

# CROWN EMPLOYEES (DEPARTMENT OF INDUSTRY, SKILLS AND REGIONAL DEVELOPMENT) REGULATORY OFFICERS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 740 of 2015)

Before Commissioner Stanton

28 October 2015

## REVIEWED AWARD

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### PART A

#### 1. Title

This Award shall be known as the Crown Employees (Department of Industry, Skills and Regional Development) Regulatory Officers Award.

#### 2. Definitions

- (i) "Act" means the *Government Sector Employment Act* 2013.
- (ii) "AQIS" refers to the Australian Quarantine Inspection Service.
- (iii) "Association/Union" means the Public Service Association and the Professional Officers' Association Amalgamated Union of New South Wales.

- (iv) "Department" means the Department of Industry, Skills and Regional Development, as specified in Schedule 1 of the *Government Sector Employment Act 2013*.
- (v) "Secretary" means the Secretary, Department of Industry, Skills and Regional Development, as specified in Schedule 1 of the *Government Sector Employment Act 2013*.
- (vi) "Industrial Relations Secretary" means the Secretary of the Treasury, as established under the *Government Sector Employment and Act 2013*.
- (vii) "Job Evaluation" means an agreed methodology within the NSW Public Sector to grade roles under this Award.
- (viii) "Member of Staff" for the purposes of this Award, means a person employed as an employee on probation, or an employee, employed in any capacity under the provisions of Part 4 Division 5 of the Act.
- (ix) "Normal Work" is defined as the duties, responsibilities and capabilities to the role description, of a member, or members, of staff, at the time of a grievance, dispute or difficulty.
- (x) "Public Service" means the Public Service of New South Wales as defined in the *Government Sector Employment Act 2013*.
- (xi) "Role" means a role as dealt with in Section 9 of the *Government Sector Employment Act 2013*.
- (xii) "Regulation" means the *Government Sector Employment Regulation 2014*.
- (xiii) "Rules" means the *Government Sector Employment Rules 2014*.
- (xiv) "Regulatory Officer" means and includes all members of staff employed as ongoing, ongoing part time, temporary or casual employed under the provisions of the Act, who at or after the date this Award are assigned to a role of, and were classified as a Regulatory Officer under this Award.
- (xv) "Regulatory Officer Grade 1" means a member of staff whose duties are of single or dual function/discipline in nature and the role is designated as such by job evaluation.
- (xvi) "Regulatory Officer Grade 2" means a member of staff whose duties are of multi functional or multi disciplinary, and may include the supervision of more than one Grade 1 Regulatory Officer in a field operation and is a role. (xvii) "Regulatory Officer Grade 3" means a member of staff who has a multi functional or multi disciplinary roles including the preparation of legal briefs for prosecutions, and/or assistance with the supervision of a section of an operation and is a role.
- (xviii) "Regulatory Officer Grade 4" means a member of staff who performs the role of a Grade 4 Regulatory Officer whilst being designated as a functional or disciplinary specialist, or supervises a particular section of an operation and is a role.
- (xix) "Regulatory Officer Grade 5" means a member of staff whose role includes management of teams or staff over a geographic area or operational unit and is a role designated as such by job evaluation.
- (xx) "Regulatory Officer Grade 6" means a member of staff whose responsibility is State or Program based and is a role.
- (xxi) "Regulatory Officer Grade 7" single graded management or specialised role.
- (xxii) "Regulatory Officer Grade 8" single graded management or specialised role.
- (xxiii) "Salary Rates" means the ordinary time rate of pay for the member of staff's grading, excluding shift allowances, weekend penalties, and all other allowances not regarded as salary.

(xxiv) "Service" means continuous service for salary purposes.

### **3. Salaries**

Subject to the provisions of the Crown Employees (Public Sector – Salaries 2015) Award, the rates of salary as set out in Table 1 - Salaries, of Part B, Monetary Rates shall be paid to members of staff assigned to roles at grades specified.

### **4. Saving of Rights**

At the time of making of this Award, no member of staff covered by this Award will suffer a reduction in their rate of pay or any loss or diminution in his or her conditions of employment as a consequence of the making of this Award.

### **5. Progression Criteria**

A Regulatory member of staff who has been in receipt of the 1st Year of Grade 3 for a minimum twelve months shall be eligible for progression to Grade 3, Year 2 subject to the ability to undertake the relevant capabilities outlined in the Government Sector Capabilities Framework as stated in their role description and successful completion of any Agricultural Regulatory Officers Training Program approved by the Secretary. Training programs shall be developed in consultation with the parties to this award.

### **6. Hours of Work**

- (a) Regulatory Officers other than those involved in Stock Inspection -
  - (i) Members of staff, at departmental convenience, will work rostered standard hours or flexible hours of duty in accordance with the Departments Flexible Working Hours Agreement.
  - (ii) The ordinary working hours for Regulatory Officers, who are engaged on rostered hours will be 35 hours per week, 7 hours per day, Monday to Friday inclusive, between the spread of hours 6.00 am to 6.00 pm. Rosters once set shall not be altered except with 7 days notice or by mutual agreement between the parties or in the event of an emergency.
  - (iii) The spread of hours of work for members of staff working part-time will be the same as those prescribed for full-time members of staff performing similar duties of the same classification and grading.
  - (iv) Members of staff can not be required to work more than 5 hours in one continuous period without an unpaid meal break of at least 30 minutes.
  - (v) Part-time members of staff shall have set hours which shall include the days of the week, the quantum of hours and the starting and finishing times to be worked within the spread of hours. The hours shall not be changed unless 7 days notice is given or by mutual agreement between the Department and the member of staff, or in the event of an emergency.
- (b) Regulatory Officers - Stock Inspection
  - (i) Except as provided in paragraph (ii) of this subclause the ordinary hours of work of a Regulatory Officer involved in Stock Inspection shall not exceed seventy-six hours per fortnight to be worked in each instance from Monday to Friday, inclusive.
  - (ii) The ordinary hours of a Regulatory Officer involved in Stock Inspection located at a crossing shall not exceed seventy-six hours per fortnight to be worked in not more than any ten days of the fortnightly period.

Provided that:

- (a) The number of ordinary hours to be credited as hours actually worked by a Regulatory Officer involved in Stock Inspection in receipt of the 15% allowance prescribed in subclause (i) of clause 7, Allowances, while working at a one, two or four-person crossing is to be determined in accordance with the following table:

(A) No. of Hours Credited for Each 24 Hours At a One-Person Crossing	(B) No. of Hours Credited for Each 24 Hours At a Two-Person Crossing
8 hours	16 hours

The hours to be credited for a Regulatory Officer involved in Stock Inspection working on a four-person crossing shall be on the basis of one hour's credit for one hour actually worked.

- (b) The balance of hours between time required to be spent at one and two-person crossings for each twenty-four hours and hours to be credited as actually worked in accordance with the above formula is stand-by time, and is compensated by the allowance prescribed in subclause (i) of clause 7, Allowances.
- (c) Where the number of ordinary hours required at a one or two-person crossing is less than twenty-four hours, the number of ordinary hours to be credited as hours actually worked by a Regulatory Officer involved in Stock Inspection shall be proportionate to the respective formulae contained in this subclause.
- (d) Regulatory Officers - 38 hours per week - Animal Health Inspection
- (i) Members of staff employed in the classification of Animal Health Inspection, at departmental convenience, will work rostered or flexible hours of duty.
  - (ii) The ordinary working hours for Regulatory Officers employed in the classification of Animal Health Inspection, who are engaged on rostered hours, will be 38 hours per week, Monday to Friday inclusive, between the spread of hours 6.00 am to 6.00 pm.
  - (iii) The spread of hours of work for members of staff working part-time will be the same as those prescribed for full-time members of staff performing similar duties of the same classification and grading.
  - (iv) Members of staff cannot be required to work more than 5 hours in one continuous period without an unpaid meal break of at least 30 minutes.
  - (v) Part-time members of staff shall have set hours which shall include the days of the week, the quantum of hours and the starting and finishing times to be worked within the spread of hours. The hours shall not be changed unless 7 days notice is given or by mutual agreement between the Department and the member of staff, or in the event of an emergency.

## 7. Allowances

- (i) Any Regulatory Officer involved in Stock Inspection who is rostered for duty over seven (7) days of the week and whose hours are prescribed by paragraph (ii) of subclause (b) of clause 6, Hours of Work, shall also be paid an allowance equivalent to 15 per cent of salary for all incidents associated with shift work, stand-by time, work carried out during stand-by time and weekend duty. That allowance is to be deemed as salary for all purposes except in respect of the following:
- (a) Calculation of overtime rates in accordance with clause 9, Overtime; and

- (b) Payment of an annual leave loading.
- (ii) A Regulatory Officer involved in stock inspection on a one-person crossing who is required to provide relief and whose hours of duty are as prescribed in paragraph 2 of subclause (b) of clause 6, Hours of Work, shall be paid a relief allowance per annum as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B - Monetary Rates. That allowance is for relief provided at the crossing whilst the officer is on patrol. The allowance in respect of a crossing shall be the amount per annum as set out in Item 2 of the said Table 2. That allowance relates to after hours telephone use by the employee and/or spouse.

These allowances will be adjusted in accordance with any variations applied commensurate with this Award.

- (iii) A Regulatory Officer who is required by the Department to provide forage and equipment to fulfil their duties shall be paid an allowance at the rates and conditions as determined by the Secretary.
- (iv) A Regulatory Officer who is required to tow their own registered horse float on official business, whether by Departmental vehicle or by their private vehicle, shall be paid an allowance as determined by the Secretary.

### **8. Penalty Payments for Shift Work and Weekend Work**

In addition to the salary rates prescribed by this Award, employees authorised by the Department to perform work on a shift basis and/or weekends and public holidays shall be paid for all time other than overtime worked at the following prescribed penalty:

- (i)
  - (a) On afternoon shift, commencing at or after 10am and before 1pm at the rate of 10 per cent extra.
  - (b) On afternoon shift, commencing at or after 1pm and before 4pm at the rate of 12½ per cent extra.
  - (c) On night shift, commencing at or after 4pm and before 4am at the rate of 15 per cent extra.
  - (d) Early morning shift, commencing at or after 4am and before 6am at the rate of 10 per cent extra.
- (ii)
  - (a) Between midnight Friday and midnight Saturday at the rate of half time extra.
  - (b) Between midnight Saturday and midnight Sunday at the rate of three-quarter time extra; provided that the weekend rates in this subclause shall be substitution for and not cumulative upon the shift premiums prescribed in subclause (i) of this clause.
- (iii) Between midnight to the following midnight on a public holiday - at the rate of time and one-half extra in substitution for and not cumulative upon the shift premiums prescribed in subclauses (i) and (ii) of this clause.

### **9. Overtime**

- (i) A staff member may be directed by the Secretary to work overtime, provided it is reasonable for the staff member to be required to do so. A staff member may refuse to work overtime in circumstances where the working of such overtime would result in the staff member working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
  - (a) the staff member's prior commitments outside the workplace, particularly the staff members family and carer responsibilities, community obligations or study arrangements;
  - (b) any risk to staff member health and safety;

- (c) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services,
  - (d) the notice (if any) given by the Department Head regarding the working of the overtime, and by the staff member of their intention to refuse overtime; or
  - (e) any other relevant matter.
- (ii) Except for Regulatory Officers who work a 38 hour week, overtime conditions for all other regulatory staff will be in accordance with the conditions laid down in the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied or replaced..
  - (iii) When members of staff who are working part-time are required to work longer on any day than their usual part-time hours, payment shall be as follows:-
    - (a) for the time in excess of the person's usual hours and up to the normal full time hours for the classification, payment shall be at the ordinary hourly rate plus a loading of 4/48ths in lieu of recreation leave.
    - (b) for the time worked beyond the full time starting and finishing times for the classification, payment shall be in accordance with the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied or replaced..
  - (iv) Except in respect of Regulatory officers involved in Stock Inspection, a Regulatory Officer shall be entitled to make a claim on the Department for non-directed out of hours work where it can be shown that the performance of this work was in accordance with the efficient and effective performance of official duties. Non-directed out of hours work can only be claimed on an hour for hour basis for work performed outside the employee's spread of ordinary hours (8.30 am - 4.30 pm Monday - Friday). A maximum of leave in lieu of 10 hours per month can be claimed for work performed by a Regulatory Officer at his/her office.
  - (v) The following overtime conditions apply to Regulatory Officers who work a 38 hour week:
 

Except for 0.4 of an hour for each day worked which contributes towards one paid rostered day off in each twenty working day cycle, any time directed to be worked by a Regulatory Officer involved in Stock Inspection.

    - (a) In excess of seventy-six rostered hours per fortnight, Monday to Friday, or on Saturday shall be overtime and paid for at the rate of time and a half for the first two hours and double time thereafter.
    - (b) In excess of 76 rostered hours per fortnight by a Regulatory Officer involved in Stock Inspection on a Sunday shall be overtime and paid for at the rate of double time.
    - (c) Where the excess of fortnightly hours is due to hours credited pursuant to clause 10, Relieving Duties at Stock Inspection Crossings, of this Award, in respect of relief of Regulatory Officers involved in Stock Inspection at a one, two or four-person crossing on a Saturday, Sunday or Public Holiday, hours so credited shall be paid for at ordinary rates.
    - (d) Except where the time is worked by arrangement with another employee and with the concurrence of the supervisor -
      - (i) any time directed to be worked by a Regulatory Officer involved in stock inspection on a rostered day off, Monday to Saturday, inclusive, shall be overtime and paid for at the rate of time and a half for the first two hours and double time thereafter;

- (ii) any time directed to be worked by a Regulatory Officer involved in stock inspection on a rostered day off which falls on a Sunday shall be overtime and paid for at the rate of double time.
- (iii) any time directed to be worked by a Regulatory Officer involved in stock inspection on a rostered day off which falls on a Public Holiday shall be overtime and paid for at the rate of double time and a half.
- (e) Except as provided in paragraph (d) of this subclause, any time directed to be worked by a Regulatory Officer involved in stock inspection on a public holiday in excess of the employees rostered seventy-six hours per fortnight, shall be overtime and paid for at the rate of double time and a half.
- (f) Except as provided for in subclause (a) of clause 10, Relieving Duties At Stock Inspection Crossings, of this Award, an employee may elect to be granted time off rather than claim payment for overtime directed to be worked. Leave in lieu of payment shall be taken at the convenience of the Department and is to be taken within three months of the date of the election in accordance with the following:
  - (a) One days leave in lieu of time worked for three or more hours;
  - (b) Half a days leave in lieu of time worked up to three hours.
- (g) An employee who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three hours' work at the appropriate rate prescribed by this Award.
- (h) An employee who works so much overtime -

between the termination of his/her ordinary work day or shift, and the commencement of their ordinary work in the next day or shift, that the employee has not had at least eight consecutive hours off duty between these times, shall, subject to this subclause, be released after completion of such overtime until the employee has had eight hours off duty without loss of pay for ordinary working time occurring during such absence and be credited for such time.

Provided that if, on the instructions of the supervisor, such an employee resumes or continues, to work without having had eight (8) consecutive hours off duty, the employee shall be paid at overtime rates until released from duty for such period and shall then be entitled to be absent until the employee has had eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

### **10. Relieving Duties at Stock Inspection Crossings**

Where a Regulatory Officer involved in Stock Inspection, not in receipt of the 15% allowance prescribed in subclause (i) of clause 7, Allowances, is required to relieve another Regulatory Officer on a one, two, or four-person crossing, the periods of relieving duty performed by him/her shall be credited as part of the ordinary hours worked by him/her or in accordance with the following:

(A)	(B)	(C)	(D)
Period of Duty	No. of Hours Credited for each 24 Hour Shift at One-person Crossing	No. of Hours Credited for Each 24 Hour Shift at Two- person Crossing	No. of Hours Credited for each 8-Hour Shift on a Four- person Crossing
Each 24 Hour Day from Midnight Sunday to Midnight Friday	8	16	8
Saturday (24 Hours)	15	30	Overtime as per Clause 10

Sunday (24 Hours)	16	32	Overtime as per Clause 10
Public Holidays (24 Hours)	20	40	Overtime as per Clause 10

Where the period of relief is respectively less than twenty-four hours, the number of ordinary hours to be credited as hours actually worked by a Regulatory Officer involved in Stock Inspection shall be proportionate to the respective formulae contained in this clause.

Provided that, except in respect of overtime payments, and where a Regulatory Officer involved in stock inspection whose hours of duty are as prescribed in paragraph (i) of subclause (b) of clause 6, Hours of Work, and who is required to relieve another Regulatory Officer involved in stock inspection at a one or two-person crossing for a minimum period of eight hours, shall be credited with a minimum of eight hours duty for that shift.

Provided that -

- (a) Where a Regulatory Officer involved in Stock Inspection is required to relieve on Saturday, Sunday or Public Holiday, the employee may elect to take time in lieu for all or part of the time credited as part of the ordinary hours worked on an hour-for-hour basis, up to a maximum of eight hours.
- (b) A Regulatory Officer involved in Stock Inspection who is required to relieve a Regulatory Officer as per this paragraph and who is not in receipt of the entitlements prescribed by subclause (i) of clause 7, Allowances and clause 87.7 and 87.8, Shift Work of the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied or replaced shall be paid the monetary equivalent of a proportionate amount of the allowance and leave respectively specified in subclause (i) of clause 7 and subclause 88(g) or 88(h), calculated on the hours worked.

### **11. Job Evaluation**

- (i) Roles classified as Regulatory Officers shall be graded in accordance with the accredited Job Evaluation methodology agreed by the Department, Director General and Association.
- (ii) The grading of Regulatory Officers roles shall be carried out in consultation between the Department and the Association using the Department's Joint Consultative Committee. This Committee shall be the forum for negotiation and consultation on the operation of the Department's Job Evaluation methodology during the operation of this Award.
- (iii) Roles will be evaluated and graded from time to time in the following circumstances:
  - (a) where the nature of a role is significantly changed, or a new role is created;
  - (b) where a role falls vacant, the Department can determine whether it is necessary to evaluate and grade the role prior to advertising the vacancy;
  - (c) at the request of any party to this Award provided that the role occupied by the member of staff has not been evaluated and graded for a minimum of twelve (12) months.

Where a member of staff's role is evaluated as falling within a lower or higher grading than that to which the member of staff is presently assigned, then the Department:

- (A) will examine the feasibility of initiating work redesign changes to the role in order to seek to justify the role's salary range at its existing grading level, or;
- (B) adhere to existing statutory and related Public Service policies on filling regraded roles if initiating action under paragraph (A) of this subclause is determined to be inconsistent with maintaining Department efficiency, or otherwise impracticable.



## 12. Anti-Discrimination

- (i) It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination of the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.
  - (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
  - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

## 13. Deduction of Union Membership Fees

- (i) The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.
- (ii) The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- (iii) Subject to (i) and (ii) above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Monies so deducted from employee's pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- (v) Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.

- (vi) Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

#### 14. Area, Incidence and Duration

The members of staff regulated by this Award shall be entitled to the conditions of employment as set out in this Award and, except where specifically varied by this Award, existing conditions are provided for under the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014*, the *Government Sector Employment Rules 2014*, the *Crown Employees (Public Service Conditions of Employment) Award 2009* and the *Crown Employees (Public Sector - Salaries 2015) Award* or any Awards replacing these Awards.

The changes made to the Award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 28 October 2015.

The Award remains in force until varied or rescinded, the period for which it was made having already expired.

### PART B

#### MONETARY RATES

**Table 1 - Rates of Pay**

Effective from the beginning of the full first pay period to commence on or after 1.07.2015

(A) Full Time

Regulatory Officer		1.7.2015 Annual Salary 2.50% \$	Common Salary Points
Grade 1	Year 1	50,433	29
	Year 2	52,185	33
	Year 3	54,155	37
Grade 2	Year 1	56,691	42
	Year 2	60,998	50
	Year 3	64,399	56
Grade 3	Year 1	68,223	62
	Year 2	73,918	70
	Year 3	76,675	74
Grade 4	Year 1	79,891	78
	Year 2	82,135	81
Grade 5	Year 1	85,455	85
	Year 2	88,015	88
Grade 6	Year 1	94,423	95
	Year 2	97,426	98
Grade 7	Year 1	99,367	100
	Year 2	102,223	103

Grade 8	Year 1	106,307	107
	Year 2	109,490	110
	Year 3	112,713	113

(B) Part-Time Hourly Rate Formulae - for staff other than those involved in Stock Inspection.

$$\frac{\text{Annual Salary}}{52.17857143} \times \frac{1}{35} = \text{1 hours pay}$$

(C) Part-Time Hourly Rate Formulae - for Staff involved in Stock Inspection.

$$\frac{\text{Annual Salary}}{52.17857143} \times \frac{1}{38} = \text{1 hours pay}$$

**Table 2 - Other Rates and Allowances**

Effective from the beginning of the first pay period to commence on or after 1.07.2015.

Item No.	Clause No.	Brief Description	1.7.15 Amount per annum 2.50% \$
1	7 (ii)	One person crossing relief allowance	5,407
2	7 (ii)	One person crossing telephone allowance	2,672

J. D. STANTON, Commissioner

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Printed by the authority of the Industrial Registrar.