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SCHEDULES

SCHEDULE 2

MODIFICATIONS OF INDUSTRIAL TRAINING ACT 1964

PART I

THE MODIFICATIONS—GENERAL

- 1 Subject to any modifications made by the following paragraphs of this Part of this Schedule in any of the following provisions of the Act, in sections 1(4), 2(5) and (6), 4(2), 5(1), (2) and (5), 7(2) and 8(3) of the Act a reference to the Commission shall be substituted for any reference to the Secretary of State.
- 2 (1) In section 1(1) of the Act after the word "may" there shall be inserted the words " , if the Manpower Services Commission submits to him proposals that he should do so, ".
(2) In subsection (2) of section 1 of the Act, after the word "Act" there shall be inserted the following definitions—
 - “the Commission " means the Manpower Services Commission ;
 - " employee " includes a person engaged under a contract for services, and
 - " employer " shall be construed accordingly ;
 - " employment " means employment under a contract of service or apprenticeship or a contract for services or otherwise than under a contract, and
 - " employed " shall be construed accordingly ;
 - " exemption certificate " has the meaning assigned to it by section 4A(1) of this Act, and
 - " holder " in relation to an exemption certificate means the person to whom the certificate is issued;”and for so much of the said subsection (2) as begins with the word " and " in the definition of " the industry " there shall be substituted the following definitions—
 - “levy order " has the meaning assigned to it by section 4(1) of this Act;
 - and
 - " the Minister " means the Secretary of State.”
- (3) In section 1(4) of the Act, for the words "Before making" there shall be substituted the words " Before the Commission submits to the Minister proposals for the making of".
- 3 (1) In section 2(1) of the Act—
 - (a) at the beginning there shall be inserted the words " For the purpose of encouraging adequate training of persons employed or intending to be employed in the industry " ;
 - (b) in paragraphs (a) and (c) for the word " shall " there shall be substituted the word " may " and in paragraph (a) for the words from " of persons" to " required " there shall be substituted the words " of those persons as the

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board considers adequate " and for the words " such persons " there shall be substituted the words " those persons ";

- (c) after paragraph (g) there shall be inserted the following paragraph—
 “(h) may provide advice about training connected with the industry.”

- (2) For subsection (3) of section 2 of the Act there shall be substituted the following subsection—

“(3) An industrial training board may—

- (a) at the request of another industrial training board provide advice for the other board and courses and other facilities for the training of persons employed or intending to be employed in the industry for which that other board is established ;
- (b) at the request of the Commission provide such other advice, and such other courses and facilities for training, as are mentioned in the request;
- (c) at the request of an employer in the industry provide for him advice about training connected with activities carried on in Northern Ireland or outside the United Kingdom which, if they were carried on in Great Britain, would be included in the industry ;
- (d) enter into agreements with persons for the making by them of payments to the board in respect of the exercise by the board of any of its functions ;
- (e) take part in any arrangements made in pursuance of section 2(1) or (2), 3(4) or 8 of the Employment and Training Act 1973 (which relate to arrangements for persons to select, train for and obtain suitable employments and to obtain suitable employees) ;

but any expense incurred by the board in pursuance of paragraph (c) of this subsection shall not be defrayed out of sums received by the board by way of levy.”

- (3) At the end of paragraph (b) of section 2(4) of the Act there shall be inserted the words

“, to persons who make studies for the purpose of providing such courses or facilities and to persons who maintain arrangements to provide such courses or facilities which are not for the time being in use " and at the end of the said section 2(4) there shall be inserted the following paragraph—

- (d) make payments to persons in connection with arrangements under which they or employees of theirs make use of courses or other facilities provided or approved by the board.”

- 4 (1) In section 3(1) of the Act for the words " the proposals " there shall be substituted the words " proposals submitted to and approved by the Commission under section 7 of this Act " and after the words " section 2 " there shall be inserted the words " or 4B(4) ".

- (2) In section 3(2) of the Act, for the words from " allowances " onwards there shall be substituted the words " allowances (including allowances for loss of remunerative time) as the Minister may determine with the approval of the Minister for the Civil Service and to the chairman of any such committee to which functions mentioned in the preceding subsection are delegated (hereafter in this section referred to as a " relevant committee ") such remuneration as the Minister may so determine ".

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- (3) After subsection (2) of section 3 of the Act there shall be inserted the following subsection—
- “(2A) An industrial training board may make, or as the case may be join in making, such arrangements as the Minister may specify with the approval of the Minister for the Civil Service—
- (a) for the payment of pensions, superannuation allowances and gratuities to or in respect of the chairmen of relevant committees ;
 - (b) for the payment of compensation to a person who ceases to be a chairman of a relevant committee otherwise than on the expiry of his term of office where it appears to the Minister that there are special circumstances which make it right for him to receive compensation.”
- 5 (1) For subsection (1) of section 4 of the Act there shall be substituted the following subsection—
- “(1) For the purpose of encouraging adequate training in the industry an industrial training board may, in accordance with an order made by the Minister (hereafter in this Act referred to as " a levy order "), impose a levy on employers in the industry except so far as they are exempted from the levy by the industrial training order, the levy order or an exemption certificate.”
- (2) In section 4(2) of the Act, after the words " to proposals" there shall be inserted the words " in respect of a levy which have been " .
- (3) In section 4 of the Act, after subsection (2) there shall be inserted the following subsection—
- “(2A) Nothing in this Act shall be construed as requiring the Minister to make a levy order in a case in which he considers it inexpedient to make one ; and the Minister shall not make a levy order in pursuance of any proposals under the said section 7 unless—
- (a) he is satisfied that proposals published by the relevant board in pursuance of section 4A of this Act provide for exemption certificates relating to the levy (other than levy payable by virtue of subsection (1B) of the said section 7) in such cases as he considers appropriate ;
 - (b) such of the proposals under the said section 7 as were made in pursuance of subsection (1A)(a) of that section and are approved by the Commission provide for the exemption from the levy of employers who, in view of the small number of their employees, ought in his opinion to be exempted from it;
 - (c) he is satisfied that such of the proposals under the said section 7 as were made in pursuance of subsection (1B) of that section are necessary as mentioned in paragraph (a) of that subsection and are shown, by evidence furnished by the board which made the proposals, to be considered necessary as mentioned in paragraph (b) of that subsection; and
 - (d) the amount which, disregarding any exemptions, he estimates would if the order were made be payable by virtue of it by any employer in the industry either—
 - (i) does not exceed an amount which the Minister estimates is equal to one per cent, of the aggregate of the emoluments

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and payments intended to be disbursed as emoluments which are paid and payable, by that employer to or in respect of persons employed in the industry, in respect of the period specified in the proposals as the period which is relevant for the purposes of this sub-paragraph, or

- (ii) does exceed the amount mentioned in the preceding sub-paragraph but is considered by him to be appropriate in the circumstances ;

and a levy order made in a case falling within paragraph (d)(ii) of this subsection shall state that it is made in such a case.”

- (4) In section 4(3) of the Act, before the word " contain " there shall be inserted the words " provide for payments by way of levy to accrue due from day to day over a period specified in the order and may " and before the word " become " there shall be inserted the words " (whether or not any period over which that amount accrues due has expired) " .
- (5) At the end of section 4(4) of the Act there shall be inserted the words " unless the instrument contains only an order which includes a statement that it is made in a case falling within subsection (2A)(d)(ii) of this section, and no levy order which includes such a statement shall be made unless a draft of the order has been approved by a resolution of each House of Parliament " .
- 6 After section 4 of the Act there shall be inserted the following sections—

“4A Proposals for exemption by certificate from certain levies.

- (1) An industrial training board may from time to time, and shall whenever directed to do so by the Commission, submit to the Commission for the Commission's approval proposals for the issue of certificates (in this Act referred to as " exemption certificates") which, while the certificates are in force, are to exempt from relevant levy employers in the industry who—
- (a) make arrangements for the training, or the training and further education associated with training, of persons needed to carry on the activities which are or are expected to be carried on at establishments of the employers ; and
 - (b) satisfy the board, by reference to criteria specified in the proposals, that the arrangements are adequate for those establishments ;
- and in this subsection " relevant levy " means levy which, apart from any exemption certificate, is payable to the board in question by virtue of this Act in respect of persons employed at establishments for which such arrangements are made, other than levy which the levy order authorising it provides is to be payable notwithstanding any exemption certificate.
- (2) Where a board by which proposals are submitted to the Commission in pursuance of the preceding subsection is informed by the Commission that the Commission and the Minister approve the proposals, it shall be the duty of the board to arrange for the proposals to be published as soon as practicable in a manner approved by the Commission.
- (3) Proposals made by a board in pursuance of subsection (1) of this section—

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- (a) must include proposals as to the arrangements for the reconsideration of decisions in pursuance of subsection (4) of the following section ; and
- (b) may include proposals for altering or cancelling any previous proposals made by the board in pursuance of subsection (1) of this section ;

but proposals made by virtue of paragraph (b) of this subsection shall not affect the operation of any exemption certificates issued in pursuance of previous proposals.

- (4) Subsections (2) to (6) of section 7 of this Act shall have effect in relation to a direction under subsection (1) of this section and proposals mentioned in that subsection as they have effect in relation to a direction under section 7(1) of this Act and proposals mentioned in the said section 7(1).

4B Certificates of exemption from levy.

- (1) Where an industrial training board is satisfied, on an application made in writing to the board by an employer liable apart from this section to pay to the board any levy from which exemption may be conferred on him by an exemption certificate, that the arrangements made by him for the training, or the training and further education associated with training, of persons needed to carry on the activities which are or are expected to be carried on at a particular establishment of his are such that, in accordance with proposals published by the board in pursuance of the preceding section, an exemption certificate falls to be issued to him in respect of the establishment, it shall be the duty of the board to issue such a certificate to him; and the holder of an exemption certificate shall, while the certificate is in force, be exempt from levy payable to the board by virtue of this Act in respect of persons employed at the establishment to which the certificate relates, other than levy which the levy order authorising it provides is to be payable notwithstanding any exemption certificate.

- (2) An exemption certificate—
 - (a) may require the holder of the certificate to comply with such conditions relating to the training, or the training and education, of persons needed to carry on the activities which are or are expected to be carried on at the establishments to which the certificate relates (including in particular conditions as to the inspection on behalf of the relevant board of the arrangements for the training or the training and education) as are specified in the certificate and are in accordance with the proposals mentioned in the preceding subsection ;
 - (b) shall specify the date on which the certificate is to come into force ;
 - (c) shall specify the period (not exceeding three years beginning with that date) at the expiration of which it shall cease to be in force unless it has previously ceased to be in force by virtue of the following subsection ;
 - (d) may provide that the certificate shall be deemed to have been in force for such period before the date on which it comes into force as is specified in the certificate (which shall not begin before the period

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- of one year ending with the date on which the said board received the application in pursuance of which it issues the certificate);
 and any levy paid to the said board by a person for a period in respect of which by virtue of paragraph (d) of this subsection it becomes not payable shall be repayable by the board to that person.
- (3) An exemption certificate issued by a board shall cease to be in force if the board gives notice in writing to the holder of the certificate stating that in the opinion of the board he has failed to comply with conditions specified in the certificate and mentioned in the notice ; but for the purposes of the preceding provisions of this subsection a notice given in pursuance of this subsection shall be disregarded if the board subsequently informs the person to whom it was given that the notice is withdrawn.
- (4) If a person who is liable apart from any exemption certificate to pay to a board levy from which exemption may be conferred by an exemption certificate is dissatisfied with the decision of the board—
- (a) to refuse to issue to him an exemption certificate relating to such levy in respect of a particular establishment; or
 - (b) to refuse to include in an exemption certificate issued to him provisions or different provisions authorised by subsection (2)(b) or (d) of this section ; or
 - (c) to include in an exemption certificate provisions requiring him to comply with conditions ; or
 - (d) to give a notice to him in pursuance of subsection (3) of this section, and requests the board in writing to reconsider the decision, it shall be the duty of the board to reconsider it or to secure that it is reconsidered by a committee authorised to deal with such requests by virtue of section 3(1) of this Act; and if on reconsidering the decision the board or committee decides not to alter it, or not to alter it in a manner which the person who made the request considers is satisfactory, that person may refer the decision to a body established in pursuance of the following subsection.
- (5) It shall be the duty of the Minister to make regulations establishing a body to which decisions are to be referred in pursuance of the preceding subsection ; and regulations made by virtue of this subsection may include provisions as to the powers and procedure of the body and such other provisions (including provisions for defraying the body's expenses out of moneys provided by Parliament or otherwise) as the Minister considers appropriate for the purpose of facilitating the exercise by the body of its functions and may, without prejudice to the generality of the preceding provisions of this subsection—
- (a) require a board to draw the attention of a person to his right to refer a decision to the body ;
 - (b) authorise the body to direct a board of which a decision is referred to the body to alter the decision in a manner specified in the direction ; and
 - (c) require the board to comply with the direction and provide for any case in which it fails to do so.

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- (6) Regulations under subsection (5) of this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) No appeal shall lie to a tribunal established in pursuance of section 12 of this Act in respect of such a decision as is mentioned in subsection (4) of this section.”
- 7 (1) In section 5(1) of the Act for the word " Treasury " there shall be substituted the word " Minister " .
- (2) In section 5 of the Act after subsection (1) there shall be inserted the following subsection—
- “(1A) The Commission may give to an industrial training board such directions as the Commission thinks fit for the purpose of securing—
- (a) that the board's expenditure for a purpose specified in the directions does not exceed an amount so specified ; and
- (b) that the whole or part of any grant or loan made to the board in pursuance of the preceding subsection is used only for the purposes specified in the directions ;
- and it shall be the duty of the board to comply with the directions.”
- 8 (1) At the end of section 6(3) of the Act there shall be inserted the words " or to the Commission, the Employment Service Agency, the Training Services Agency or an officer of the Commission or either Agency " .
- (2) In section 6(7)(b) of the Act for the words " either of those subsections " there shall be substituted the words " that subsection " .
- 9 After section 6 of the Act there shall be inserted the following section—

“6A Provisions supplementary to s.6.

- (1) The Commission may, with the approval of the Minister, direct an industrial training board to exercise the power to require the furnishing of information which is conferred on the board by subsection (2) of the preceding section (hereafter in this section referred to as " the relevant power ") so as to require employers in the industry to furnish to the board, in such form and on such occasions as are specified in the direction, such information as the Commission considers that the Commission needs for the purposes of its functions and as is so specified ; and it shall be the duty of the board to comply with the direction.
- (2) An industrial training board shall not exercise the relevant power except—
- (a) in pursuance of a direction given by virtue of the preceding subsection ; or
- (b) with the approval of the Minister and in accordance with the conditions, if any, of the approval;
- and any application by a board for approval in pursuance of paragraph (b) of this subsection must be made to the Commission and contain such information as the Commission may require with respect to the proposed exercise of the relevant power.

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- (3) Where the Commission receives such an application from a board the Commission—
- (a) may request the board to withdraw or alter the application; and
 - (b) shall, if it does not so request or the board declines to comply with the request or complies with a request to alter the application, transmit the application to the Minister ;
- and it shall be the duty of the Commission on transmitting the application to the Minister to inform him whether in its opinion he should reject the application or approve it with specified conditions or without conditions.
- (4) An approval of an application given by the Minister in pursuance of subsection (2)(b) of this section may be given subject to conditions that the board in question may exercise the relevant power only for the purpose of requiring the furnishing of information in such forms and on such occasions as are specified in the instrument of approval.”
- 10 (1) For subsection (1) of section 7 of the Act there shall be substituted the following subsection—
- “(1) An industrial training board shall from time to time, and whenever directed to do so by the Commission, submit to the Commission for the Commission's approval proposals for the exercise of functions conferred on the board by section 2 of this Act and may from time to time, and shall whenever directed by the Commission to do so, submit as aforesaid—
- (a) proposals for the delegation of all or any of those functions to committees established under section 3 of this Act; and
 - (b) proposals for the raising and collection of a levy.”
- (2) After subsection (1) of section 7 of the Act there shall be inserted the following subsections—
- “(1A) Any proposals by a board in pursuance of paragraph (b) of the preceding subsection must include—
- (a) proposals for exempting from the levy any employer who, in view of the small number of his employees, ought in the opinion of the board to be exempted from it; and
 - (b) such information or further information as the Commission directs the board to furnish, and any additional information which the board considers appropriate, for the purpose of assisting the Minister to decide whether a levy order made in pursuance of the proposals would fall within sub-paragraph (i) or sub-paragraph (ii) of section 4(2A)(d) of this Act;
- and proposals in pursuance of paragraph (a) of this subsection may be made in respect of different numbers of employees for different employers or classes of employers and may provide for numbers of employees or for employers or classes of employers to be determined by reference to such factors as are specified in the proposals.
- (1B) Any proposals made by a board in pursuance of paragraph (b) of subsection (1) of this section may include proposals for securing that exemption certificates issued by the board shall not exempt from the whole or a portion of the levy the employers or some of the employers in the industry, and different proposals may be made in pursuance of

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this subsection as respects different categories of employers and different portions of the levy; but the Commission shall not approve proposals made in pursuance of this subsection unless—

- (a) it is of the opinion that the proposals are necessary to encourage adequate training in the industry; and
- (b) it is satisfied, by evidence furnished to it by the board, that—
 - (i) organisations appearing to it to represent more than half of the persons whom it considers are likely to be liable to make payments by way of levy in consequence of the proposals, and
 - (ii) organisations appearing to it to represent persons whom it considers are together likely to be liable to make payments by way of levy in consequence of the proposals which amount to more than half the aggregate amount of those payments,

consider, after taking reasonable steps to ascertain the views of the proposals taken by the persons aforesaid who are represented by the organisations, that the proposals are necessary as mentioned in paragraph (a) of this subsection.

(1C) It shall be the duty of the Commission to submit to the Minister any proposals which are made to the Commission in pursuance of paragraph (b) of subsection (1) of this section and approved by the Commission.”

- (3) In section 7(2) of the Act for the words from " the proposals submitted " to " unsatisfactory he" there shall be substituted the words " it appears to the Minister, after he has considered a report made to him by the Commission on the proposals submitted in pursuance of the direction, that the proposals are unsatisfactory he " .
- 11 (1) In section 8(1) of the Act for the words "Minister may, with the approval of" there shall be substituted the words " Commission may, with the approval of the Minister and " .
- (2) At the beginning of section 8(4) of the Act there shall be inserted the words " The Commission shall send a copy of every such report to the Minister and " .
- 12 (1) In section 9(1) of the Act after the word " may " there shall be inserted the words " on the recommendation of the Commission " .
- (2) In section 9(2) of the Act for the words from the beginning to " Minister" there shall be substituted the words " Before recommending the making of an order under subsection (1)(a) of this section the Commission shall consult the industrial training board and such organisations or associations appearing to the Commission to be representative—
 - (a) of employers engaged in activities to be included in or excluded from the relevant industrial training order by virtue of the amendments in question ; and
 - (b) of employees engaged in those activities ;and before recommending the making of an order under subsection (1)(b) of this section the Commission " .
 - (3) In section 9(3) of the Act after the word " industry " there shall be inserted the words " (whether or not they are holders of exemption certificates) " and after the word " raising" there shall be inserted the words " the whole or part of " .

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13 After section 9 of the Act there shall be inserted the following section—

“9A Transfer of establishments' activities from industry of one board to that of another.

- (1) If an employer in the industry of an industrial training board requests the Commission in writing to secure that activities carried on at a particular establishment of his shall, instead of being included for the purposes of this Act in that industry, be included for those purposes in the industry of another industrial training board, the Commission may if it thinks fit, after consulting both the boards in question about the request, submit it to the Minister with a recommendation that he should give effect to the request.
- (2) Where the Minister receives a recommendation in pursuance of the preceding subsection in respect of a request he may if he thinks fit make an order giving effect to the request; and the power conferred by this subsection to make an order relating to an establishment shall—
 - (a) be exercisable by statutory instrument; and
 - (b) include power to revoke or vary any previous order made in the exercise of that power in respect of the establishment.
- (3) An industrial training order or an order under the preceding section may revoke an order under the preceding subsection.”

14 In section 10 of the Act after the word " board" in subsection (1) and in each place where it occurs in subsection (3) there shall be inserted the words " the Commission or the Minister ".

15 In section 12 of the Act after subsection (2A) there shall be inserted the following subsection—

“(2B) The Minister may out of moneys provided by Parliament pay such remuneration as he may determine with the consent of the Minister for the Civil Service to the President of the Industrial Tribunals (England and Wales), the President of the Industrial Tribunals (Scotland) and any person who is a member on a full-time basis of a panel of chairmen of tribunals which is appointed in accordance with regulations under this section.”

16 In section 14(1) of the Act for the words from the beginning to " carried on " there shall be substituted the words " An industrial training board may, with the consent of the Commission given with the approval of the Minister, exercise such functions in connection with training for employment " and at the end of section 14(1) there shall be inserted the words " ; and -the board may enter into agreements for the making of payments to the board in respect of the exercise in pursuance of this subsection of functions by the board. "

17 In the Schedule to the Act—

- (a) at the end of paragraph 4 there shall be inserted the words " and may make such arrangements for the payment of pensions, superannuation allowances and gratuities to or in respect of its chairman as the Minister may specify with the like approval ";
- (b) after paragraph 4 there shall be inserted the following paragraph—

“4A Where a person ceases to be the chairman of an industrial training board otherwise than on the expiry of his term of office and it appears to the Minister that there are

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special circumstances which make it right for him to receive compensation, the board may make him a payment of such amount as the Minister may determine with the approval of the Minister for the Civil Service.”;

- (c) in paragraph 6(1) after the word " specify " there shall be inserted the words " and the Commission ";
- (d) after sub-paragraph (1) of paragraph 6 there shall be inserted the following sub-paragraph—

“(1A) The Commission may appoint one or more persons to attend the meetings of a committee of an industrial training board, and a person so appointed shall be entitled to take part in the proceedings of the committee and receive copies of all documents distributed to its members but shall have no vote.”;

- (e) at the end of paragraph 10 there shall be inserted the words " with the approval of the Minister given with the consent of the Minister for the Civil Service "; and
- (f) in paragraph 11 for the words "as the board may determine " there shall be substituted the words " (including allowances for loss of remunerative time) as the Minister may determine with the approval of the Minister for the Civil Service ".

18 The following provisions of the Act shall cease to have effect, namely—

- (a) section 2(1)(f);
- (b) in section 3(1), the words from " , in accordance " to " section 7 of this Act, " ;
- (c) in section 5, in subsection (1) the words "out of moneys provided by Parliament", subsection (3) and in subsection (4) the words from " and any " onwards ;
- (d) in section 6, subsection (1), in subsection (2) the words from " and any " to " board " in the second place where it occurs and in subsections (6) and (7)(a) the words " subsection (1) or";
- (e) sections 11, 13 and 17 ;
- (f) in the Schedule, paragraph 6(2).