in respect of all shops in an area within its district would be in the local and public interest, or that there is a strong public demand for such an authority within its district, it may apply to the Commission for such an authority as if it were the majority of the occupiers of all shops in that area. 40

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19. Applications and orders—(1) At the hearing of an application under section 17 of this Act, any of the following persons may appear and be heard, in person or by counsel:
- 5 (a) The applicant:
  - (b) Any Inspector:
  - (c) The local authority in whose area the shop is situated:
  - (d) The occupier of any shop that may be affected by the result of the application:
  - 10 (e) Any organisation that, or any of whose members, may, in the opinion of the Commission, be affected by the result of the application.
- (2) The Commission may make an order either refusing the application or granting it, either wholly or in part, and
- 15 either unconditionally or subject to such conditions as the Commission thinks fit; and the shop concerned may be open accordingly.
- (3) Without limiting the generality of subsection (2) of this section, it may be a condition of an order thereunder that
- 20 the shop concerned or, in the case of an application in respect of all the shops in a district or area, all those shops, be open only for the sale of approved goods in accordance with section 6 (3) of this Act during specified hours or on specified days; and in that case that shop or, as the case may be, all those
- 25 shops, may be open only to that extent during those hours or on those days, notwithstanding that, in the case of an order affecting all the shops in a district or area, not all the occupiers thereof were parties to the application concerned.
- (4) In determining, pursuant to subsection (3) of this
- 30 section, the hours during which or the days on which a shop or all the shops in a district or area is or are to be open only as aforesaid, the Commission shall, unless in its opinion special reasons exist for not doing so, specify such hours or days as shall, in its opinion, most readily enable persons
- 35 working in that shop or those shops to have 2 consecutive days off:
- Provided that if the industrial unions of workers representing those persons so agree, other hours or days may be specified.
- 40 (5) In deciding whether to grant or refuse an application the Commission shall have regard to the following matters:
- (a) The public demand during the hours and on the days for which there has been an application for authority to open:

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- (b) The nature of the area in which the shop concerned is situated, and in particular whether it is a tourist or holiday area;
- (c) The interests of the occupier of any other shop: 5
- (d) The public interest generally, including the interests of persons living in the vicinity of the shop concerned.

(6) An order made under this section may at any time be amended or revoked by the Commission, on application 10 by the original applicant, the occupier of any shop that is affected by the extended opening authorised by the order, or, in the case of an order affecting a shop the occupier of which has been convicted of an offence against this Act, on the application of an Inspector; and the provisions of this section 15 and section 17 of this Act shall, with the necessary modifications, apply to any such application as if it were an application under subsection (1) of that section.

(7) Subject to subsection (6) of this section, an order made under this section shall continue to apply to a shop 20 notwithstanding that its ownership or management may change:

Provided that, in the case of an order in respect of only one shop, if the occupier thereof carries on therein any business that was not carried on therein when the order was 25 made, the order shall thereupon cease to apply to that shop.

(8) For the purposes of this Act, the Commission shall have and may exercise, in respect of any application and the hearing thereof, the powers of a Magistrate under the Magistrates' Courts Act 1947 to the same extent as if the application were 30 an originating application under the rules of procedure for the time being in force under that Act; and, subject to subsection (10) of this section, those rules shall apply accordingly.

(9) All Courts and persons acting judicially shall take 35 judicial notice of the signature of the member of the Commission attached to any order under this section.

(10) Proceedings before the Commission shall not be held bad for want of form; and no decision of the Commission shall be reviewed in any Court except on the grounds of lack 40 of jurisdiction.

(11) The occupier of a shop in respect of which an order under this section is for the time being in force shall display prominently in the shop, so that it may be read by any person

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without having to ask for its production or obtain permission to see it, a notice setting out accurately the full terms of the order; and no person shall display in any shop a notice  
5 that relates to an order that is no longer in force in respect of that shop or that does not set out accurately the full terms of an order that is in force in respect of that shop.

(12) In the light of any matters arising, or any representations made, during any proceedings before it, the  
10 Commission may recommend to the Minister that goods of any class be declared to be approved goods or special goods.

Cf. 1955, No. 32, s. 10B

*New*

**17. Authority for extended opening of shops—**(1) The  
15 occupier of a shop may apply to the Commission for an order that it be authorised to open at specified times on specified days.

(2) The occupiers of the majority of the shops in any area may apply to the Commission for an order that all the shops  
20 in that area be authorised to open at specified times on specified days.

**18. Applications—**(1) Every application under section 17 of this Act shall be filed in the Magistrate's Court most convenient of access to the shop or shops concerned, and shall  
25 specify the name of the applicant, the shop or shops concerned, the nature of the business carried on therein, the times and days in respect of which the application is made, and the reasons for the application.

(2) Notice of the date and place of the hearing of the  
30 application shall be given to the applicant by the Registrar of the Court where the application is filed at least 14 days before the date fixed for the hearing; and within 3 days of the notice being given to him the applicant shall cause a copy of the application to be published in some newspaper  
35 approved for the purpose by the Registrar, and to be sent to—

(a) The Secretary:

(b) Every industrial union of workers registered in respect of shop assistants employed in the locality concerned in shops carrying on the trade carried on in the shop or shops in respect of which the application is made:  
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*New*

- (c) Every industrial union of employers registered, and organisation of employers functioning, in respect of shops of that kind: 5
- (d) Every territorial local authority in whose area the shop or shops are situated: 5
- (e) The regional planning authority (within the meaning of the Town and Country Planning Act 1953) in whose area the shop or shops are situated. 10
- Cf. 1955, No. 32, s. 10A 10

**19. Hearings and orders—**(1) At the hearing of an application under section 17 of this Act, any of the following persons may appear and be heard, in person or by counsel:

- (a) The applicant: 15
- (b) Any Inspector: 15
- (c) The occupier of any shop that may be affected by the result of the application: 15
- (d) Any person or organisation specified in section 18 (2) of this Act: 20
- (e) Any other organisation that, or any of whose members may, in the opinion of the Commission, be affected by the result of the application. 20

(2) The Commission may make an order either refusing the application or granting it, either wholly or in part, and either unconditionally or subject to such conditions as the Commission thinks fit; and the shop or shops concerned may be open accordingly. 25

(3) Without limiting the generality of subsection (2) of this section, it may be a condition of an order thereunder that the shop or shops concerned be closed at specified times on specified days when it or they would otherwise not be required by this Act to be closed; and in that case the shop or shops concerned shall be closed accordingly, notwithstanding that, in the case of an order affecting all the shops in an area, not all the occupiers thereof were parties to the application concerned. 30 35

(4) In determining, pursuant to subsection (3) of this section, the hours during which or the days on which a shop or all the shops in an area is or are to be closed, the Commission shall, unless in its opinion special reasons exist for not doing so, specify such hours or days as shall, in its opinion, most readily enable persons working in that shop or those shops to have 2 consecutive days off: 40



*New*

5 Provided that if the industrial unions of workers representing those persons or, in the case of persons not so represented, those persons so agree, other hours or days may be specified.

(5) The Commission shall grant an application under section 17 of this Act to the extent only that it is satisfied that its granting is in the best interests of the public generally.

10 (6) In satisfying itself that the granting of an application under section 17 of this Act is in the best interests of the public generally, the Commission shall have regard, *inter alia*, to the following matters:

- 15 (a) Public demand:
- (b) Any effect the granting of the order would have on retail prices:
- (c) Any effect the granting of the order would have on family and other social patterns in the area concerned:

20 *Struck Out*

(d) The nature of the area in which the shop or shops concerned are situated, including whether it is a tourist or holiday area, and the class of patron served and intended to be served thereby:

25 *New*

(d) The nature of the area in which the shop or shops concerned are situated and the class of patron intended to be served thereby, having regard in particular to the desirability of providing service to the public at all reasonable times in tourist and holiday resort areas:

35 (e) The stability, and orderly and economic planning and development, of any wider area, and of the transport and other services in any wider area, of which the area in which the shop or shops concerned are situated forms part:

- (f) The interests of the occupiers of other shops:
- (g) The need to minimise the amount of commercial activity taking place on Sundays:
- 40 (h) The application of the principle of the 40 hour week, as embodied in sections 93 and 94 of the Industrial Relations Act 1973, and any derogation from that principle that may be caused by the granting of the order.

*New*

(7) An order made under this section may at any time be amended or revoked by the Commission, on application by the original applicant, the occupier of any shop that is affected by the extended opening authorised by the order, any industrial union of workers registered in respect of shop assistants employed in the locality concerned in shops carrying on the trade carried on in the shop or shops in respect of which the order was made, the regional planning authority (within the meaning of the Town and Country Planning Act 1953) in whose area the shop or shops are situated, or, in the case of an order affecting a shop the occupier of which has been convicted of an offence against this Act, on the application of an Inspector; and the provisions of this section and section 18 of this Act shall, with the necessary modifications, apply to any such application as if it were an application under section 17 of this Act.

(8) Subject to subsection (7) of this section, an order made under this section that applies to a specified shop shall continue to apply to that shop notwithstanding that its ownership or management may change; but if the occupier of the shop carries on any class of business in it that was not carried on when the order was made, the order shall thereupon cease to apply to that shop and shall not be capable of being revived otherwise than by way of a further order.

(9) Subject to subsection (7) of this section, an order made under this section that applies to all the shops in an area shall also apply to every shop that may be built or opened in that area during the currency of the order.

(10) For the purposes of this Act, the Commission shall have and may exercise, in respect of any application and the hearing thereof, the powers of a Magistrate under the Magistrates' Courts Act 1947 to the same extent as if the application were an originating application under the rules of procedure for the time being in force under that Act and, subject to subsection (12) of this section, those rules shall apply accordingly.

(11) All Courts and persons acting judicially shall take judicial notice of the signature of the member of the Commission attached to any order under this section.

(12) Proceedings before the Commission shall not be held bad for want of form; and no decision of the Commission shall be reviewed in any Court except on the grounds of lack of jurisdiction.

(13) The occupier of a shop in respect of which an order under this section is for the time being in force shall display prominently in the shop, so that it may be read by any person without having to ask for its production or obtain permission

*New*

to see it, a notice setting out accurately the full terms of the order; and no person shall display in any shop a notice that relates to an order that is no longer in force in respect of that shop or that does not set out accurately the full terms of an order that is in force in respect of that shop.

Cf. 1955, No. 32, s. 10B

*New*

(14) The Commissioner shall cause to be sent to the Secretary a copy of every order made under this section.

**19A. Register of orders**—(1) The Secretary shall keep a register of copies of all orders made under section 19 of this Act, and of copies of all orders and exemptions to which section 25 (1) of this Act applies, for the time being in force, and shall cause to be kept by every District Superintendent of Labour and District Officer of Labour a register of those parts of that register relating to shops situated within his district.

(2) Any person may, during ordinary office hours and without payment of any fee, inspect any register kept pursuant to subsection (1) of this section and take notes therefrom.

**20. Inspectors**—(1) For the purposes of this Act every Inspector, accompanied if he thinks fit by a constable to assist him in his duty, may enter, inspect, and examine any shop, or any place that he has reasonable cause to believe to be a shop or to have a shop within its premises, at all reasonable times by day and night:

Provided that where, in order to enter any place that he believes to be a shop, an Inspector wishes to enter part of a private dwelling-house (being a part that he does not believe to be a shop) he shall not enter that part except pursuant to a warrant issued under subsection (2) of this section.

(2) Any Magistrate or Justice who, on an application in writing made on oath, is satisfied that there is reasonable ground for believing a private dwelling-house to be a shop or to have a shop within its premises, may issue to an Inspector named therein a warrant, in a form prescribed by the Governor-General by Order in Council, to enter that dwelling-house.

(3) Every occupier of a shop, or a place that an Inspector has reasonable cause to believe to be a shop or to have a shop within its premises, shall allow an Inspector, with or without a constable, to enter, inspect, and examine it pursuant to subsection (1) of this section.

(4) Every Inspector may examine, either alone or in the presence of another person, as he thinks fit, with respect to matters under this Act, any person whom he finds in a shop or in a place he has reasonable cause to believe to be a shop or to have a shop within its premises, and may require any such person to give his name and address and to sign a statutory declaration of the matters in respect of which he is so examined: 5

Provided that on any such examination by an Inspector no person shall be required, in response to any question, to give an answer tending to incriminate himself. 10

(5) Every Inspector shall be furnished with a certificate of his appointment, in the form prescribed under the Factories Act 1946, and on applying for admission to any shop or place he has reasonable cause to believe to be a shop or to have a shop within its premises he shall, if required by the occupier, produce the certificate to him. 15

(6) No Inspector shall divulge to any person any information obtained pursuant to this Act except for the purposes of this Act. 20

Cf. 1921-22, No. 46, ss. 34, 66; 1951, No. 11, s. 3; 1955, No. 32, s. 44

**21. Offences and penalties—**(1) The occupier of a shop that is open in contravention of this Act or of a condition subject to which an order has been granted pursuant to section 19 of this Act commits an offence. 25

(2) Every person who sells restricted goods during the hours or on any day specified in section 6 (1) of this Act otherwise than pursuant to an order under section 19 or to section 7, section 8, or section 9, of this Act commits an offence. 30

*New*

(2A) Every person commits an offence who—

(a) Without reasonable cause delays or obstructs an Inspector in the exercise of any of his powers or duties under this Act; or 35

(b) Conceals or prevents, or attempts to conceal or prevent any person from appearing before and being examined by an Inspector.

(3) Every person who acts in contravention of or fails to comply with the requirements of this Act commits an offence. 40

(4) Every person who commits an offence against this Act shall be liable, on summary conviction, to a fine not exceeding \$500.

Cf. 1921-22, No. 46, ss. 33, 46, 59; 1955, No. 32, ss. 33,

5

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**22. Procedure—**(1) An Inspector who lays an information in respect of an offence against this Act, or proceeds with or conducts any proceedings in connection therewith, shall not be called upon to prove that he is an Inspector; and any such information may be proceeded with and conducted by the Inspector laying it, or by any other Inspector, or by any other person permitted by the Court.

10  
15 (2) In any proceedings relating to an offence against this Act by the occupier of a shop it shall be sufficient in the information to allege that a place is a shop and to state the name of its ostensible occupier or the style or title under which the occupier is usually known or carries on business; and the information may from time to time be amended as to the actual name of the occupier.

20 (3) If the Court thinks fit, several informations laid against the same person relating to offences against this Act or, with the consent of the parties, informations laid against several parties in respect of such offences, may be heard together; and in any such case a witness sworn to give evidence in  
25 respect of one information shall for all purposes be deemed to be a witness in respect of each information.

**23. Effect of Act on awards and agreements—**(1) Notwithstanding anything in any award or agreement (within the meaning of the Industrial Relations Act 1973), any shop  
30 may be open at any time in accordance with this Act.

(2) Nothing in this Act shall require any employee to work in any shop contrary to any such award or agreement that applies to him.

**24. Act administered in Department of Labour—**This  
35 Act shall be administered in the Department of Labour.

**25. Savings—**(1)

*Struck Out*

Notwithstanding section 26 of this Act, every order of the Shops and Offices Exemption Tribunal pursuant to section 10B of the Shops and Offices Act 1955, being an order exempting any shop from the provisions of any Act or any award relating to the times when it is required to be closed, that was in force immediately before the commencement of this Act shall enure and continue in force for the purposes of this Act as if it were an order under section 19 of this Act, and may be amended or revoked accordingly.

*New*

Notwithstanding section 26 of this Act, every order or exemption under the Shops and Offices Act 1955 or under any enactment repealed by that Act, being an order exempting any shop from the provisions of any Act or award relating to the times when it is required to be closed, that was in force immediately before the commencement of this Act shall enure and continue in force as if it were an order under section 19 of this Act, and may be amended or revoked accordingly.

(2) Notwithstanding section 26 of this Act, every exemption from any provision of the Shops and Offices Act 1955 or of any award requiring a shop to be closed at any time, given by the Minister pursuant to section 7 (2) or section 11 (1) of that Act, that was in force immediately before the commencement of this Act shall enure and continue in force for the purposes of this Act as if it were an authority issued by the Secretary under section 7 (2) or, as the case may be, section 9 of this Act, and may be amended or revoked accordingly.

(3) Notwithstanding section 26 of this Act, every application made to the Shops and Offices Exemption Tribunal under section 10A of the Shops and Offices Act 1955 that was not finally disposed of immediately before the commencement of this Act may be dealt with by the Commission in all respects as if it had originally been made to the Commission.

**26. Consequential amendments and repeals—**(1) The enactments specified in the first column of the Third Schedule to this Act are hereby amended in the manner indicated in the second column of that schedule.

(2) The enactments specified in the Fourth Schedule to this Act are hereby consequentially repealed.

SCHEDULES

FIRST SCHEDULE Section 5 (2) (4) (a)

GOODS DEEMED TO BE APPROVED GOODS

*Aquarium Flora and Fauna*

Aquarium flora and fauna (including tropical fish), and food and ancillary equipment necessary for the keeping of such flora and fauna.

*Bakers and Pastrycooks Goods*

Biscuits.  
Bread.  
Cake.  
Pastry.  
Pies.  
Sandwiches.  
Smallgoods.

*Building Supplies and Handyman's Requisites*

Timber.  
Plywood.  
Interior wallboard and tiles (with or without a wood content).  
Decorative and faced boards.  
Fibrous plaster and plaster board sheets.  
Building paper and substitutes.  
Damp course.  
Sand and glass paper.  
Fillers, adhesives, and putty.  
Paint, primers only, in containers not exceeding 2.3 litres.  
Nails, screws, hinges, and butts.  
Catches and handles.  
Hacksaw blades.  
Hammers.  
Handles for garden and hand tools.  
Paint brushes.  
Screwdrivers.

*Condiments*

Mayonnaise.  
Mustard.  
Pepper.  
Pickles.  
Relishes.  
Salt.  
Sauces.  
Vinegar.

*Confectionery*

Confectionery and sweetmeats.

*Dairy Produce*

Butter.

**((Cheese, packaged or processed.))**

Cheese, including packaged and processed cheese.

Cream, including reduced cream.

Milk, including condensed and dried milk.

FIRST SCHEDULE—*continued**Drinks*

- Aerated waters.
- Cordials.
- Cordial extracts.
- Soft drinks.

*Fish*

Fresh fish and shellfish, if it is sold by the owner of a registered fishing boat or a person appointed by him in that behalf, direct from that boat at the place where it is moored, berthed, or beached, or from a stall within 500 metres from that place, and if it has been taken from that boat under a valid boat fishing permit for the method or methods used to take that fresh fish or shellfish.

*Frozen Foods*

- Fruit, frozen.
- Ice cream.
- Ice blocks.
- Meals, pre-cooked and deep frozen.
- Vegetables, frozen.

*Fruit and Flowers*

((*Cut flowers.*))

Flowers sold by the grower thereof on the premises where they are

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grown.

Fruit, fresh, bottled, or tinned.

((*Wreaths.*))

*Fuels*

- Charcoal.
- Coke.
- Coal.
- Carbonettes, and any other solid fuels derived from coal, in retail packages not exceeding 20 kilogrammes.
- Dieseline.
- Firewood.
- Kerosine.

*Gardening Supplies*

- Compost.
- Fertilisers.
- Fungicides.
- Garden Dusts.
- Garden Sprays.
- Insecticides.
- Manures.
- Mulches.
- Peat.
- Pesticides.
- Plant care products.
- Potting mixtures and ingredients.
- Soil conditioners.
- Weed killers.



FIRST SCHEDULE—*continued*

*Groceries, Miscellaneous*

- Breakfast cereals, pre-packaged.
- Baked Beans.
- Cocoa, including cocoa compounds.
- Coffee, including coffee compounds.
- Eggs.
- Extracts, meat or vegetable.
- Fish, tinned.
- Flour, in pre-packed quantities not exceeding 1.5 kilogrammes.
- Honey.
- Jam.
- Jelly crystals.
- Nuts, shelled and pre-wrapped.
- Pastes and spreads.
- Soups, tinned or packaged.
- Spaghetti, tinned.
- Sugar, in pre-packed quantities not exceeding 1.5 kilogrammes.
- Tea, in pre-packed quantities not exceeding 250 grammes.

*Magazines and Periodicals*

- Magazines and periodicals; this shall not be deemed to include books published either in hard-bound or paper-backed editions.
- Newspapers.

*Meats and Smallgoods*

- Bacon.
- Ham, cooked.
- Luncheon sausage.
- Meat, tinned.
- Sausages, pre-wrapped.
- Saveloys.

*Medicinal and Household Goods*

- Aspirins and similar headache tablets.
- Babies' bottles.
- Baby foods.
- Babies' teats.
- Cough mixtures.
- Fly sprays.
- Light bulbs.
- Medicated confectionery.
- Razor blades.
- Sanitary towels.
- Sticking plaster, bandages, and similar emergency dressings.
- Sunburn lotions.
- Toilet rolls.
- Toilet soaps.
- Toothpaste.
- Toothbrushes.

*Miscellaneous Items*

- Boats.
- Candles.
- Pantyhose.
- Torch batteries.
- Women's nylon stockings.

FIRST SCHEDULE—*continued**Motor Accessories*

Caravans and trailers.

Motor spirits, petrol, and oil.

Parts or accessories for motor vehicles, farm machinery, or farm implements.

*Photographic Goods*

Films.

*Plants, etc.*

Corms.

Plants.

Seedlings.

Seeds.

Shrubs.

Trees.

Tubers (including seed potatoes).

*Prepared or Cooked Foods*

Cooked fish.

Cooked chipped potatoes.

Cooked oysters.

Cooked sausages.

Cooked saveloys.

Meals, including refreshments, consumed on the premises in which  
they are sold.Take-away foods, being prepared or cooked foods in a form ready  
for immediate human consumption.*Tobacco, etc.*

Cigarettes.

Cigarette papers.

Cigars.

Matches.

Tobacco.

*Vegetables*

Lettuce.

Tomatoes.

Vegetables, tinned or freeze-dried.

Vegetables sold by the grower thereof on the premises where they  
are grown.

Struck Out

SECOND SCHEDULE <span style="float: right;">Section 5 (4) (b)</span>		
GOODS DEEMED TO BE SPECIAL GOODS		
Goods	Hours	Days
Vegetables	8 a.m. to Noon  8 a.m. to 1 p.m.	Saturdays other than New Year's Day, Waitangi Day, Anzac Day, Christmas Day, and Boxing Day.
New and used motor cars (including station sedans), motor trucks (including vans), motor omnibuses, motorcycles, power cycles, tractors, and other motor vehicles propelled by mechanical means		

New

SECOND SCHEDULE <span style="float: right;">Section 5 (4) (b)</span>		
GOODS DEEMED TO BE SPECIAL GOODS		
Goods	Hours	Days
Cut flowers (including bouquets) .....	8 a.m. to Noon  8 a.m. to 1 p.m.	Saturdays (other than New Year's Day, the day after New Year's Day, Waitangi Day, Anzac Day, Christmas Day, and Boxing Day).
Wreaths .....		
Vegetables .....	8 a.m. to 1 p.m.	Saturdays (other than New Year's Day, the day after New Year's Day, Waitangi Day, Anzac Day, Christmas Day, and Boxing Day).
New and used motor cars (including station sedans), motor trucks (including vans), motor omnibuses, motorcycles, power cycles, tractors, and other motor vehicles propelled by mechanical means		

## Section 26 (1)

## THIRD SCHEDULE

## AMENDMENTS

Enactment Amended	Manner in which amended
Section 18 (3) of the Police Offences Act 1927	By omitting the words "or to any person carrying on or working in the business of a shop within the meaning of the Shops and Offices Act 1955" (as added by section 4 (2) (b) of the Shops and Offices Act 1955), and substituting the words "or to any person carrying on or working in the business of a shop within the meaning of the Shop Trading Hours Act 1976". <i>New</i>
Section 18 (3a) of the Police Offences Act 1927 (as inserted by section 4 (1) of the Police Offences Amendment Act 1952)	To omit the words "Shops and Offices Act 1955", and substitute the words "Shop Trading Hours Act 1977"
The First Schedule to the Labour Department Act 1954 (as substituted by section 3 (1) of the Labour Department Amendment Act 1970)	By inserting, in its appropriate alphabetical order, "The Shop Trading Hours Act 1976".
Section 19 of the Shops and Offices Act 1955	By omitting the word "three", and substituting the expression "13". <i>Struck Out</i>
Section 292 (6) of the Sale of Liquor Act 1962	By omitting the words "all the provisions of that Act", and substituting the words "or section 3 of the Shop Trading Hours Act 1976, all the provisions of those Acts". <i>New</i>
Section 292 (7) of the Sale of Liquor Act 1962	By inserting, after the words "all the provisions of that Act", the words "and the Shop Trading Hours Act 1977".
Section 292 (7) of the Sale of Liquor Act 1962	By omitting the words "the provisions of the Shops and Offices Act 1955 and of any award made under section 3 of that Act applying to any shop or store authorised under this section it shall be lawful for any such shop or store", and substituting the words "the Shop Trading Hours Act 1976, it shall be lawful for any shop or store authorised under this section".

FOURTH SCHEDULE

Section 26 (2)

ENACTMENTS REPEALED

Sections 3 to 12 (inclusive), and section 49, of the Shops and Offices Act 1955

The Shops and Offices Amendment Act 1959

The Shops and Offices Amendment Act 1965

Section 2 of the Shops and Offices Amendment Act 1975.