

SCHEDULES

SCHEDULE 1

RE-ENACTED PROVISIONS OF INDUSTRIAL RELATIONS ACT 1971

Note: The cross heading in square brackets at the beginning of each paragraph of this Schedule indicates the provision of the 1971 Act which is re-enacted, with or without amendments, in that paragraph.

PART I

INTRODUCTORY

Code of Practice

[Section 2]

- 1 (1) It shall be the duty of the Secretary of State to maintain a code of practice, containing such practical guidance as would be helpful for the purpose of promoting good industrial relations.
- (2) The last code of practice brought into effect under Part I of the Industrial Relations Act 1971 shall remain in effect for the purpose of this Part of this Schedule unless and until revised as hereinafter provided.
- (3) The Secretary of State may from time to time revise the whole or any part of a code of practice which has been brought into effect under this Part of this Schedule.
- (4) In preparing any proposed revision of that code the Secretary of State shall have regard to—
 - (a) the need for those who manage undertakings to accept the primary responsibility for the promotion of good industrial relations, and
 - (b) the need for providing practical guidance with respect to disclosure of information by employers, and with respect to the establishment and maintenance of effective means of negotiation, consultation and communication at all levels between those who manage undertakings and the workers employed in them.

Revisions of Code of Practice

[Section 3]

- 2 (1) Where the Secretary of State proposes to revise the whole or part of the code of practice (in the form in which, whether as originally approved or as previously revised, the code or that part of it has effect for the time being) he shall consult with the Trades Union Congress and the Confederation of British Industry and prepare a

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draft of the revised code, or that part of it, as the case may be, and shall transmit a copy of the draft to each of them for their consideration and advice.

- (2) The Secretary of State shall take account of any advice given to him by the Trades Union Congress or the Confederation of British Industry with respect to a draft prepared under sub-paragraph (1) above and shall arrange for any such advice to be published in such manner as he may consider appropriate; and, if the Secretary of State determines to proceed with the draft, he shall lay the draft, or a modified draft, before both Houses of Parliament.
- (3) If the draft laid under sub-paragraph (2) above is approved by a resolution of each House of Parliament, the Secretary of State shall issue the revised code, or part of the code as revised, as the case may be, in the form of the draft.
- (4) On issuing any document under this paragraph (whether it is the code of practice as originally approved or a revised code or part of a revised code) the Secretary of State shall make by statutory instrument an order specifying the date on which the document is to be brought into effect.

Use of code in proceedings under this Act

[Section 4]

- 3 —A failure on the part of any person to observe any provision of a code of practice which is for the time being in force under this Part of this Schedule shall not of itself render him liable to any proceedings ; but in any proceedings before an industrial tribunal under this Act—
 - (a) any such code of practice shall be admissible in evidence,
 - and
 - (b) any provision of such a code of practice which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account by the tribunal in determining that question.

PART II

UNFAIR DISMISSAL

Right of employee not to be unfairly dismissed

[Section 22]

- 4 (1) In every employment to which this paragraph applies every employee shall have the right not to be unfairly dismissed by his employer, and the remedy of an employee so dismissed for breach of that right shall be by way of complaint to an industrial tribunal under Part III of this Schedule, and not otherwise.
- (2) This paragraph applies to every employment except in so far as its application is excluded by or under any provision of this Schedule.

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Meaning of "dismissal"

[Section 23]

- 5 (1) In this Schedule "dismissal" and "dismiss" shall be construed in accordance with the following provisions of this paragraph.
- (2) Subject to sub-paragraph (3) below, an employee shall be treated for the purposes of this Act as dismissed by his employer, if, but only if,—
- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
 - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
 - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the obligatory period of that notice, the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of this Schedule be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.
- (4) For the purposes of sub-paragraph (3) above—
- (a) if the actual period of the employer's notice (that is to say, the period beginning at the time when the notice is given and ending with the time when it expires) is equal to the minimum period which (whether by virtue of any enactment or otherwise) is required to be given by the employer to terminate the contract of employment, "the obligatory period", in relation to that notice, means the actual period of the notice;
 - (b) in any other case, "the obligatory period", in relation to an employer's notice, means that period which, being equal to the minimum period referred to in sub-paragraph (a) above, expires at the time when the employer's notice expires.
- (5) In this Schedule "the effective date of termination"—
- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires ;
 - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
 - (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

Fair and unfair dismissal

[Section 24]

- 6 (1) In determining for the purposes of this Schedule whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
 - (b) that it was a reason falling within sub-paragraph (2) below, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) In sub-paragraph (1)(b) above the reference to a reason falling within this sub-paragraph is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
 - (b) related to the conduct of the employee, or
 - (c) was that the employee was redundant, or
 - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) Where the employer has fulfilled the requirements of sub-paragraph (1) above, then, subject to paragraphs 7 and 8 below, the question whether the dismissal was fair or unfair shall be determined in accordance with the following provisions of this paragraph.
- (4) For the purposes of this Schedule the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union;
 - (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union ; or
 - (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.
- (5) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Schedule if—
- (a) it is the practice, in accordance with a union membership agreement, for all the employees of that employer or all employees of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions ; and
 - (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or proposed to refuse to become or remain a member of that union or one of those unions ;
- unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever or on any reasonable grounds to being a member of a particular trade union, in which case the dismissal shall be regarded as unfair.

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- (6) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of sub-paragraph (4) or (5) above is hereafter in this Schedule referred to as an inadmissible reason.
- (7) Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—
- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason ; or
 - (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,
- then, for the purposes of this Schedule the dismissal shall be regarded as unfair.
- (8) Subject to sub-paragraphs (4) to (7) above, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.
- (9) In this paragraph, in relation to an employee—
- (a) " capability " means capability assessed by reference to skill, aptitude, health or any other physical or mental quality ;
 - (b) " qualifications " means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held ; and
 - (c) any reference to redundancy or to being redundant shall be construed as a reference to the existence of one or other of the facts specified in paragraphs (a) and (b) of section 1(2) of the Redundancy Payments Act 1965.

Dismissal in connection with a lock-out

[Section 25]

- 7 (1) The dismissal of an employee by way of a lock-out (whether the lock-out extends to all the employees of the employer or only to some of them, and whether the dismissal occurs at the beginning of the lock-out or during the course of it) shall not be regarded as unfair if the employee is offered re-engagement as from the date of resumption of work.
- (2) Where an employee who has been so dismissed, and has not been offered re-engagement as from the date of resumption of work, claims that he was unfairly dismissed by his employer, the provisions of paragraph 6 above shall apply as if in that paragraph, for any reference to the reason or principal reason for which the employee was dismissed by his employer, there were substituted a reference to the reason or principal reason for which he was not offered re-engagement as from that date.

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(3) In this paragraph any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee, either in the position which he held immediately before the effective date of termination or in a different position which would be reasonably suitable to him.

(4) In this paragraph—

(a) " the date of resumption of work " means the date as from which, at or after the termination of the lock-out, the other comparable employees of the original employer, or a majority of those employees, were offered re-engagement, and

(b) " the original employer ", in relation to an employee, means the employer who dismissed him ;

and in this sub-paragraph " comparable employees ", in relation to an employee, means such of the employees of the original employer to whom the lock-out extended as, immediately before the effective date of termination, held positions similar to that held by that employee.

Dismissal in connection with a strike or other industrial action

[Section 26]

8 (1) The provisions of this paragraph shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer, where on the date of dismissal he was taking part in a strike or other industrial action.

(2) If the reason or principal reason for the dismissal was that the employee took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown—

(a) that one or more employees of the same employer (in this paragraph referred to as " the original employer"), who also took part in that action, were not dismissed for taking part in it, or

(b) that one or more such employees, who were dismissed for taking part in it, were offered re-engagement on the termination of the industrial action and that the employee was not offered such re-engagement,

and that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal or not offered re-engagement was an inadmissible reason.

(3) In this paragraph any reference to the date of dismissal—

(a) where the employee's contract of employment was terminated by notice, whether given by his employer or by him, is a reference to the date on which that notice was given, and

(b) in any other case, is a reference to the effective date of termination ;

and any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee, either in the position which he held immediately before the date of dismissal or in a different position which would be reasonably suitable to him.

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Excluded classes of employment

[Section 27]

- 9 (1) Paragraph 4 above does not apply to any of the following, that is to say,—
- (a) any employment in an undertaking in which immediately before the effective date of termination there were in the aggregate (including the dismissed employee) less than four employees who had been continuously employed for a period of not less than thirteen weeks, whether they are, or had been, all employed at the same place or are, or had been, employed at different places;
 - (b) any employment where the employer is the husband or wife or a close relative of the employee ;
 - (c) any employment as a registered dock worker, as defined by any scheme for the time being in force under the Dock Workers (Regulation of Employment) Act 1946, not being employment by virtue of which the employee is wholly or mainly engaged in work which is not dock work as defined by the scheme ;
 - (d) any employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel;
 - (e) any employment as a teacher to whom section 85 of the Education (Scotland) Act 1962 (dismissal of teachers) applies ;
 - (f) any employment under a contract which normally involves employment for less than twenty-one hours weekly.
- (2) Paragraph 4 above does not apply to any employment where under his contract of employment the employee ordinarily works outside Great Britain.
- (3) For the purposes of sub-paragraph (2) above a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
- (a) the employment is wholly outside Great Britain, or
 - (b) he is not ordinarily resident in Great Britain,
- be regarded as a person who under his contract ordinarily works in Great Britain.
- (4) In this paragraph "close relative", in relation to a person, means that person's father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.
- (5) The foregoing provisions of this paragraph shall have effect subject to any order made under paragraph 11 below.

Qualifying period and upper age limit

[Section 28]

- 10 Subject to paragraph 11 below, paragraph 4 above does not apply to the dismissal of an employee from any employment if the employee—
- (a) was not continuously employed for a period of not less than 26 weeks ending with the effective date of termination, or
 - (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an

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employee holding the position which he held, or, if a man, attained the age of sixty-five, or, if a woman, attained the age of sixty;

but this paragraph shall have effect in a case where the effective date of termination falls within the period of six months beginning with the commencement of this Schedule as if the reference in sub-paragraph (a) to 26 weeks were a reference to 52 weeks.

Supplementary provisions relating to paragraphs 9 and 10

[Section 29]

- 11 (1) Paragraphs 9(1)(a) and 10 above shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason.
- (2) The Secretary of State may by order made by statutory instrument add to or vary any of the provisions of paragraphs 9 and 10 above or exclude the operation of any of those provisions.
- (3) 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.

Exclusion of certain contracts for a fixed term

[Section 30]

- 12 Paragraph 4 above does not apply—
- (a) to dismissal from employment under a contract for a fixed term of two years or more, where the contract was made before 28th February 1972 and is not a contract of apprenticeship, and the dismissal consists only of the expiry of that term without its being renewed, or
- (b) to dismissal from employment under a contract for a fixed term of two years or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that paragraph in relation to that contract.

Exclusion in respect of dismissal procedures agreement

[Section 31]

- 13 (1) An application may be made jointly to the Secretary of State by all the parties to a dismissal procedures agreement to make an order designating that agreement for the purposes of this paragraph.
- (2) On any such application the Secretary of State may make such an order if he is satisfied—
- (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union ;

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- (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed ;
 - (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies ;
 - (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Schedule ;
 - (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
 - (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.
- (3) Where a dismissal procedures agreement is designated by an order under this paragraph which is for the time being in force, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under paragraph 4 above; and accordingly that paragraph shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

Revocation of exclusion under paragraph 13

[Section 32]

- 14 (1) At any time when an order under paragraph 13 above is in force, any of the parties to the dismissal procedures agreement to which the order relates may apply to the Secretary of State for the order to be revoked.
- (2) If on any such application the Secretary of State is satisfied either—
- (a) that it is the desire of all the parties to the dismissal procedures agreement that the order should be revoked, or
 - (b) that the agreement has ceased to fulfil all the conditions specified in paragraph 13(2) above,
- the Secretary of State shall revoke the order by a further order made under this paragraph.
- (3) Any order made under this paragraph may contain such transitional provisions as appear to the Secretary of State to be appropriate in the circumstances, and, in particular, may direct—
- (a) that, notwithstanding paragraph 13(3) above, an employee shall not be excluded from his rights under paragraph 4 above where the effective date of termination falls within a transitional period which is specified in the order and is a period ending with the date on which the order under this paragraph takes effect and shall have an extended time for presenting a complaint under Part III of this Schedule in respect of a dismissal where the effective date of termination falls within that period, and
 - (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of termination falls within that transitional period, an

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industrial tribunal shall have regard to such considerations (in addition to those specified in Part III of this Schedule) as may be specified in the order.

Pressure on employer to dismiss unfairly

[Section 33]

- 15 In determining, for the purposes of this Part of this Schedule any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of paragraph 6(1)(b) above or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—
- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
 - (b) any such question shall be determined as if no such pressure had been exercised.

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.

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- (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,
- 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

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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 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.

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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 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

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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—
- (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.

Status: This is the original version (as it was originally enacted).

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.

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.

PART IV

CONCILIATION OFFICERS, AND MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Conciliation officers

[Section 146]

- 26 (1) The Secretary of State shall appoint conciliation officers to perform the functions specified in the following provisions of this paragraph, subject to the approval of the Minister for the Civil Service as to their numbers and as to their terms and conditions of service.
- (2) Where a complaint has been presented to an industrial tribunal by the complainant under paragraph 17 above, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
- (a) if he is requested to do so by the complainant and by the employer against whom it was presented, or
 - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this sub-paragraph with a reasonable prospect of success, to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

Status: This is the original version (as it was originally enacted).

- (3) For the purpose of promoting such a settlement, in a case where the complainant has ceased to be employed by the employer against whom the complaint was made,—
- (a) the conciliation officer shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or his engagement by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable ; but
 - (b) where such reinstatement, re-engagement or engagement is not practicable or cannot be agreed between the parties to the complaint,
- and they desire the conciliation officer to act under this paragraph, he shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- (4) Where at any time—
- (a) after the complainant has ceased to be employed by an employer, in circumstances where the employee claims that he was unfairly dismissed, but
 - (b) before any complaint relating to that claim has been presented by the claimant under paragraph 17 above,
- a request is made to a conciliation officer (whether by the employer or by the employee) to make his services available to them, the conciliation officer shall act in accordance with sub-paragraph (2) and (3) above as if a complaint had been presented in pursuance of that claim.
- (5) Anything communicated to a conciliation officer in connection with the performance of his functions under this paragraph shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.

Teacher in aided school dismissed on requirement of local education authority

[Section 148]

- 27 (1) Where a teacher in an aided school is dismissed by the governors or managers of the school in pursuance of a requirement of the local education authority under paragraph (a) of the proviso to section 24(2) of the Education Act 1944, Parts II and III of this Schedule shall have effect in relation to the dismissal as if—
- (a) the local education authority had at all material times been the teacher's employer, and
 - (b) the local education authority had dismissed him, and the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.
- (2) For the purposes of a complaint under paragraph 17 above as applied by this paragraph, paragraph 19 above shall have effect as if—
- (a) in sub-paragraph (4)(b), for the words " the employer in question refused or failed to make such an offer, and the tribunal considers that he acted unreasonably in doing so " there were substituted the words

“the local education authority refused or failed to permit the aggrieved party to be re-engaged, and the tribunal considers that they acted unreasonably in doing so”, and

Status: This is the original version (as it was originally enacted).

- (b) in sub-paragraph (5), any reference to the employer were a reference to the local education authority.

Race Relations Act 1968

[Section 149]

- 28 (1) Where under the Race Relations Act 1968 a complaint is made to the Secretary of State or the Race Relations Board that an act has been done which is unlawful by virtue of section 3(1) of that Act, or a matter falling to be investigated by that Board raises the question whether any such act has been done, then, if it appears to the Secretary of State or the Board—
- (a) that that act is one in respect of which a complaint of unfair dismissal has been presented to an industrial tribunal under paragraph 17 above, or in respect of which a complaint could be so presented (or could have been so presented if the requirements of industrial tribunal regulations relating to it had been complied with), and
 - (b) that a complaint so presented to an industrial tribunal has not been dismissed by virtue of any provision contained in or made under paragraphs 9 to 13 above or (as the case may be) would not fall or have fallen to be so dismissed,
- the Secretary of State or the Board shall not proceed any further under that Act in relation to that act, except to the extent provided by the following provisions of this paragraph.
- (2) If, on determining a complaint of unfair dismissal presented under paragraph 17 above, an industrial tribunal has recorded a finding that the dismissal of the claimant was unfair and also that the reason or one of the reasons for the dismissal was the complainant's colour, race or ethnic or national origin, then, sub-paragraph (1) above shall not preclude the Secretary of State or the Race Relations Board—
- (a) from proceeding under that Act for the purpose of securing a written assurance against a repetition of that action, in accordance with section 15(3)(b) of that Act or in accordance with paragraph 3 of Schedule 2 or paragraph 2 or 8 of Schedule 3 to that Act, or
 - (b) from proceeding under that Act (whether by way of bringing proceedings or otherwise) in consequence of forming an opinion or receiving a report that a written assurance so secured has been broken.
- (3) The Secretary of State or the Race Relations Board may proceed in accordance with sub-paragraph (2)(a) or (b) above notwithstanding any limitation imposed by the Race Relations Act 1968 as to the time within which anything may be done under that Act.
- (4) In this paragraph any reference to the Race Relations Board shall be construed as including references—
- (a) to any conciliation committee constituted under the Race Relations Act 1968, and
 - (b) to any other body of persons to whom a matter could be referred for investigation under Schedule 2 or Schedule 3 to that Act.

Redundancy payments

[Section 150]

- 29 (1) Regulations may make provision with respect to cases where a complaint of unfair dismissal is presented to an industrial tribunal under paragraph 17 above, and a redundancy payment or an equivalent payment has been paid, or has been or is claimed, in respect of the same dismissal.
- (2) Any such regulations may make such modifications of the provisions of Part III of this Schedule or of the Redundancy Payments Act 1965, as the Secretary of State may consider appropriate, including—
- (a) provisions excluding the right to a redundancy payment or equivalent payment, or requiring any such payment to be repaid, or
 - (b) provisions requiring a rebate under section 30 of that Act or a sum payable under section 41(2) of that Act to be withheld or reduced, or (where already paid) to be recoverable in whole or in part, and on being so recovered to be paid into the Redundancy Fund,
- in such circumstances as may be prescribed by the regulations.
- (3) In section 21 of the Redundancy Payments Act 1965 (claims for redundancy payments), at the end of paragraph (c) there shall be added the words " or
- (d) a complaint relating to his dismissal has been presented by the employee under paragraph 17 of Schedule 1 to the Trade Union and Labour Relations Act 1974".
- (4) In this paragraph " equivalent payment" means any payment which is either—
- (a) a payment made or falling to be made as mentioned in paragraph (b) or paragraph (c) of section 30(1) of the Redundancy Payments Act 1965, or
 - (b) a payment in respect of the termination of a person's employment, made in accordance with a scheme under section 1 of the Superannuation Act 1972 or in accordance with any such arrangements as are mentioned in section 41(3) of the Redundancy Payments Act 1965.
- (5) No regulations shall be made under this paragraph unless a draft of the regulations has been laid before Parliament and approved by resolution of each House of Parliament.

Period of continuous employment

[Section 151]

- 30 (1) The provisions of Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment), and the provisions of any order for the time being in force under section 10 of that Act in so far as it modifies that Schedule, shall have effect for the purposes of this Act in determining for what period an employee has been continuously employed.
- (2) For the purposes of any proceedings under this Schedule a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.
- (3) Regulations made by the Secretary of State may make provision—

Status: This is the original version (as it was originally enacted).

- (a) for preserving the continuity of a person's period of employment for the purposes of Schedule 1 to the Contracts of Employment Act 1972, or for the purposes of that Schedule as applied by or under any other enactment specified in the regulations, or
 - (b) for modifying or excluding the operation of section 24 of the Redundancy Payments Act 1965 (which requires the continuity of the period of employment to be treated as broken for the purposes of that Act where a redundancy payment is paid to an employee and he is subsequently re-engaged), subject to the recovery of any sum which, in accordance with subsection (3) of that section, is treated as payment of a redundancy payment, in cases where, in consequence of action to which sub-paragraph (4) below applies, a dismissed employee is re-engaged by his employer or is engaged by a successor of that employer or by an associated employer.
- (4) This sub-paragraph applies to any action taken in relation to the dismissal of an employee which consists—
- (a) of the presentation by him of a complaint under paragraph 17 above, or
 - (b) of his making a claim in accordance with a dismissal procedures agreement designated by an order under paragraph 13 above, or
 - (c) of any action taken by a conciliation officer under paragraph 26(4) above.

Nominations by members of trade unions

[Section 155]

- 31 (1) Regulations may make provision—
- (a) for enabling members of trade unions who are not under sixteen years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union of which he is a member ; and
 - (b) for enabling any money payable out of the funds of a trade union on the death of a member of the trade union, to an amount not exceeding £500, to be paid or distributed on his death (whether in accordance with such a nomination or otherwise) without letters of administration, probate of any will or confirmation.
- (2) Any regulations made in accordance with sub-paragraph (1)(a) above—
- (a) may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked, and
 - (b) may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed by the regulations.
- (3) Any regulations under this section may include such incidental, transitional or supplementary provisions as the Secretary of State may consider appropriate and, in particular, any such regulations made in accordance with sub-paragraph (1)(a) above may include provision for securing, to such extent and subject to such conditions as may be prescribed in the regulations, that nominations made under the Trade Union Act Amendment Act 1876 shall have effect as if they have been made under the regulations and may be varied or revoked accordingly.

Status: This is the original version (as it was originally enacted).

- (4) The Secretary of State may by order made by statutory instrument direct that, in relation to deaths occurring after the end of the period of one month beginning with the date on which the order comes into force, sub-paragraph (1)(b) above shall have effect as if, for the reference to £500, there were substituted a reference to such higher amount as may be specified in the order.
- (5) No order shall be made under sub-paragraph (4) above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Restrictions on contracting out

[Section 161]

- 32 (1) Except as provided by sub-paragraph (2) below, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Act; or
 - (b) to preclude any person from presenting a complaint to or bringing any proceedings before an industrial tribunal under this Act.
- (2) Sub-paragraph (1) above shall not apply—
- (a) to any union membership agreement;
 - (b) to any provision of an agreement relating to dismissal from employment such as is mentioned in paragraph 12(b) above;
 - (c) to any provision in a dismissal procedures agreement excluding rights under paragraph 4 above if that provision is not to have effect unless an order under paragraph 13 above is for the time being in force in respect of it;
 - (d) to any agreement to refrain from presenting a complaint under paragraph 17 above, where in compliance with a request under paragraph 26(4) above a conciliation officer has taken action in accordance with that sub-paragraph;
 - (e) to any agreement to refrain from proceeding with a complaint presented under paragraph 17 above where a conciliation officer has taken action in accordance with paragraph 26(2) and (3) above.

Employment under the Crown

[Section 162]

- 33 (1) Subject to the following provisions of this paragraph, the provisions of this Act shall have effect in relation to Crown employment and to workers in Crown employment as they have effect in relation to other employment and to other workers.
- (2) In this paragraph (subject to sub-paragraph (4) below) " Crown employment" means employment under or for the purposes of a government department, otherwise than as a member of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council, and " Crown employee" means a person who is for the time being in Crown employment or (where it has ceased) was in Crown employment.
- (3) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with sub-paragraph (1) above—

Status: This is the original version (as it was originally enacted).

- (a) any reference to an employee shall be construed as a reference to a Crown employee ;
- (b) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
- (c) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to Crown employment;
- (d) the reference in paragraph 21(5)(c) above to any person's undertaking or an undertaking in which he works shall be construed as a reference to the national interest; and
- (e) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge, and, in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(4) For the purposes of this Act—

- (a) none of the bodies specified in Schedule 3 to the Redundancy Payments Act 1965 (national health service employers) shall be regarded as performing functions on behalf of the Crown, and their employees shall not be regarded as being employed under or for the purposes of a government department, and accordingly employment by any such body shall not be Crown employment within the meaning of this paragraph;
- (b) associations established for the purposes of the Auxiliary Forces Act 1953 shall be treated as if they were government departments, and accordingly employment by any such association shall be Crown employment within the meaning of this paragraph ;

and for the purposes of this paragraph Crown employment does not include any employment in respect of which a certificate to which sub-paragraph (5) below applies is for the time being in force.

- (5) This sub-paragraph applies to any certificate issued by or on behalf of a Minister of the Crown and certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or at a time specified in the certificate was) required to be excepted from sub-paragraph (1) above for the purpose of safeguarding national security; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.