

SCHEDULES

SCHEDULE 12

Section 110.

DEATH OF EMPLOYEE OR EMPLOYER

PART I

GENERAL

Introductory

- 1 In this Schedule " the relevant provisions" means the provisions of this Act (including this Schedule) conferring rights on employees, or connected therewith, and so much of the 1974 Act as relates to unfair dismissal.

Institution or continuance of tribunal proceedings

- 2 Where an employee or employer has died tribunal proceedings arising under any of the relevant provisions may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.
- 3 (1) If there is no personal representative of a deceased employee, tribunal proceedings arising under any of the relevant provisions (or proceedings to enforce a tribunal award made in any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the industrial tribunal may appoint being either—
- (a) a person authorised by the employee to act in connection with the proceedings before the employee's death ; or
 - (b) the widower, widow, child, father, mother, brother or sister of the deceased employee,
- and references in this Schedule to a personal representative shall be construed as including such a person.
- (2) In such a case any award made by the industrial tribunal shall be in such terms and shall be enforceable in such manner as may be provided by regulations made by the Secretary of State.
- 4 (1) Subject to any specific provision of this Schedule to the contrary, in relation to an employee or employer who has died—
- (a) any reference in the relevant provisions to the doing of anything by or in relation to an employee or employer shall be construed as including a reference to the doing of that thing by or in relation to any personal representative of the deceased employee or employer ; and
 - (b) any reference in the said provisions to a thing required or authorised to be done by or in relation to an employee or employer shall be construed

Status: This is the original version (as it was originally enacted).

as including a reference to any thing which, in accordance with any such provision as modified by this Schedule (including sub-paragraph (a) above), is required or authorised to be done by or in relation to any personal representative of the deceased employee or employer.

- (2) Nothing in this paragraph shall prevent references in the relevant provisions to a successor of an employer from including a personal representative of a deceased employer.

Rights and liabilities accruing after death

- 5 Any right arising under any of the relevant provisions as modified by this Schedule shall, if it had not accrued before the death of the employee in question, nevertheless devolve as if it had so accrued.
- 6 Where by virtue of any of the relevant provisions as modified by this Schedule a personal representative of a deceased employer is liable to pay any amount and that liability had not accrued before the death of the employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before the death.

Death during protected period

- 7 Where an industrial tribunal makes a protective award under section 101 above and an employee of a description to which the award relates dies during the protected period, the award shall be treated in his case as if it specified a protected period of such length as to end on the date of his death.

PART II

UNFAIR DISMISSAL

Introductory

- 8 In this Part of this Schedule " the unfair dismissal provisions " means so much of this Act (including this Schedule) and -the 1974 Act as relates to unfair dismissal.

Death during notice period

- 9 Where an employer has given notice to an employee to terminate his contract of employment and before that termination the employee or the employer dies, the unfair dismissal provisions shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.
- 10 Where the employee's contract of employment has been terminated by the employer and by virtue of paragraph 5(6) of Schedule 1 to the 1974 Act a date later than the effective date of termination as defined by sub-paragraph (5) of that paragraph is to be treated as the effective date of termination for the purposes of certain of the unfair dismissal provisions, and before that later date the employee or the employer dies, the said sub-paragraph (b) shall have effect as if the notice referred to in that sub-paragraph as required to be given by the employer would have expired on the death.

Remedies for unfair dismissal

- 11 Where an employee has died, then, unless an order for reinstatement or re-engagement has already been made, the unfair dismissal provisions relating to reinstatement and re-engagement shall not apply ; and accordingly if the industrial tribunal finds that the grounds of the complaint are well-founded the case shall be treated as falling within section 72(5) above as a case in which no order is made under section 71 above.
- 12 If an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—
- (a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, section 72(2) and (3) above shall apply and an award shall be made under section 72(2)(b) above unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order;
 - (b) if there has been no such refusal, section 72(1) above shall apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as it would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.