

## SCHEDULES

### SCHEDULE 1

#### RE-ENACTED PROVISIONS OF INDUSTRIAL RELATIONS ACT 1971

#### PART III

#### JURISDICTION AND PROCEDURE OF INDUSTRIAL TRIBUNALS

##### *Extended scope of industrial tribunals*

##### *[Section 100]*

- 16 (1) Tribunals established under section 12 of the Industrial Training Act 1964 shall, by the name of industrial tribunals, continue to exercise the jurisdiction conferred on them by or under that Act, the Redundancy Payments Act 1965, the Docks and Harbours Act 1966, the Selective Employment Payments Act 1966, the Equal Pay Act 1970 and the Contracts of Employment Act 1972 and also the jurisdiction conferred on them by or under this Act.

##### *Complaint to industrial tribunal of unfair dismissal*

##### *[Section 106]*

- 17 (1) A complaint may be presented to an industrial tribunal against an employer by any person (in this Part and Part IV of this Schedule referred to as the complainant) that he was unfairly dismissed by the employer or by a person acting on the employer's behalf.
- (2) Where on a complaint under this paragraph the industrial tribunal—
- (a) finds that the grounds of the complaint are well-founded, and
  - (b) considers that it would be practicable and in accordance with equity, for the complainant to be reinstated or re-engaged by the employer or to be engaged by a successor of the employer or by an associated employer,
- the tribunal shall make a recommendation to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so reinstated, re-engaged or engaged.
- (3) Where on such a complaint the industrial tribunal finds that the grounds of the complaint are well-founded, but—
- (a) the tribunal does not make such a recommendation as aforesaid, or
  - (b) the tribunal makes such a recommendation, and (for what ever reason) the recommendation is not complied with,

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the tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal.

*National security*

*[Section 159]*

- 18 (1) If on a complaint under paragraph 17 above it is shown that the action to which the complaint relates was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.
- (2) A certificate purporting to be signed by or on behalf of a Minister of the Crown, and certifying—
- (a) that action specified in the certificate was taken for the purpose of safeguarding national security, or
  - (b) that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security,
- shall for the purposes of this Schedule be conclusive evidence of the fact so certified.

*General principles as to assessment of compensation*

*[Section 116]*

- 19 (1) Where in any proceedings on a complaint under paragraph 17 above an industrial tribunal makes an award of compensation to be paid by a party to the proceedings (in this paragraph referred to as the party in default) to another party (in this paragraph referred to as the aggrieved party), the amount of the compensation shall, subject to paragraph 20 below, be such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the aggrieved party in consequence of the matters to which the complaint relates, in so far as that loss was attributable to action taken by or on behalf of the party in default.
- (2) The said loss shall be taken to include—
- (a) any expenses reasonably incurred by the aggrieved party in consequence of the matters to which the complaint relates, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for those matters,
- subject, however, to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (3) Where the industrial tribunal finds that the matters to which the complaint relates were to any extent caused or contributed to by any action of the aggrieved party in connection with those matters, the tribunal shall reduce its assessment of his loss to such extent as, having regard to that finding, the tribunal considers just and equitable.
- (4) Where, on a complaint under paragraph 17 above, the industrial tribunal has made a recommendation in accordance with sub-paragraph (2) of that paragraph, and that recommendation is not complied with, then—
- (a) if the tribunal finds that the reason for which it was not complied with was that the aggrieved party refused an offer of re-instatement, re-engagement

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or engagement on the terms stated in the recommendation, and the tribunal considers that he acted unreasonably in doing so, the tribunal (without prejudice to the generality of the rule mentioned in sub-paragraph (2) above) shall reduce the assessment of his loss, or

- (b) if the tribunal finds that the reason for which the recommendation was not complied with was that the employer in question refused or failed to make such an offer, and the tribunal considers that he acted unreasonably in doing so, the tribunal shall increase that assessment,

to such extent (in either case) as in the circumstances the tribunal considers just and equitable.

- (5) In determining, on a complaint under paragraph 17 above, how far any loss sustained by the aggrieved party was attributable to action taken by or on behalf of the employer, no account shall be taken of any pressure which was exercised on the employer as mentioned in paragraph 15(a) above, and that question shall be determined as if no such pressure had been exercised.

#### *Limit on compensation*

##### *[Section 118]*

- 20 (1) The amount of compensation which is awarded to a person under paragraph 17 above shall not exceed—
- (a) the amount which, in his case, represents 104 weeks' pay, or
  - (b) £5,200 (that is to say, 104 X £50),
- whichever is the less.
- (2) The Secretary of State shall make provision by regulations for calculating the amount of a week's pay for the purposes of this paragraph.
- (3) The Secretary of State may by order made by statutory instrument provide that, subject to such transitional provisions (if any) as may be contained in the order, sub-paragraph (1) above shall have effect as if, for the references to £5,200 and £50, there were substituted references to such larger sums as may be specified in the order.
- (4) No order shall be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### *Regulations as to tribunal procedure*

##### *[Schedule 6, paragraphs 1 to 5 and 11]*

- 21 (1) Regulations (in this Part of this Schedule referred to as "the regulations") may make such provision as appears to the Secretary of State to be necessary or expedient with respect to proceedings before industrial tribunals.
- (2) The regulations may in particular include provision—
- (a) for determining by which tribunal any appeal, question or complaint is to be determined ;
  - (b) for treating the Secretary of State (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before

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- an industrial tribunal, where he would not otherwise be a party to them, and entitling him to appear and to be heard accordingly.
- (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses ;
  - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or, in Scotland, for granting to any such person such recovery or inspection of documents as might be granted by the sheriff ;
  - (e) for prescribing the procedure to be followed on any appeal, reference or complaint or other proceedings before an industrial tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and provisions for enabling an industrial tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations;
  - (f) for the appointment of one or more assessors for the purposes of any proceedings before an industrial tribunal, where the proceedings are brought under an enactment which provides for one or more assessors to be appointed;
  - (g) for the award of costs or expenses, including any allowances payable under section 12(3) of the Industrial Training Act 1964 other than allowances payable to members of industrial tribunals or assessors ;
  - (h) for taxing or otherwise settling any such costs or expenses (and, in particular, in England and Wales, for enabling such costs to be taxed in the county court); and
  - (i) for the registration and proof of decisions, orders and awards of industrial tribunals.
- (3) In relation to proceedings on complaints under paragraph 17 above the regulations shall include provision—
- (a) for requiring a copy of any such complaint, and a copy of any notice relating to it which is lodged by or on behalf of the employer against whom the complaint is made, to be sent to a conciliation officer;
  - (b) for securing that the complainant and the employer against whom the complaint is made are notified that the services of a conciliation officer are available to them ; and
  - (c) for postponing the hearing of any such complaint for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.
- (4) An industrial tribunal shall not consider a complaint under paragraph 17 above unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (5) The regulations may enable an industrial tribunal to sit in private for the purpose of hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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- (a) information which he could not disclose without contravening a prohibition imposed by or under any enactment; or
  - (b) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
  - (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 29(1) above, be seriously prejudicial to the interests of any undertaking of his or any undertaking in which he works.
- (6) Any person who without reasonable excuse fails to comply with any requirement imposed by the regulations by virtue of sub-paragraph (2)(c) above or any requirement with respect to the discovery, recovery or inspection of documents so imposed by virtue of sub-paragraph (2)(d) above shall be liable on summary conviction to a fine not exceeding £100.

*Exclusion of Arbitration Act 1950*

*[Schedule 6, paragraph 7]*

- 22 The Arbitration Act 1950 shall not apply to any proceedings before an industrial tribunal.

*Presumption as to dismissal for redundancy*

*[Schedule 6, paragraph 8]*

- 23 Where in accordance with the regulations an industrial tribunal determines in the same proceedings—
- (a) a question referred to it under Part I of the Redundancy Payments Act 1965, and
  - (b) a complaint presented under paragraph 17 above,
- section 9(2)(b) of that Act (whereby a dismissal is to be presumed, unless the contrary is proved, to have been by reason of redundancy) shall not have effect for the purposes of the proceedings in so far as they relate to the complaint under paragraph 17 above.

*Right of appearance*

*[Schedule 6, paragraph 9]*

- 24 Any person may appear before an industrial tribunal in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

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*Recovery of sums awarded*

*[Schedule 6, paragraph 10]*

- 25 (1) Any sum payable in pursuance of a decision of an industrial tribunal in England and Wales which has been registered in accordance with the regulations shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.
- (2) Any order for the payment of any sum made by an industrial tribunal in Scotland may be enforced in like manner as a recorded decree arbitral.
- (3) In this paragraph any reference to a decision or order of an industrial tribunal—
- (a) does not include a decision or order which, on being reviewed, has been revoked by the tribunal, and
  - (b) in relation to a decision or order which, on being reviewed, has been varied by the tribunal, shall be construed as a reference to the decision or order as so varied.