

## SCHEDULES

### SCHEDULE 1

Section 19.

#### PROVISIONS LEADING TO SUSPENSION ON MEDICAL GROUNDS

1. The Paints and Colours Manu -facture Regulations 1907.	S.R. & 0.1907 No. 17	Reg. 5.
2. The Yarn (Dyed by Lead Com -pounds) Heading Regulations 1907.	S.R. & O. 1907 No. 616	Reg. 4.
3. The Vitreous Enamelling Regula -tions 1908.	S.R. & 0.1908 No. 1258	Reg. 10.
4. The Tinning of Metal Hollow-ware, Iron Drums and Harness Furni -ture Regulations 1909.	S.R. & O. 1909 No. 720	Reg. 6.
5. The Lead Smelting and Manu -facture Regulations 1911.	S.R. & O. 1911 No. 752	Reg. 13.
6. The Lead Compounds Manufacture Regulations 1921.	S.R. & 0. 1921 No. 1443	Reg, 11.
7. The Indiarubber Regulations 1922.	S.R. & 0. 1922 No. 329	Reg. 12.
8. The Chemical Works Regulations 1922	S.R. & O. 1922 No. 731	Reg. 30.
9. The Electric Accumulator Regula -tions 1925.	S.R. &0. 1925 No. 28	Reg. 13.
10. The Lead Paint Regulations 1927	S.R. & O. 1927 No. 847	Reg. 6.
11. The Pottery (Health and Welfare) Special Regulations 1950.	S.I. 1950 No. 65	Reg. 7.
12. The Factories Act 1961	1961 c. 34	Section 75(2) (including that section as extended by section 128).
13. The Ionising Radiations (Unsealed Radioactive	S.I. 1968 No. 780	Regs. 12 and 33.

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Substances) Regula -tions 1968.		
14. The Ionising Radiations (Sealed Sources) Regulations 1969.	S.I. 1969 No. 808	Regs. 11 and 30.
15. The Radioactive Substances (Road Transport Workers) (Great Britain) Regulations 1970.	S.I. 1970 No. 1827	Reg. 14.

## SCHEDULE 2

Section 33.

### SUPPLEMENTARY PROVISIONS RELATING TO MATERNITY

#### PART I

#### UNFAIR DISMISSAL

##### *Introductory*

- 1       References in this Part to provisions of this Act relating to unfair dismissal are references to those provisions as they apply by virtue of section 56.

##### *Adaptation of unfair dismissal provisions*

- 2       (1) Section 57 shall have effect as if for subsection (3) there were substituted the following subsection: —
- “(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 58(1), 59, 60 and 62, 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 would have been acting reasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work.”.
- (2) If in the circumstances described in section 45(3) no offer is made of such alternative employment as is referred to in that subsection, then the dismissal which by virtue of section 56 is treated as taking place shall, notwithstanding anything in section 57 or 58, be treated as an unfair dismissal for the purposes of Part V of this Act.
- (3) The following references shall be construed as references to the notified day of return, that is to say—
- (a) references in Part V of this Act to the effective date of termination;
  - (b) references in sections 69 and 70 to the date of termination of employment.
- (4) The following provisions of this Act shall not apply, that is to say, sections 55, 58(3), 64(1), 65, 66, 73(5) and (6), 141(2), 142(1), 144(2), 145(2) and 146(1). paragraph

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11(1) of Schedule 13, paragraphs 7(1)(f) to (i) and (2) and 8(3) of Schedule 14 and paragraph 10 of Schedule 15.

- (5) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of section 71 or 73, the calculation date is the last day on which the employee worked under the original contract of employment

## PART II

### REDUNDANCY PAYMENTS

#### *Introductory*

- 3 References in this Part to provisions of this Act relating to redundancy are references to those provisions as they apply by virtue of section 86.

#### *Adaptation of redundancy payments provisions*

- 4 (1) References in Part VI of this Act shall be adapted as follows, that is to say—
- (a) references to the relevant date, wherever they occur, shall be construed, except where the context otherwise requires, as references to the notified day of return;
  - (b) references in sections 82(4) and 84(1) to a renewal or re-engagement taking effect immediately on the ending of employment under the previous contract or after an interval of not more than four weeks thereafter, shall be construed as references to a renewal or re-engagement taking effect on the notified day of return or not more than four weeks after that day; and
  - (c) references in section 84(3) to the provisions of the previous contract shall be construed as references to the provisions of the original contract of employment
- (2) Nothing in section 86 shall prevent an employee from being treated, by reason of the operation of section 84(1), as not having been dismissed for the purposes of Part VI of this Act.
- (3) The following provisions of this Act shall not apply, that is to say, sections 81(1) (b), 82(1) and (2), 83(1) and (2), 85, 87 to 89, 90(3), 92, 93, 96, 110, 144(2), 146(1) and 150, paragraph 4 of Schedule 4, Schedule 12 and paragraphs 7(1)(j) and (k) and 8(4) of Schedule 14.
- (4) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of Schedule 4, the calculation date is the last day on which the employee worked under the original contract of employment

#### *Prior redundancy*

- 5 If, in proceedings arising out of a failure to permit an employee to return to work, the employer shows—
- (a) that the reason for the failure is that the employee is redundant; and
  - (b) that the employee was dismissed or, had she continued to be employed by him, would have been dismissed, by reason of redundancy during her absence on a day earlier than the notified day of return and falling after the

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beginning of the eleventh week before the expected week of confinement. then, for the purposes of Part VI of this Act the employee—

- (i) shall not be treated as having been dismissed with effect from the notified day of return ; but
- (ii) shall, if she would not otherwise be so treated, be treated as having been continuously employed until that earlier day and as having been dismissed by reason of redundancy with effect from that day.

### PART III

#### GENERAL

##### *Dismissal during period of absence*

- 6 (1) This paragraph applies to the dismissal of an employee who is under this Act entitled to return to work and whose contract of employment continues to subsist during the period of her absence but who is dismissed by her employer during that period after the beginning of the eleventh week before the expected week of confinement
- (2) For the purposes of sub-paragraph (1), an employee shall not be taken to be dismissed during the period of her absence if the dismissal occurs in the course of the employee's attempting to return to work in accordance with her contract in circumstances in which section 48 applies.
- (3) In the application of Part V of this Act to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, sections 58(3), 64, 65, 66, 141(2), 144(2), 145 and 146(1).
- (4) Any such dismissal shall not affect the employee's right to return to work, but—
- (a) compensation in any unfair dismissal proceedings arising out of that dismissal shall be assessed without regard to the employee's right to return; and
  - (b) that right shall be exercisable only on her repaying any redundancy payment or compensation for unfair dismissal paid in respect of that dismissal, if the employer requests such repayment

##### *Power to amend or modify*

- 7 (1) The Secretary of State may by order amend the provisions of this Schedule and section 48 or modify the application of those provisions to any description of case.
- (2) No order under this paragraph shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

## SCHEDULE 3

Section 50.

### RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

#### *Preliminary*

- 1 In this Schedule the "period of notice " means the period of notice required by section 49(1) or, as the case may be, section 49(2).

#### *Employments for which there are normal working hours*

- 2 (1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours—
- (a) the employee is ready and willing to work but no work is provided for him by his employer; or
  - (b) the employee is incapable of work because of sickness or injury; or
  - (c) the employee is absent from work in accordance with the terms of his employment relating to holidays,
- then the employer shall be liable to pay the employee for the part of normal working hours covered by paragraphs (a), (b) and (c) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week's pay by the number of normal working hours.
- (2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice whether by way of sick pay, holiday pay or otherwise, shall go towards meeting the employer's liability under this paragraph.
- (3) Where notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### *Employments for which there are no normal working hours*

- 3 (1) If an employee does not have normal working hours under the contract of employment in force in the period of notice the employer shall be liable to pay the employee for each week of the period of notice a sum not less than a week's pay.
- (2) Subject to sub-paragraph (3), the employer's obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.
- (3) Sub-paragraph (2) shall not apply—
- (a) in respect of any period during which the employee is incapable of work because of sickness or injury, or
  - (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,
- and any payment made to an employee by his employer in respect of such a period, whether by way of sick pay, holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.

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- (4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

*Sickness or industrial injury benefit*

- 4 (1) The following provisions of this paragraph shall have effect where the arrangements in force relating to the employment are such that—
- (a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and
  - (b) in calculating any payment so made to any such employee an amount representing, or treated as representing, sickness benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.
- (2) If during any part of the period of notice the employee is incapable of work because of sickness or injury, and—
- (a) one or more payments, by way of sick pay are made to him by the employer in respect of that part of the period of notice, and
  - (b) in calculating any such payment such an amount as is referred to in subparagraph (1)(b) is taken into account as therein mentioned,
- then for the purposes of this Schedule the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under paragraph 2 or paragraph 3 accordingly.

*Absence on leave granted at request of employee*

- 5 The employer shall not be liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee (including any period of time off taken in accordance with section 27, 28, 29 or 31)

*Notice given before a strike*

- 6 No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

In this paragraph " strike " has the meaning given by paragraph 24 of Schedule 13.

*Termination of employment during period of notice*

- 7 (1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.
- (2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment shall be due to

the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

## SCHEDULE 4

Section 81.

### CALCULATION OF REDUNDANCY PAYMENTS

- 1 The amount of a redundancy payment to which an employee is entitled in any case shall, subject to the following provisions of this Schedule, be calculated by reference to the period, ending with the relevant date, during which he has been continuously employed.
- 2 Subject to paragraphs 3 and 4, the amount of the redundancy payment shall be calculated by reference to the period specified in paragraph 1 by starting at the end of that period and reckoning backwards the number of years of employment falling within that period, and allowing—
  - (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks (within the meaning of Schedule 13) in which the employee was not below the age of forty-one;
  - (b) one week's pay for each such year of employment (not falling within the preceding sub-paragraph) which consists wholly of weeks (within the meaning of Schedule 13) in which the employee was not below the age of twenty-two ; and
  - (c) half a week's pay for each such year of employment not falling within either of the preceding sub-paragraphs.
- 3 Where, in reckoning the number of years of employment in accordance with paragraph 2, twenty years of employment have been reckoned, no account shall be taken of any year of employment earlier than those twenty years.
- 4 (1) Where in the case of an employee the relevant date is after the specified anniversary, the amount of the redundancy payment, calculated in accordance with the preceding provisions of this Schedule, shall be reduced by the appropriate fraction.  
(2) In this paragraph "the specified anniversary", in relation to a man, means the sixty-fourth anniversary of the day of his birth, and, in relation to a woman, means the fifty-ninth anniversary of the day of her birth, and " the appropriate fraction " means the fraction of which—
  - (a) the numerator is the number of whole months, reckoned from the specified anniversary, in the the period beginning with that anniversary and ending with the relevant date, and
  - (b) the denominator is twelve.
- 5 For the purposes of any provision contained in Part VI whereby an industrial tribunal may determine that an employer shall be liable to pay to an employee either—
  - (a) the whole of the redundancy payment to which the employee would have been entitled apart from another provision therein mentioned, or
  - (b) such part of that redundancy payment as the tribunal thinks fit,the preceding provisions of this Schedule shall apply as if in those provisions any reference to the amount of a redundancy payment were a reference to the amount of the redundancy payment to which the employee would have been so entitled.

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6 The preceding provisions of this Schedule shall have effect without prejudice to the operation of any regulations made under section 98 whereby the amount of a redundancy payment, or part of a redundancy payment, may be reduced.

7 Where the relevant date does not occur on a Saturday, any reference in the preceding provisions of this Schedule to the relevant date shall be construed as a reference to the Saturday immediately following that date.

## SCHEDULE 5

Section 99.

### NATIONAL HEALTH SERVICE EMPLOYERS

1 A Regional Health Authority, Area Health Authority, special health authority, Health Board or the Common Services Agency for the Scottish Health Service.

2 The Dental Estimates Board.

3 Any joint committee constituted under section 13(8) of the National Health Service (Scotland) Act 1972.

4 The Public Health Laboratory Service Board.

## SCHEDULE 6

Section 104.

### CALCULATION OF REDUNDANCY REBATES

#### PART I

##### REBATES IN RESPECT OF REDUNDANCY PAYMENTS

1 Subject to sections 104(7) and 108 and to the following provisions of this Part, the amount of any redundancy rebate payable in respect of a redundancy payment shall be calculated by taking the number of years of employment by reference to which the redundancy payment falls to be calculated in accordance with Schedule 4 and allowing—

- (a)  $\frac{123}{200}$  of one week's pay for each year of employment falling within subparagraph (a) of paragraph 2 of that Schedule ;
- (b)  $\frac{41}{100}$  of one week's pay for each year of employment falling within subparagraph (b) of that paragraph; and
- (c)  $\frac{41}{200}$  of one week's pay for each year of employment falling within subparagraph (c) of that paragraph.

2 Where the amount of the redundancy payment, calculated in accordance with paragraphs 1, 2 and 3 of Schedule 4, is reduced by virtue of paragraph 4 of that Schedule, the amount of the rebate shall be  $\frac{41}{100}$  of the amount of the redundancy payment as so reduced.

3 (1) The provisions of this paragraph shall have effect in relation to any case where—  
 (a) under section 85, 92 or 110 an industrial tribunal is empowered to determine that an employer shall be liable to pay to an employee either the whole or



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- part of the redundancy payment to which the employee would have been entitled apart from another provision therein mentioned, and
- (b) the tribunal determines that the employer shall be liable to pay part (but not the whole) of that redundancy payment.
- (2) There shall be ascertained what proportion that part of the redundancy payment bears to the whole of it (in this paragraph referred to as " the relevant proportion ").
- (3) There shall also be ascertained what, in accordance with the preceding provisions of this Part, would have been the amount of the redundancy rebate payable in respect of that redundancy payment if the employer had been liable to pay the whole of it.
- (4) Subject to paragraph 4, the amount of the rebate payable in that case shall then be an amount equal to the relevant proportion of the amount referred to in sub-paragraph (3).
- 4 Where the amount of a redundancy payment or part of a redundancy payment is reduced in accordance with regulations made under section 98.—
- (a) the proportion by which it is so reduced shall be ascertained, and
- (b) the amount of any redundancy rebate calculated by reference to that payment shall be reduced by that proportion.

## PART II

### REBATES IN RESPECT OF OTHER PAYMENTS

#### *Introductory*

- 5 The provisions of this Part shall have effect for the purpose of calculating the amount of any redundancy rebate payable in respect of an employer's payment which is not a redundancy payment or part of a redundancy payment (in this Part referred to as "the agreed payment").
- 6 In this Part " the agreement ", in relation to the agreed payment, means the agreement referred to in paragraph (b) or paragraph (c) of section 104(1) by reference to which that payment is payable ; and " the relevant provisions of the agreement " means those provisions of the agreement which relate to either of the following matters, that is to say—
- (a) the circumstances in which the continuity of an employee's period of employment is to be treated as broken, and
- (b) the weeks which are to count in computing a period of employment.
- 7 In this Part any reference to the amount of the relevant redundancy payment, in relation to the agreed payment, shall be construed as a reference to the amount of the redundancy payment which the employer would have been liable to pay to the employee if—
- (a) the order referred to in paragraph (b) of subsection (1) of section 104, or (as the case may be) the order and the award referred to in paragraph (c) of that subsection, had not been made;
- (b) the circumstances in which the agreed payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances ;

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- (c) in relation to that redundancy payment, the relevant date had been the date on which the termination of the employee's contract of employment is treated for the purposes of the agreement as having taken effect; and
  - (d) in so far as the relevant provisions of the agreement are inconsistent with the provisions of Schedule 13 as to the matters referred to in sub-paragraphs (a) and (b) of paragraph 6, those provisions of the agreement were substituted for those provisions of that Schedule ;
- and "the assumed conditions" means the conditions specified in sub-paragraphs (a) to (d) of this paragraph.

*Method of calculation*

- 8 Subject to sections 104(7) and 108, and to the following provisions of this Part, the amount of any redundancy rebate payable in respect of the agreed payment shall be an amount calculated as follows, that is to say, by taking the number of years of employment by reference to which the amount of the relevant redundancy payment would fall to be calculated in accordance with Schedule 4 (as that Schedule would have applied if the assumed conditions were fulfilled), and allowing—
- (a)  $\frac{123}{200}$  of one week's pay for each such year of employment falling within sub-paragraph (a) of paragraph 2 of that Schedule;
  - (b)  $\frac{41}{100}$  of one week's pay for each such year of employment falling within sub-paragraph (b) of that paragraph; and
  - (c)  $\frac{41}{200}$  of one week's pay for each such year of employment falling within sub-paragraph (c) of that paragraph.
- 9 For the purposes of paragraph 8, Schedule 13 shall have effect as if paragraphs 11(2), 12 and 14 were omitted.
- 10 Where the amount of the agreed payment is less than the amount of the relevant redundancy payment—
- (a) the proportion which it bears to the amount of the relevant redundancy payment shall be ascertained, and
  - (b) the amount of the rebate shall (except as provided by the next following paragraph) be that proportion of the amount calculated in accordance with the preceding provisions of this Part of this Schedule.
- 11 Where the amount of the relevant redundancy payment calculated in accordance with paragraphs 1, 2 and 3 of Schedule 4 would (if the assumed conditions were fulfilled) have been reduced by virtue of paragraph 4 of that Schedule, the amount of the rebate shall be  $\frac{41}{100}$  of the amount of the relevant redundancy payment as so reduced.

*Savings*

- 12 (1) This Schedule shall have effect in relation to redundancy rebates of a kind specified in sub-paragraph (2), as if—
- (a) in paragraphs 1 and 8, for the reference to  $\frac{123}{200}$ ,  $\frac{41}{100}$  and  $\frac{41}{200}$  there were substituted a reference to  $\frac{3}{4}$ ,  $\frac{1}{2}$  and  $\frac{1}{4}$  respectively, and
  - (b) in paragraphs 2 and 11 for each reference to  $\frac{41}{100}$  there were substituted a reference to  $\frac{1}{2}$ .
- (2) The redundancy rebates referred to in sub-paragraph (1) are—

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- (a) any rebate payable in respect of the whole or part of a redundancy payment in relation to which the relevant date is or would but for the operation of section 90(3) be earlier than 14th August 1977 ;
- (b) any rebate payable in respect of a payment to an employee on the termination of his contract of employment which is paid—
  - (i) in pursuance of an agreement in respect of which an order under section 96 is in operation; or
  - (ii) in pursuance of an award made under Schedule 11 to the Employment Protection Act 1975 in connection with such an agreement,

where, under the agreement in question, the employee's contract is treated for the purposes of the agreement as having been terminated on a date earlier than 14th August 1977.

*Power to modify paragraphs 1,2,8 and 11*

- 13 (1) The Secretary of State may from time to time by order modify this Schedule—
- (a) by substituting for the three fractions of a week's pay for the time being specified in sub-paragraphs (a), (b) and (c) of paragraphs 1 and 8 one of the other sets of three fractions specified in the following Table ; and
  - (b) by substituting for the fraction for the time being specified in paragraphs 2 and 11 for the purpose of calculating the amount of the rebates in respect of reduced payments the like fraction as, by virtue of paragraph (a) is substituted for the fraction in paragraphs 1(b) and 8(6).

TABLE

	<i>Fraction in paragraphs 1(a) and 8(a)</i>	<i>Fraction in paragraphs 1(b) \ 2,8(b)and 11</i>	<i>Fraction in paragraphs 1(c) and 8(c)</i>
1	21/40	7/20	7/40
2	123/200	41/100	41/200
3	27/40	9/20	9/40
4	3/4	1/2	1/4
5	33/40	11/20	11/40
6	9/10	3/5	3/10
7	39/40	13/20	13/40
8	21/20	7/10	7/20
9	9/8	3/4	3/8
10	6/5	4/5	2/5

In this Table—

- (a) the three fractions specified in paragraph 2 are those which, at the passing of this Act, are specified in sub-paragraphs (a), (b) and (c) of paragraphs 1 and 8 ;

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- (b) the second of the fractions specified in paragraph 2 is the fraction which, at the passing of this Act, is specified in paragraphs 2 and 11.
- (2) No order shall be made under sub-paragraph (1) unless a draft thereof has been laid before and approved by a resolution of each House of Parliament.

## SCHEDULE 7

Section 106.

### CALCULATION OF PAYMENTS TO EMPLOYEES OUT OF REDUNDANCY FUND

- 1 (1) Where the employer's payment is a redundancy payment, the sum referred to in section 106(2) is a sum equal to the amount of that payment
- (2) Where, in a case falling within section 104(6), the employer's payment is part of a redundancy payment, the sum referred to in section 106(2) is a sum equal to the amount of that part of the payment
- 2 (1) The provisions of this paragraph shall have effect for the purpose of determining the sum referred to in section 106(2) in relation to an employer's payment which is not a redundancy payment or part of a redundancy payment.
- (2) Paragraphs 6 and 7 of Schedule 6 shall have effect for the purposes of this paragraph as they have effect for the purposes of Part II of that Schedule; and in the application of those paragraphs in accordance with this sub-paragraph the employer's payment in relation to which the sum referred to in section 106(2) falls to be determined shall be taken to be the agreed payment.
- (3) In relation to any such employer's payment, the sum in question shall be a sum equal to—
- (a) the amount of the employer's payment, or
- (b) the amount of the relevant redundancy payment,
- whichever is the less.

## SCHEDULE 8

Section 117.

### EMPLOYEES PAID BY VIRTUE OF STATUTORY PROVISION BY PERSON OTHER THAN EMPLOYER

*Provision of Act*

*Reference to be construed as  
reference to the person responsible  
for paying the remuneration*

Section 81(1)	The second reference to the employer.
Section 85(3)	The reference to the employer in paragraph (b).
Section 85(4)	The last reference to the employer.
Section 88(4)	The reference to the employer.
Section 89(1)	The first reference to the employer.

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<i>Provision of Act</i>	<i>Reference to be construed as reference to the person responsible for paying the remuneration</i>
Section 89(4) and (5)	The references to the employer.
Section 92(3)	The second reference to the employer.
Section 98(3)	The reference to the employer.
Section 101(1)	The reference to the employer.
Section 102	The references to the employer.
Section 104	The references to the employer.
Section 106	The references to the employer.
Section 107(1)	The reference to the employer.
Section 108(1), (2) (4) and (5)	The references to the employer.
Section 110(2)	The third reference to the employer.
Section 110(5) and (6)	The reference to the employer.
Schedule 13, paragraph 12(3)	The references to the employer.

SCHEDULE 9

Section 128.

INDUSTRIAL TRIBUNALS

*Regulations as to tribunal procedure*

- 1 (1) The Secretary of State may by regulations (in this Schedule referred to as "the regulations") make such provision as appears to him to be necessary or expedient with respect to proceedings before industrial tribunals.
- (2) The regulations may in particular include provision—
- for determining by which tribunal any appeal, question or complaint is to be determined ;
  - for enabling an industrial tribunal to hear and determine proceedings brought by virtue of section 131 concurrently with proceedings brought before the tribunal otherwise than by virtue of that section ;
  - 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;
  - for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses ;
  - 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 person such recovery or inspection of documents as might be granted by the sheriff;
  - for prescribing the procedure to be followed on any appeal, reference or complaint or other proceedings before an industrial tribunal, including

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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 ;

- (g) 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 ;
- (h) for the award of costs or expenses, including any allowances payable under paragraph 10 other than allowances payable to members of industrial tribunals or assessors ;
- (i) 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
- (j) for the registration and proof of decisions, orders and awards of industrial tribunals.

(3) In relation to proceedings on complaints under section 67 or any other enactment in relation to which there is provision for conciliation, the regulations shall include provision-

- (a) for requiring a copy of any such complaint, and a copy of any notice relating to it which is lodged by or on behalf of the employer against whom the complaint is made, to be sent to a conciliation officer ;
- (b) for securing that the complainant and the employer against whom the complaint is made are notified that the services of a conciliation officer are available to them ; and
- (c) for postponing the hearing of any such complaint for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.

(4) In relation to proceedings under section 67—

- (a) where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint; or
- (b) where the proceedings arise out of the employer's failure to permit the employee to return to work after an absence due to pregnancy or confinement,

regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed, or, as the case may be, which she held before her absence, or of comparable or suitable employment.

(5) Without prejudice to paragraph 2, 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 of 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

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- (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) of the Trade Union and Labour Relations Act 1974 (matters to which trade disputes relate) cause substantial injury to any undertaking of his or in which he works.
- (6) The regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send notice or a copy of any document so specified relating to any proceedings before the tribunal, or of any decision, order or award of the tribunal, to any government department or other person or body so specified.
- (7) Any person who without reasonable excuse fails to comply with any requirement imposed by the regulations by virtue of sub-paragraph (2)(d) or any requirement with respect to the discovery, recovery or inspection of documents so imposed by virtue of sub-paragraph (2)(e) shall be liable on summary conviction to a fine not exceeding £100.

#### *National security*

- 2 (1) If on a complaint under section 24 or 67 it is shown that the action complained of 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 that the action specified in the certificate was taken for the purpose of safeguarding national security, shall for the purposes of sub-paragraph (1) be conclusive evidence of that fact.

#### *Payment of certain sums into Redundancy Fund*

- 3 Any sum recovered by the Secretary of State in pursuance of any such award as is mentioned in paragraph 1(2)(h) where the award was made in proceedings in pursuance of Part VI of this Act shall be paid into the Redundancy Fund.

#### *Exclusion of Arbitration Act 1950*

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

#### *Presumption as to dismissal for redundancy*

- 5 Where in accordance with the regulations an industrial tribunal determines in the same proceedings—
- (a) a question referred to it under sections 81 to 102, and
  - (b) a complaint presented under section 67,
- section 91(2) shall not have effect for the purposes of the proceedings in so far as they relate to the complaint under section 67.

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*Right of appearance*

- 6 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*

- 7 (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 cm 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.

*Constitution of tribunals for certain cases*

- 8 An industrial tribunal hearing an application under section 77 or 79 may consist of a President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by a President to hear such applications.

*Remuneration for presidents and full-time chairmen of industrial tribunals*

- 9 The Secretary of State may pay such remuneration as he may with the consent of the Minister for the Civil Service determine 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 subsection (1) of section 128.

*Remuneration etc. for members of industrial tribunals and for assessors and other persons*

- 10 The Secretary of State may pay to members of industrial tribunals and to any assessors appointed for the purposes of proceedings before industrial tribunals such fees and allowances as he may with the consent of the Minister for the Civil Service determine and may pay to any other persons such allowances as he may with the consent of that Minister determine for the purposes of, or in connection with, their attendance at industrial tribunals.

*Pensions for full-time presidents or chairmen of industrial tribunals*

- 11 (1) The Secretary of State may from time to time make to the Minister for the Civil Service, as respects any holder on a full-time basis of any of the following offices established by regulations under section 128 who is remunerated, apart from any allowances, on an annual basis, namely—



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- (a) President of the Industrial Tribunals (England and Wales);
- (b) President of the Industrial Tribunals (Scotland);
- (c) member of a panel of chairmen so established,

a recommendation that the Minister shall pay to that holder (hereafter in this paragraph referred to as " the pensioner ") out of moneys provided by Parliament an annual sum by way of superannuation allowance calculated in accordance with sub-paragraph (3).

- (2) No such allowance shall be payable unless—
  - (a) the pensioner is at the time of his retirement over the age of seventy-two or, where he retires after fifteen years service, over the age of sixty-five ; or
  - (b) the Secretary of State is satisfied by means of a medical certificate that at the time of the pensioner's retirement the pensioner is, by reason of infirmity of mind or body, incapable of discharging the duties of his office and that the incapacity is likely to be permanent.
- (3) The said annual sum shall be a sum not exceeding such proportion of the pensioner's last annual remuneration (apart from any allowances) as in the following Table corresponds with the number of the pensioner's completed years of relevant service.

TABLE

<i>Years of service</i>	<i>Fraction of remuneration</i>
Less than 5	six-fortieths
5	ten-fortieths
6	eleven-fortieths
7	twelve-fortieths
8	thirteen-fortieths
9	fourteen-fortieths
10	fifteen-fortieths
11	sixteen-fortieths
12	seventeen-fortieths
13	eighteen-fortieths
14	nineteen-fortieths
15 or more	twenty-fortieths

- (4) In this paragraph the expression "relevant service" means service on a full-time basis as holder of any of the offices referred to in sub-paragraph (1) (including such service remunerated otherwise than on an annual basis) of service in any such other capacity under the Crown as may be prescribed by regulations made by the Minister for the Civil Service; and regulations under this sub-paragraph—
  - (a) may be made generally or subject to specified exceptions or in relation to specified cases or classes of case and may make different provision for different cases or classes of cases; and

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- (b) may provide that in calculating relevant service either the whole of a person's prescribed service of any description shall be taken into account or such part thereof only as may be determined by or under the regulations.
- (5) The decision of the Minister shall be final on any question arising as to—
- (a) the amount of any superannuation allowance under sub-paragraph (1); or
  - (b) the reckoning of any service for the purpose of calculating such an allowance.
- (6) Sections 2 to 8 of the Administration of Justice (Pensions) Act 1950 (which provide for the payment of lump sums on retirement or death and of widows' and children's pensions in the case of persons eligible for pensions for service in any of the capacities listed in Schedule 1 to that Act) shall have effect as if—
- (a) the capacity of holder on a full-time basis of any of the offices referred to in sub-paragraph (1) were listed in the said Schedule 1 ; and
  - (b) in relation to that capacity the expression " relevant service " in the said sections 2 to 8 had the meaning assigned by sub-paragraph (4); and
  - (c) in relation to such a holder of such an office, any reference in the said section 2 to his last annual salary were a reference to his last annual remuneration apart from any allowances.
- (7) Where the rate of the superannuation allowance payable to any person under sub-paragraph (1) is or would be increased by virtue of regulations made under sub-paragraph (4) in respect of relevant service in some capacity other than as holder of one of the offices referred to in sub-paragraph (1), and a pension payable to him wholly in respect of service in that other capacity would have been paid and borne otherwise than out of moneys provided by Parliament, any pension benefits paid to or in respect of him as having been the holder of such an office shall, to such extent as the Minister for the Civil Service may determine, having regard to the relative length of service and rate of remuneration in each capacity, be paid and borne in like manner as that in which a pension payable to him wholly in respect of service in that other capacity would have been paid and borne.
- (8) In this paragraph the expression " pension " includes any superannuation or other retiring allowance or gratuity, and the expression " pensionable " shall be construed accordingly, and the expression " pension benefits " includes benefits payable to or in respect of the pensioner by virtue of sub-paragraph (6).

## SCHEDULE 10

Section 130.

### STATUTORY PROVISIONS RELATING TO REFEREES AND BOARDS OF REFEREES

- 1 Regulations under section 37 of the Coal Industry Nationalisation Act 1946.
- 2 Regulations under section 67 of the National Insurance Act 1946.
- 3 Regulations under section 68 of the National Health Service Act 1946, and orders under section 11(9) or section 31(5) of that Act
- 4 Regulations under section 67 of the National Health Service (Scotland) Act 1947.
- 5 Regulations under Schedule 5 to the Fire Services Act 1947.
- 6 Regulations under section 101 of the Transport Act 1947.

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- 7 Subsections (3) and (5) of section 54 of the Electricity Act 1947, and regulations under section 55 of that Act or under that section as applied by section 27 of the Electricity Act 1957.
- 8 Regulations under section 140 of the Local Government Act 1948, and such regulations as applied by any local Act, whether passed before or after this Act.
- 9 Regulations under subsection (1) or subsection (2) of section 60 of the National Assistance Act 1948.
- 10 Rules under section 3 of the Superannuation (Miscellaneous Provisions) Act 1948.
- 11 Subsections (3) and (5) of section 58 of the Gas Act 1948, and regulations under section 60 of that Act
- 12 Subsection (4) of section 6 of the Commonwealth Telegraphs Act 1949 and regulations under that section.
- 13 Regulations under section 25 of the Prevention of Damage by Pests Act 1949.
- 14 Regulations under section 42 of the Justices of the Peace Act 1949.
- 15 Regulations under section 27 or section 28 of the Transport Act 1953.
- 16 Regulations under section 24 of the Iron and Steel Act 1953.
- 17 Regulations under section 12 of the Electricity Reorganisation (Scotland) Act 1954.
- 18 Orders under section 23 of the Local Government Act 1958 and regulations under section 60 of that Act.
- 19 Regulations under section 1 of the Water Officers Compensation Act 1960.
- 20 Regulations under section 18(6) of the Land Drainage Act 1961.
- 21 Subsection (6) of section 74 of the Transport Act 1962 and orders under that section, regulations under section 81 of that Act, and paragraph 17(3) of Schedule 7 to that Act.
- 22 Orders under section 84 of the London Government Act 1963 and regulations under section 85 of that Act
- 23 Regulations under section 106 of the Water Resources Act 1963.

## SCHEDULE 11

Section 135.

### EMPLOYMENT APPEAL TRIBUNAL

#### PART I

##### PROVISIONS AS TO MEMBERSHIP, SITTINGS, PROCEEDINGS AND POWERS

###### *Tenure of office of appointed members of Appeal Tribunal*

- 1 Subject to paragraphs 2 and 3, a member of the Appeal Tribunal appointed by Her Majesty under section 135(2)(c) (in this Schedule referred to as an "appointed member") shall hold and vacate office as such a member in accordance with the terms of his appointment.

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- 2           An appointed member may at any time resign his membership by notice in writing addressed to the Lord Chancellor and the Secretary of State.
- 3           (1) If the Lord Chancellor, after consultation with the Secretary of State, is satisfied that an appointed member
- (a) has been absent from sittings of the Appeal Tribunal for a period longer than six consecutive months without the permission of the President of the Tribunal; or
  - (b) has become bankrupt or made an arrangement with his creditors; or
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member;
- the Lord Chancellor may declare his office as a member to be vacant and shall notify the declaration in such manner as the Lord Chancellor thinks fit; and thereupon the office shall become vacant
- (2) In the application of this paragraph to Scotland for the references in sub-paragraph (1) (b) to a member's having become bankrupt and to a member's having made an arrangement with his creditors there shall be substituted respectively references to a member's estate having been sequestrated and to a member's having made a trust deed for behoof of his creditors or a composition contract

#### *Temporary membership of Appeal Tribunal*

- 4           At any time when the office of President of the Appeal Tribunal is vacant, or the person holding that office is temporarily absent or otherwise unable to act as President of the Tribunal, the Lord Chancellor may nominate another judge nominated under section 135(2)(a) to act temporarily in his place.
- 5           At any time when a judge of the Appeal Tribunal nominated by the Lord Chancellor is temporarily absent or otherwise unable to act as a judge of that Tribunal, the Lord Chancellor may nominate another person who is qualified to be nominated under section 135(2)(a) to act temporarily in his place.
- 6           At any time when a judge of the Appeal Tribunal nominated by the Lord President of the Court of Session is temporarily absent or otherwise unable to act as a judge of the Appeal Tribunal, the Lord President may nominate another judge of the Court of Session to act temporarily in his place.
- 7           At any time when an appointed member is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal the Lord Chancellor and the Secretary of State may jointly appoint a person appearing to them to have the qualifications for appointment as such a member to act temporarily in his place.
- 8           (1) At any time when it appears to the Lord Chancellor that it is expedient to do so in order to facilitate in England and Wales the disposal of business in the Appeal Tribunal, he may appoint a qualified person to be a temporary additional judge of the Tribunal during such period or on such occasions as the Lord Chancellor thinks fit.
- (2) In this paragraph " qualified person " means a person qualified for appointment as a puisne judge of the High Court under section 9 of the Supreme Court of Judicature (Consolidation) Act 1925 or any person who has held office as a judge of the Court of Appeal or of the High Court.
- 9           A person appointed to act temporarily in place of the President or any other member of the Appeal Tribunal shall, when so acting, have all the functions of the person in whose place he acts.

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10 A person appointed to be a temporary additional judge of the Appeal Tribunal shall have all the functions of a judge nominated under section 135(2)(a).

11 No judge shall be nominated under paragraph 5 or 6 except with his consent.

#### *Organisation and sittings of Appeal Tribunal*

12 The Appeal Tribunal shall be a superior court of record and shall have an official seal which shall be judicially noticed.

13 The Appeal Tribunal shall have a central office in London.

14 The Appeal Tribunal may sit at any time and in any place in Great Britain.

15 The Appeal Tribunal may sit, in accordance with directions given by the President of the Tribunal, either as a single tribunal or in two or more divisions concurrently.

16 With the consent of the parties to any proceedings before the Appeal Tribunal, the proceedings may be heard by a judge and one appointed member, but, in default of such consent, any proceedings before the Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there are equal number of persons whose experience is as representatives of employers and whose experience is as representatives of workers.

#### *Rules*

17 (1) The Lord Chancellor, after consultation with the Lord President of the Court of Session, shall make rules with respect to proceedings before the Appeal Tribunal.

(2) Subject to those rules, the Tribunal shall have power to regulate its own procedure.

18 Without prejudice to the generality of paragraph 17 the rules may include provision—

- (a) with respect to the manner in which an appeal may be brought and the time within which it may be brought;
- (b) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
- (c) enabling the Appeal Tribunal to sit in private for the purpose of hearing evidence to hear which an industrial tribunal may sit in private by virtue of paragraph 1 of Schedule 9.

19 (1) Without prejudice to the generality of paragraph 17 the rules may empower the Appeal Tribunal to order a party to any proceedings before the Tribunal to pay to any other party to the proceedings the whole or part of the costs or expenses incurred by that other party in connection with the proceedings, where in the opinion of the Tribunal—

- (a) the proceedings were unnecessary, improper or vexatious, or
- (b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings.

(2) Except as provided by sub-paragraph (1), the rules shall not enable the Appeal Tribunal to order the payment of costs or expenses by any party to proceedings before the Tribunal.

20 Any person may appear before the Appeal Tribunal in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

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### *Powers of Tribunal*

- 21 (1) For the purpose of disposing of an appeal the Appeal Tribunal may exercise any powers of the body or officer from whom the appeal was brought or may remit the case to that body or officer.
- (2) Any decision or award of the Appeal Tribunal on an appeal shall have the same effect and may be enforced in the same manner as a decision or award of a body or officer from whom the appeal was brought.
- 22 (1) The Appeal Tribunal shall, in relation to the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority—
- (a) in England and Wales, as the High Court,
  - (b) in Scotland, as the Court of Session.
- (2) No person shall be punished for contempt of the Tribunal except by, or with the consent of, a judge.
- 23 (1) In relation to any fine imposed by the Appeal Tribunal for contempt of the Tribunal section 14 of the Criminal Justice Act 1948 and section 47 of the Criminal Justice Act 1967 (which relate to fines imposed and recognizances forfeited at certain courts) shall have effect as if in those provisions any reference to the Crown Court included a reference to the Tribunal.
- (2) A magistrates' court shall not remit the whole or any part of a fine imposed by the Appeal Tribunal except with the consent of a judge who is a member of the Tribunal.
- (3) This paragraph does not extend to Scotland.

### *Staff*

- 24 The Secretary of State may appoint such officers and servants of the Appeal Tribunal as he may determine, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service.

## **PART II**

### **SUPPLEMENTARY**

#### *Remuneration and allowances*

- 25 The Secretary of State shall pay the appointed members of the Appeal Tribunal, the persons appointed to act temporarily as appointed members, and the officers and servants of the Tribunal such remuneration and such travelling and other allowances as he may with the approval of the Minister for the Civil Service determine
- 26 A person appointed to be a temporary additional judge of the Appeal Tribunal shall be paid such remuneration and allowances as the Lord Chancellor may, with the approval of the Minister for the Civil Service, determine.

#### *Pensions, etc.*

- 27 If the Secretary of State determines, with the approval of the Minister for the Civil Service, that this paragraph shall apply in the case of an appointed member, the

Secretary of State shall pay such pension, allowance or gratuity to or in respect of that member on his retirement or death or make that member such payments towards the provision of such a pension, allowance or gratuity as the Secretary of State may with the like approval determine.

- 28 Where a person ceases to be an appointed member otherwise than on his retirement or death and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

## SCHEDULE 12

Section 150.

### DEATH OF EMPLOYEE OR EMPLOYER

#### PART I

#### GENERAL

##### *Introductory*

- 1 In this Schedule " the relevant provisions " means Part I (so far as it relates to itemised pay statements), section 53 and Parts II, III, V, VI and VII of this Act and this Schedule.

##### *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—

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- (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 as including a reference to any thing which, in accordance with any such provision as modified by this Schedule (including sub-paragraph (a)), 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 employer 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.

**PART II**

UNFAIR DISMISSAL

*Introductory*

- 7 In this Part of this Schedule "the unfair dismissal provisions" means Part V of this Act and this Schedule.

*Death during notice period*

- 8 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.
- 9 Where the employee's contract of employment has been terminated by the employer and by virtue of section 55(5) a date later than the effective date of termination as defined by subsection (4) of that section 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, section 55(5) shall have effect as if the notice referred to in that subsection as required to be given by the employer would have expired on the date of the death.



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### *Remedies for unfair dismissal*

- 10 Where an employee has died, then, unless an order for reinstatement or re-engagement has already been made, section 69 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 68(2) as a case in which no order is made under section 69.
- 11 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 71(2) and (3) shall apply and an award shall be made under section 71(2)(6) 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 71(1) 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.

## **PART III**

### **REDUNDANCY PAYMENTS: DEATH OF EMPLOYER**

#### *Introductory*

- 12 The provisions of this Part shall have effect in relation to an employee where his employer (in this Part referred to as the deceased employer ") dies.
- 13 Section 94 shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.

#### *Dismissal*

- 14 Where by virtue of subsection (1) of section 93 the death of the deceased employer is to be treated for the purposes of Part VI of this Act as a termination by him of the contract of employment, section 84 shall have effect subject to the following modifications: —
- (a) for subsection (1) there shall be substituted the following subsection—
    - “(1) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer, then, subject to subsections (3) and (6), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract.”;
  - (b) in subsection (2), paragraph (a) shall be omitted and in paragraph (b) for the words " four weeks " there shall be substituted the words " eight weeks ";
  - (c) in subsections (5) and (6), references to the employer shall be construed as references to the personal representative of the deceased employer.

- 15 Where by reason of the death of the deceased employer the employee is treated for the purposes of Part VI of this Act as having been dismissed by him, section 82 shall have effect subject to the following modifications—
- (a) for subsection (3) there shall be substituted the following subsection—
    - “(3) If a personal representative of the deceased employer makes an employee an offer (whether in writing or not) to renew his contract of employment, or to reengage him under a new contract of employment, so that the renewal or re-engagement would take effect not later than eight weeks after the death of the deceased employer the provisions of subsections (5) and (6) shall have effect.”;
  - (b) in subsection (4), paragraph (a) shall be omitted and in paragraph (b) for the words " four weeks " there shall be substituted the words " eight weeks ";
  - (c) in subsection (5), the reference to the employer shall be construed as a reference to the personal representative of the deceased employer.
- 16 For the purposes of section 82 as modified by paragraph 15—
- (a) an offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted as the employer for the deceased employer, and
  - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable, or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 84.

*Lay-off and short-time*

- 17 Where the employee has before the death of the deceased employer been laid off or kept on short-time for one or more weeks, but has not given to the deceased employer notice of intention to claim, then if after the death of the deceased employer—
- (a) his contract of employment is renewed, or he is re-engaged under a new contract by a personal representative of the deceased employer, and
  - (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,
- the provisions of sections 88 and 89 shall apply as if the week in which the deceased employer died and the first week of the employee's employment by the personal representative were consecutive weeks, and any reference in those sections to four weeks or thirteen weeks shall be construed accordingly.
- 18 The provisions of paragraph 19 or (as the case may be) paragraph 20 shall have effect where the employee has given to the deceased employer notice of intention to claim, and—
- (a) the deceased employer has died before the end of the next four weeks after the service of that notice, and
  - (b) the employee has not terminated the contract of employment by notice expiring before the death of the deceased employer.

- 19 If in the circumstances specified in paragraph 18 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim,  
and he is not re-engaged under a new contract by such a personal representative before the end of those four weeks, section 88(1) and (2) and (in relation to subsection (1) of that section) section 89(2) and (3) shall apply as if—
- (a) the deceased employer had not died, and
  - (b) the employee had terminated the contract of employment by a week's notice (or, if under the contract he is required to give more than a week's notice to terminate the contract, he had terminated it by the minimum notice which he is so required to give) expiring at the end of those four weeks,
- but sections 88(3) and (4) and 89(1) and (4) shall not apply.
- 20 (1) The provisions of this paragraph shall have effect where, in the circumstances specified in paragraph 18, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those four weeks, and—
- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks, and
  - (b) he is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement.
- (2) Where the conditions specified in sub-paragraph (1) are fulfilled sections 88 and 89 shall apply as if—
- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in sub-paragraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer, and
  - (b) each of the periods specified in paragraphs (a) and (b) of subsection (5) of section 89 were extended by any week or weeks any part of which was after the death of the deceased employer and before the date on which the renewal or re-engagement took effect.

#### *Continuity of period of employment*

- 21 For the purpose of the application, in accordance with section 100 (1), of any provisions of Part VI of this Act in relation to an employee employed as a domestic servant in a private household, any reference to a personal representative in—
- (a) this Part of this Schedule, or
  - (b) paragraph 17 of Schedule 13,
- shall be construed as including a reference to any person to whom otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.

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## PART IV

### REDUNDANCY PAYMENTS : DEATH OF EMPLOYEE

- 22 (1) Where an employer has given notice to an employee to terminate his contract of employment, and before that notice expires the employee dies, the provisions of Part VI of this Act shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.
- (2) Where the employee's contract of employment has been terminated by the employer and by virtue of section 90(3) a date later than the relevant date as defined by subsection (1) of that section is to be treated as the relevant date for the purposes of certain provisions of Part VI of this Act, and before that later date the employee dies, section 90(3) shall have effect as if the notice referred to in that subsection as required to be given by an employer would have expired on the employee's death.
- 23 (1) Where an employer has given notice to an employee to terminate his contract of employment, and has offered to renew his contract of employment, or to re-engage him under a new contract, then if—
- (a) the employee dies without having either accepted or refused the offer, and
  - (b) the offer has not been withdrawn before his death,
- section 82 shall apply as if for the words " the employee unreasonably refuses " there were substituted the words " it would have been unreasonable on the part of the employee to refuse ".
- (2) Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period the employee dies without paying terminated or having given notice to terminate the contract subsection (6) or that section shall apply as if for the words from "and during the trial period" to "terminated" there were substituted the words " and it would have been unreasonable for the employee, during the trial period referred to in section 84, to terminate or give notice to terminate the contract .
- 24 Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period he gives notice to terminate the contract but dies before the expiry of the notice had expired and the contract had thereby been terminated on the date of the employee's death.
- 25 (1) Where in the circumstances specified in paragraphs (a) and (b) of subsection (1) of section 85, the employee dies before the notice given by him under paragraph (b) of that subsection is due to expire and before the employer has given him notice under subsection (3) of that section, subsection (4) of that section shall apply as if the employer had given him such notice and he had not complied with it.
- (2) Where, in the said circumstances, the employee dies before his notice given under section 85(1)(b) is due to expire but after the employer has given him notice under subsection (3) of section 85, subsections (3) and (4) of that section shall apply as if the circumstances were that the employee had not died, but did not comply with the last-mentioned notice.
- 26 (1) Where an employee has given notice of intention to claim and dies before he has given notice to terminate his contract of employment and before the period allowed for the purposes of subsection (2)(a) of section 88 has expired, the said subsection (2) (a) shall not apply.

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- (2) Where an employee, who has given notice of intention to claim, dies within seven days after the service of that notice, and before the employer has given a counter-notice, the provisions of sections 88 and 89 shall apply as if the employer had given a counter-notice within those seven days.
- (3) In this paragraph " counter-notice" has the same meaning as in section 89(1).
- 27 (1) In relation to the making of a claim by a personal representative of a deceased employee who dies before the end of the period of six months beginning with the relevant date, subsection (1) of section 101 shall apply with the substitution for the words " six months " , of the words " one year " .
- (2) In relation to the making of a claim by a personal representative of a deceased employee who dies after the end of the period of six months beginning with the relevant date and before the end of the following period of six months, subsection (2) of section 101 shall apply with the substitution for the words " six months " , of the words " one year " .
- 28 In relation to any case where, under any provision contained in Part VI of this Act as modified by this Schedule, an industrial tribunal has power to determine that an employer shall be liable to pay to a personal representative of a deceased employee either—
- (a) the whole of a redundancy payment to which he would have been entitled apart from another provision therein mentioned, or
- (b) such part of such a redundancy payment as the tribunal thinks fit,
- any reference in paragraph 5 to a right shall be construed as including a reference to any right to receive the whole or part of a redundancy payment if the tribunal determines that the employer shall be liable to pay it.

## SCHEDULE 13

Section 151.

### COMPUTATION OF PERIOD OF EMPLOYMENT

#### *Preliminary*

- 1 (1) Where an employee's period of employment is, for the purposes of any enactment (including any enactment contained in this Act), to be computed in accordance with this Schedule, it shall be computed in weeks, and in any such enactment which refers to a period of employment expressed in years, a year means fifty-two weeks (whether continuous or discontinuous) which count in computing a period of employment.
- (2) For the purpose of computing an employee's period of employment (but not for any other purpose), the provisions of this Schedule apply, subject to paragraph 14, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside Great Britain or was excluded by or under this Act from any right conferred by this Act.
- 2 Except so far as otherwise provided by the following provisions of this Schedule, any week which does not count under paragraphs 3 to 13 breaks the continuity of the period of employment.

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*Normal working weeks*

- 3 Any week in which the employee is employed for sixteen hours or more shall count in computing a period of employment.

*Employment governed by contract*

- 4 Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment which normally involves employment for sixteen hours or more weekly shall count in computing a period of employment.

- 5 (1) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly and, but for that change, the later weeks would count in computing a period of employment, or would not break the continuity of a period of employment, then those later weeks shall count in computing a period of employment or, as the case may be, shall not break the continuity of a period of employment, notwithstanding that change.

- (2) Not more than twenty-six weeks shall count under this paragraph between any two periods falling under paragraph 4, and in computing the said figure of twenty-six weeks no account shall be taken of any week which counts in computing a period of employment, or does not break the continuity of a period of employment, otherwise than by virtue of this paragraph.

- 6 (1) An employee whose relations with his employer are governed, or have been from time to time governed, by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he satisfies the condition referred to in sub-paragraph (2), be treated for the purposes of this Schedule (apart from this paragraph) as if his contract normally involved employment fourteen hours or more weekly, and had at all times at which there was a contract during the period of employment of five years or more referred to in sub-paragraph (2) normally involved employment for sixteen hours or more weekly.

- (2) Sub-paragraph (1) shall apply if the employee, on the date by reference to which the length of any period of employment falls to be ascertained in accordance with the provisions of this Schedule, has been continuously employed within the meaning of sub-paragraph (3) for a period of five years or more.

- (3) In computing for the purposes of sub-paragraph (2) an employee's period of employment, the provisions of this Schedule (apart from this paragraph) shall apply but as if, in paragraphs 3 and 4, for the words " sixteen hours " wherever they occur, there were substituted the words " eight hours ".

- 7 (1) If an employee has, at any time during the relevant period of employment, been continuously employed for a period which qualifies him for any right which requires a qualifying period of continuous employment computed in accordance with this Schedule, then he shall be regarded for the purposes of qualifying for that right as continuing to satisfy that requirement until the condition referred to in sub-paragraph (3) occurs.

- (2) In this paragraph the relevant period of employment means the period of employment ending on the date by reference to which the length of any period of employment falls

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to be ascertained which would be continuous (in accordance with the provisions of this Schedule) if at all relevant times the employee's relations with the employer had been governed by a contract of employment which normally involved employment for sixteen hours or more weekly.

- (3) The condition which defeats the operation of sub-paragraph (1) is that in a week subsequent to the time at which the employee qualified as referred to in that sub-paragraph—
- (a) his relations with his employer are governed by a contract of employment which normally involves employment for less than eight hours weekly ; and
  - (b) he is employed in that week for less than sixteen hours.
- (4) If, in a case in which an employee is entitled to any right by virtue of sub-paragraph (1), it is necessary for the purpose of ascertaining the amount of his entitlement to determine for what period he has been continuously employed, he shall be regarded for that purpose as having been continuously employed throughout the relevant period.

#### *Orders under section 7*

- 8       The foregoing provisions of this Schedule shall have effect subject to any order made under section 7 and an order under that section shall affect the operation of this Schedule as respects periods before the order takes effect as well as respects later periods.

#### *Periods in which there is no contract of employment*

- 9       (1) If in any week the employee is, for the whole or part of the week—
- (a) incapable of work in consequence of sickness or injury, or
  - (b) absent from work on account of a temporary cessation of work, or
  - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes, or
  - (d) absent from work wholly or partly because of pregnancy or confinement,
- that week shall, notwithstanding that it does not fall under paragraph 3, 4 or 5, count as a period of employment.
- (2) Not more than twenty-six weeks shall count under paragraph (a) or, subject to paragraph 10, under paragraph (d) of sub-paragraph (1) between any periods falling under paragraph 3, 4 or 5.

#### *Maternity*

- 10       If an employee returns to work in accordance with section 47 after a period of absence from work wholly or partly occasioned by pregnancy or confinement, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 3, 4 or 5.

#### *Intervals in employment where section 55(5) or 84(1) or 90(3) applies*

- 11       (1) In ascertaining, for the purposes of section 64(1)(a) and of section 73(3), the period for which an employee has been continuously employed, where by virtue of section 55(5) a date is treated as the effective date of termination which is later than

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the effective date of termination as defined by section 55(4), the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not otherwise count under this Schedule.

- (2) Where by virtue of section 84(1) an employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, then, in determining for the purposes of section 81(1) or Schedule 4 whether he has been continuously employed for the requisite period, the period of that interval shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).
- (3) Where by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of section 81(4) which is later than the relevant date as denned by section 90(1), then in determining for the purposes of section 81(1) or Schedule 4 whether the employee has been continuously employed for the requisite period, the period of the interval between those two dates shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).

*Payment of previous redundancy payment or equivalent payment*

- 12 (1) Where the conditions mentioned in sub-paragraph (2)(a) or (2)(b) are fulfilled in relation to a person, then in determining, for the purposes of section 81(1) or Schedule 4, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—
- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in sub-paragraph (2)(a) or, as the case may be, sub-paragraph (2)(b); or
- (b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment, and accordingly no account shall be taken of any time before that date.
- (2) Sub-paragraph (1) has effect—
- (a) where—
- (i) a redundancy payment is paid to an employee, whether in respect of dismissal or in respect of lay-off or short-time ; and
- (ii) the contract of employment under which he was employed (in this section referred to as " the previous contract") is renewed, whether by the same or another employer, or he is re-engaged under a new contract of employment, whether by the same or another employer; and
- (iii) the circumstances of the renewal or re-engagement are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement; or
- (b) where—



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- (i) a payment has been made, whether in respect of the termination of any person's employment or in respect of lay-off or short-time, either in accordance with any provisions of a scheme under section 1 of the Superannuation Act 1972 or in accordance with any such arrangements as are mentioned in section 111(3); and
  - (ii) he commences new, or renewed, employment; and
  - (iii) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.
- (3) For the purposes of this paragraph, a redundancy payment shall be treated as having been paid if—
- (a) the whole of the payment has been paid to the employee by the employer, or, in a case where a tribunal has determined that the employer is liable to pay part (but not the whole) of the redundancy payment, that part of the redundancy payment has been paid in full to the employee by the employer, or
  - (b) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 106.

*Certain weeks of employment to be disregarded for purposes of Schedule 4*

- 13 In ascertaining for the purposes of Schedule 4 the period for which an employee has been continuously employed, any week which began before he attained the age of eighteen shall not count under this Schedule.

*Redundancy payments: employment wholly or partly abroad*

- 14 (1) In computing in relation to an employee the period specified in section 81(4) or the period specified in paragraph 1 of Schedule 4, a week of employment shall not count if—
- (a) the employee was employed outside Great Britain during the whole or part of that week, and
  - (b) he was not during that week, or during the corresponding contribution week.  
—
    - (i) where the week is a week of employment after 1st June 1976, an employed earner for the purposes of the Social Security Act 1975 in respect of whom a secondary Class 1 contribution was payable under that Act; or
    - (ii) where the week is a week of employment after 6th April 1975 and before 1st June 1976, an employed earner for the purposes of the Social Security Act 1975 ; or (iii) where the week is a week of employment before 6th April 1975, an employee in respect of whom an employer's contribution was payable in respect of the corresponding contribution week ;

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whether or not the contribution mentioned in paragraph (i) or (iii) of this sub-paragraph was in fact paid.

- (2) For the purposes of the application of sub-paragraph (1) to a week of employment where the corresponding contribution week began before 5th July 1948, an employer's contribution shall be treated as payable as mentioned in sub-paragraph (1) if such a contribution would have been so payable if the statutory provisions relating to national insurance which were in force on 5th July 1948 had been in force in that contribution week.
- (3) Where by virtue of sub-paragraph (1) a week of employment does not count in computing such a period as is mentioned in that sub-paragraph, the continuity of that period shall not be broken by reason only that that week of employment does not count in computing that period.
- (4) Any question arising under this paragraph whether—
  - (a) an employer's contribution was or would have been payable, as mentioned in sub-paragraph (1) or (2), or
  - (b) a person was an employed earner for the purposes of the Social Security Act 1975 and if so whether a secondary Class 1 contribution was payable in respect of him under that Act,
 shall be determined by the Secretary of State; and any legislation (including regulations) as to the determination of questions which under that Act the Secretary of State is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the High Court or the Court of Session) shall apply to the determination of any question by the Secretary of State under this paragraph.
- (5) In this paragraph "employer's contribution" has the same meaning as in the National Insurance Act 1965, and "corresponding contribution week", in relation to a week of employment, means a contribution week (within the meaning of the said Act of 1965) of which so much as falls within the period beginning with midnight between Sunday and Monday and ending with Saturday also falls within that week of employment.
- (6) The provisions of this paragraph shall not apply in relation to a person who is employed as a master or seaman in a British ship and is ordinarily resident in Great Britain.

#### *Industrial disputes*

- 15 (1) A week shall not count under paragraph 3, 4, 5, 9 or 10 if in that week, or any part of that week, the employee takes part in a strike.
- (2) The continuity of an employee's period of employment is not broken by a week which does not count under this Schedule, and which begins after 5th July 1964 if in that week, or any part of that week, the employee takes part in a strike.
- (3) Sub-paragraph (2) applies whether or not the week would, apart from sub-paragraph (1), have counted under this Schedule.
- (4) The continuity of the period of employment is not broken by a week which begins after 5th July 1964 and which does not count under this Schedule, if in that week, or any part of that week, the employee is absent from work because of a lock-out by the employer.

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*Reinstatement after service with the armed forces, etc.*

- 16 (1) If a person who is entitled to apply to his former employer under Part II of the National Service Act 1948 (reinstatement in civil employment) enters the employment of that employer not later than the end of the six month period mentioned in section 35(2)(b) of that Act, his previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in the said period of six months shall be treated as continuous.
- (2) The reference in this paragraph to Part II of the National Service Act 1948 includes a reference to that Part of that Act as amended, applied or extended by any other Act passed before or after this Act.

*Change of employer*

- 17 (1) Subject to this paragraph and paragraph 18, the foregoing provisions of this Schedule relate only to employment by the one employer.
- (2) If a trade or business or an undertaking (whether or not it be an undertaking established by or under an Act of Parliament) is transferred from one person to another, the period of employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.
- (3) If by or under an Act of Parliament, whether public or local and whether passed before or after this Act, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer, the employee's period of employment at the time when the modification takes effect shall count as a period of employment with the second-mentioned body corporate, and the change of employer shall not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased, the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees, and the death shall not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person, the employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees after die change, and the change shall not break the continuity of the period of employment.
- 18 If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters his employment is an associated employer of the first-mentioned employer, the employee's period of employment at that time shall count as a period of employment with the second-mentioned employer and the change of employer shall not break the continuity of the period of employment

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*Crown employment*

- 19 (1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.
- (2) In this paragraph, subject to sub-paragraph (3), "Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
- (4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee's relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.
- (5) The reference in paragraph 17(2) to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown, a government department, or any other officer or body performing functions on behalf of the Crown.

*Reinstatement or re-engagement of dismissed employee*

- 20 (1) Regulations made by the Secretary of State may make provision—
- (a) for preserving the continuity of a person's period of employment for the purposes of this Schedule or for the purposes of this Schedule as applied by or under any other enactment specified in the regulations, or
  - (b) for modifying or excluding the operation of paragraph 12 subject to the recovery of any such payment as is mentioned in sub-paragraph (2) of that paragraph,
- in cases where, in consequence of action to which sub-paragraph (2) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.
- (2) 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 section 67, or
  - (b) of his making a claim in accordance with a dismissal procedures agreement designated by an order under section 65, or
  - (c) of any action taken by a conciliation officer under section 134(3).

*Employment before the commencement of Act*

- 21 Save as otherwise expressly provided, the provisions of this Schedule apply to periods before it comes into force as they apply to later periods.

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- 22 If, in any week beginning before 6th July 1964, the employee was, for the whole or any part of the week, absent from work—
- (a) because he was taking part in a strike, or
  - (b) because of a lock-out by the employer,
- the week shall count as a period of employment.
- 23 Without prejudice to the foregoing provisions of this Schedule, any week which counted as a period of employment in the computation of a period of employment in accordance with the Contracts of Employment Act 1972 whether for the purposes of that Act, the Redundancy Payments Act 1965, the Trade Union and Labour Relations Act 1974 or the Employment Protection Act 1975, shall count as a period of employment for the purposes of this Act, and any week which did not break the continuity of a person's employment for the purposes of those Acts shall not break the continuity of a period of employment for the purposes of this Act.

#### *Interpretation*

- 24 (1) In this Schedule, unless the context otherwise requires.—
- " lock-out " means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;
  - " strike " means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;
  - " week " means a week ending with Saturday.
- (2) For the purposes of this Schedule the hours of employment of an employee who is required by the terms of his employment to live on the premises where he works shall be the hours during which he is on duty or during which his services may be required.

### SCHEDULE 14

Section 152.

#### CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

#### **PART I**

##### NORMAL WORKING HOURS

- 1 For the purposes of this Schedule the cases where there are normal working hours include cases where the employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, and, subject to paragraph 2, in those cases that fixed number of hours shall be the normal working hours.

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- 2        If in such a case—
- (a)    the contract of employment fixes the number, or the minimum number, of hours of employment in the said week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and
  - (b)    that number or minimum number of hours exceeds the number of hours without overtime,
- that number or minimum number of hours (and not the number of hours without overtime) shall be the normal working hours.

## PART II

### A WEEK'S PAY

#### *Employments for which there are normal working hours*

- 3        (1) This paragraph and paragraph 4 shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date.
- (2) Subject to paragraph 4, if an employee's remuneration for employment in normal working hours, whether by the hour or week or other period, does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.
- (3) Subject to paragraph 4, if sub-paragraph (2) does not apply, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks—
- (a)    where the calculation date is the last day of a week, ending with that week;
  - (b)    in any other case, ending with the last complete week before the calculation date.
- (4) References in this paragraph to remuneration varying with the amount of work done include references to remuneration which may include any commission or similar payment which varies in amount.
- 4        (1) This paragraph shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date, and he is required under that contract to work during those hours on days of the week or at times of the day which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of the said days or times.
- (2) The amount of a week's pay shall be the amount of remuneration for the average weekly number of normal working hours (calculated in accordance with sub-paragraph (3)) at the average hourly rate of remuneration (calculated in accordance with sub-paragraph (4)).

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- (3) The average number of weekly hours shall be calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks—
    - (a) where the calculation date is the last day of a week, ending with that week ;
    - (b) in any other case, ending with the last complete week before the calculation date.
  - (4) The average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks—
    - (a) where the calculation date is the last day of a week, ending with that week;
    - (b) in any other case, ending with the last complete week before the calculation date.
- 5
  - (1) For the purpose of paragraphs 3 and 4, in arriving at the average hourly rate of remuneration only the hours when the employee was working, and only the remuneration payable for, or apportionable to, those hours of work, shall be brought in; and if for any of the twelve weeks mentioned in either of those paragraphs no such remuneration was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring the number of weeks of which account is taken up to twelve.
  - (2) Where, in arriving at the said hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and the amount of that remuneration was greater than it would have been if the work had been done in normal working hours, account shall be taken of that remuneration as if—
    - (a) the work had been done in normal working hours ; and
    - (b) the amount of that remuneration had been reduced accordingly.
  - (3) For the purpose of the application of sub-paragraph (2) to a case falling within paragraph 2, sub-paragraph (2) shall be construed as if for the words " had been done in normal working hours ", in each place where those words occur, there were substituted the words " had been done in normal working hours falling within the number of hours without overtime ".

*Employments for which there are no normal working hours*

- 6
  - (1) This paragraph shall apply if there are no normal working hours for an employee when employed under the contract of employment in force on the calculation date.
  - (2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of twelve weeks—
    - (a) where the calculation date is the last day of a week, ending with that week ;
    - (b) in any other case, ending with the last complete week before the calculation date.
  - (3) In arriving at the said average weekly rate of remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring the number of weeks of which account is taken up to twelve.

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

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*The calculation date*

- 7 (1) For the purposes of this Part, the calculation date is.—
- (a) where the calculation is for the purposes of section 14, the day in respect of which the guarantee payment is payable, or, where an employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force;
  - (b) where the calculation is for the purposes of section 21, the day before that on which the suspension referred to in section 19(1) begins;
  - (c) where the calculation is for the purposes of section 31, the day on which the employer's notice was given ;
  - (d) where the calculation is for the purposes of section 35, the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence;
  - (e) where the calculation is for the purposes of Schedule 3, the day immediately preceding the first day of the period of notice required by section 49(1) or, as the case may be, section 49(2);
  - (f) where the calculation is for the purposes of section 53 or 71(2)(b) and the dismissal was with notice, the date on which the employer's notice was given ;
  - (g) where the calculation is for the purposes of section 53 or 71(2)(6) but sub-paragraph (f) does not apply, the effective date of termination ;
  - (h) where the calculation is for the purposes of section 73 and by virtue of section 55(5) a date is to be treated as the effective date of termination for the purposes of section 73(3) which is later than the effective date of termination as defined by section 55(4), the effective date of termination as defined by section 55(4);
  - (i) where the calculation is for the purposes of section 73 but section 55(5) does not apply in relation to the date of termination, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not);
  - (j) where the calculation is for the purposes of section 87(2), the day immediately preceding the first of the four or, as the case may be, the six weeks referred to in section 88(1);
  - (k) where the calculation is for the purposes of Schedule 4 and by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of certain provisions of this Act which is later than the relevant date as defined by section 90(1), the relevant date as defined by section 90(1) ;
  - (l) where the calculation is for the purposes of Schedule 4 but sub-paragraph (it) does not apply, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not).
- (2) The conditions referred to in sub-paragraphs (1)(i) and (l) are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 49 and that the notice expired on the effective date of termination or on the relevant date, as the case may be.

*Maximum amount of week's pay for certain purposes*

- 8 (1) Notwithstanding the preceding provisions of this Schedule, the amount of a week's pay for the purpose of calculating-



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- (a) an additional award of compensation (within the meaning of section 71(2)(b), shall not exceed £100 ;
  - (b) a basic award of compensation (within the meaning of section 72) shall not exceed £100 ;
  - (c) a redundancy payment shall not exceed £100 ;
- (2) The Secretary of State may after a review under section 148 vary the limit referred to in sub-paragraph (1)(a) or (b) or (c) by an order made in accordance with that section.
- (3) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this sub-paragraph, as defined by section 55(5), falls after the order comes into operation, notwithstanding that the effective date of termination, as defined by section 55(4), for the purposes of other provisions of this Act falls before the order comes into operation.
- (4) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the relevant date for the purposes of this sub-paragraph falls after the order comes into operation, notwithstanding that the relevant date for the purposes of other provisions of this Act falls before the order comes into operation.

#### *Supplemental*

- 9 In any case in which an employee has not been employed for a sufficient period to enable a calculation to be made under any of the foregoing provisions of this Part, the amount of a week's pay shall be an amount which fairly represents a week's pay ; and in determining that amount the tribunal shall apply as nearly as may be such of the foregoing provisions of this Part as it considers appropriate, and may have regard to such of the following considerations as it thinks fit, that is to say—
- (a) any remuneration received by the employee in respect of the employment in question;
  - (b) the amount offered to the employee as remuneration in respect of the employment in question;
  - (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer;
  - (d) the remuneration received by other persons engaged in relevant comparable employment with other employers ;
- 10 In arriving at an average hourly rate or average weekly rate of remuneration under this Part account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Schedule 13, a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer.
- 11 Where under this Part account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, then the remuneration or other payments shall be apportioned in such manner as may be just.

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- 12 The Secretary of State may by regulations provide that in prescribed cases the amount of a week's pay shall be calculated in such manner as the regulations may prescribe. '

## SCHEDULE 15

Section 159.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General*

- 1 So far as anything done or treated as done under or for the purposes of any enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under or for the purposes of that provision.
- 2 Where any period of time specified in an enactment repealed by this Act is current immediately before the corresponding provision of this Act comes into force, this Act shall have effect as if the corresponding provision had been in force when that period began to run.
- 3 Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.
- 4 Any reference in an enactment or document, whether express or implied, to—
- (a) an enactment which is re-enacted in a corresponding provision of this Act;
  - (b) an enactment replaced or amended by a provision of the Employment Protection Act 1975 which is re-enacted in a corresponding provision of this Act;
  - (c) an enactment in the Industrial Relations Act 1971 which was re-enacted with or without amendment in a corresponding provision in Schedule 1 to the Trade Union and Labour Relations Act 1974 and that corresponding provision is re-enacted by a corresponding provision of this Act;
- shall, except so far as the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.
- 5 Paragraphs 1 to 4 have effect subject to the following provisions of this Schedule.

#### *Guarantee payments*

- 6 Section 15(1) shall have effect in relation to any day before 1st February 1978 as if for " £6.60 " there were substituted " £6 ".

#### *Maternity pay*

- 7 No employee is entitled to receive maternity pay in respect of a payment period or payment periods beginning before 6th April 1977.

#### *Termination of employment*

- 8 Sections 49 and 50 apply in relation to any contract made before the commencement of this Act.

### *Unfair dismissal*

- 9 (1) The repeal by this Act of the provisions relating to unfair dismissals of the Employment Protection Act 1975, of Schedule 1 to the Trade Union and Labour Relations Act 1974 and of the Trade Union and Labour Relations (Amendment) Act 1976 shall not have effect in relation to dismissals where the effective date of termination is earlier than 1st October 1976 and, accordingly, those provisions shall continue to apply to such dismissals as they applied thereto before this Act came into force.
- (2) Without prejudice to the generality of sub-paragraph (1), the provisions of paragraphs 17(2) and (3) and 19 of Schedule 1 to the said Act of 1974 shall, notwithstanding the repeal of those provisions by the Employment Protection Act 1975, continue to apply to dismissals where the effective date of termination falls before 1st June 1976.
- (3) Where the notice required to be given by an employer to terminate a contract of employment by section 49(1) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by section 55(4), that later date shall be treated as the effective date of termination for the purposes of sub-paragraphs (1) and (2).
- 10 (1) Section 54 does not apply to a 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.
- (2) Sub-paragraph (1) in its application to an employee treated as unfairly dismissed by virtue of subsection (1) or (2) of section 60 shall have effect as if for the reference to 28th February 1972 there were substituted a reference to 1st June 1976.

### *Redundancy*

- 11 (1) The repeal by this Act of any provision of the Redundancy Payments Act 1965 and of any enactment amending that Act shall not have effect in relation to dismissals and to lay-off and short-time where the relevant date falls before 1st June 1976, and, accordingly, a person's entitlement to or the computation of a redundancy payment or the reference of questions to industrial tribunals concerning such entitlement or computation in cases where the relevant date falls before 1st June 1976 shall continue to be determined as if this Act were not in force.
- (2) Where the notice required to be given by an employer to terminate a contract of employment by section 49 would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the relevant date as defined by section 90(1), that later date shall be treated as the relevant date for the purposes of sub-paragraph (1).
- 12 Section 81 shall not apply to an employee who immediately before the relevant date (within the meaning of section 90) is employed under a contract of employment for a fixed term of two years or more, if that contract was made before 6th December 1965 and is not a contract of apprenticeship.
- 13 Sections 104 and 107 shall have effect in relation to an offence committed before 17th July 1978 as if—

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- (a) for each reference to the prescribed sum in subsection (9) of section 104 and subsection (4) of section 107 there were substituted a reference to £100, and
- (b) subsection (10) of section 104 and subsection (5) of section 107 were omitted.

14 Schedule 5 shall have effect as if there were added at the end the following paragraph—

“5 The Boards of Governors of the hospitals specified in Schedule 1 to the National Health Service (Preservation of Boards of Governors) Order 1974.”.

This paragraph shall cease to have effect on 22nd February 1979 or, if the said Order of 1974 is revoked on an earlier date, on that date.

#### *Insolvency*

- 15 (1) Subject to sub-paragraph (2), the provisions of sections 122 and 123 shall apply in relation to an employer who becomes insolvent (within the meaning of section 127) after 19th April 1976, and shall in such a case apply to any debts mentioned in section 122 and to any unpaid relevant contribution (within the meaning of section 123), whether falling due before or after that date.
- (2) Section 122 shall have effect in relation to any case where the employer became insolvent before 1st February 1978 as if for each reference to £100 there were substituted a reference to £80.

#### *Calculation of a week's pay*

- 16 Paragraph 8 of Schedule 14 shall have effect—
- (a) for the purpose of calculating an additional award of compensation in any case where the date by which the order for re-instatement or re-engagement was required to be complied with fell before 1st February 1978 ;
  - (b) for the purpose of calculating a basic award of compensation in any case where the effective date of determination (as defined by subsection (5) of section 55 or, if the case is not within that subsection, by subsection (4) of that section) fell before 1st February 1978 ;
  - (c) in relation to a claim for a redundancy payment, where the relevant date fell before 1st February 1978,
- as if for each reference to £100 there were substituted a reference to £80.

#### *Computation of period of continuous employment*

- 17 For the purposes of the computation of a period of continuous employment falling to be made before 1st February 1977—
- (a) paragraphs 3 and 4 of Schedule 13 shall have effect as if for the word " sixteen" there were substituted the word " twenty-one " , and
  - (b) paragraphs 5, 6 and 7 of that Schedule shall not apply.

#### *Legal proceedings*

- 18 Notwithstanding the repeal of any enactment by this Act, the Employment Appeal Tribunal and the industrial tribunals may continue to exercise the jurisdiction

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conferred on them by or under any enactment which is repealed by this Act with respect to matters arising out of or in connection with the repealed enactments.

*House of Commons staff*

- 19 Section 122 of the Employment Protection Act 1975 shall, until 1st January 1979, have effect as if it applied the enactments which are mentioned in subsection (1) of section 139 of this Act to relevant members of the House of Commons staff (within the meaning of the said section 122).

SCHEDULE 16

Section 159.

CONSEQUENTIAL AMENDMENTS

*House of Commons Offices Act 1846 (9 & 10 Vict. c.77)*

- 1 In section 5 of the House of Commons Offices Act 1846, after the words " Employment Protection Act 1975 " there are inserted the words " the Employment Protection (Consolidation) Act 1978 ".

*Trade Union Act 1913 (2 & 3 Geo. 5. c.30)*

- 2 In section 5A of the Trade Union Act 1913, for the words " section 88(2) of the Employment Protection Act 1975 " there are substituted the words " section 136(2) of the Employment Protection (Consolidation) Act 1978 ".

*Iron and Steel Act 1949 (12, 13 & 14 Geo. 6. c.72)*

- 3 (1) In section 40 of the Iron and Steel Act 1949, in subsection (3), for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal. ".  
(2) In section 41 of the said Act of 1949, in subsection (3), for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal ".

*Industrial Training Act 1964 (c. 16)*

- 4 (1) In section 4(7) of the Industrial Training Act 1964, for the words from " a tribunal " to " Act" there are substituted the words " an industrial tribunal ".  
(2) For subsection (1) of section 12 of the said Act of 1964 there is substituted the following subsection—  
“(1) A person assessed to levy imposed under this Act may appeal to an industrial tribunal.”.

*Trade Union (Amalgamations, etc.) Act 1964 (c.24)*

- 5 In section 4(8) of the Trade Union (Amalgamations, etc.) Act 1964, for the words "section 88(2) of the Employment Protection Act 1975 " there are substituted the words " section 136(2) of the Employment Protection (Consolidation) Act 1978 ".

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*Transport Act 1968 (c. 73)*

- 6 In section 135(4)(b) of the Transport Act 1968, for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal. "

*Transport (London) Act 1969 (c.35)*

- 7 (1) In section 37(4)(b) of the Transport (London) Act 1969, for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal. "
- (2) In paragraph 6 of Schedule 2 to the said Act of 1969, for the words " paragraph 10(3) of Schedule 1 to the Contracts of Employment Act 1963 and section 8(2) of the Redundancy Payments Act 1965, for the purposes of those Acts " there are substituted the words " section 151(1) of and paragraph 17(3) of Schedule 13 to the Employment Protection (Consolidation) Act 1978, for the purposes of that Act " .

*Post Office Act 1969 (c.48)*

- 8 In paragraph 33 of Schedule 9 to the Post Office Act 1969—
- (a) in sub-paragraph (1) for the words " sections 1 and 2 of the Contracts of Employment Act 1963, Schedule 1 " there are substituted the words " sections 49 and 50 and Part VI of the Employment Protection (Consolidation) Act 1978, Schedule 13 ", for the words " the said Act of 1963 " there are substituted the words " the said Act of 1978 " ; and for the words "twenty-one hours" there are substituted the words " sixteen hours ";
  - (b) in sub-paragraph (2), for the words " Schedule 1 to the said Act of 1963 " there are substituted the words " Schedule 13 to the said Act of 1978 ";
  - (c) in sub-paragraph (3), for the words " 7 of Schedule 2 to the said Act of 1963 " there are substituted the words " 10 of Schedule 14 to the said Act of 1978 " and for the words from " paragraph 10 " to the end there are substituted the words " Schedule 13 to that Act shall be construed as a reference to that Schedule as it has effect by virtue of sub-paragraph (1) above. ";
  - (d) in sub-paragraph (4), for the words " the said Act of 1963 " and " Schedule 1 " there are substituted respectively the words " the said Act of 1978 " and " Schedule 13 " ;
  - (e) at the end there is added the following sub-paragraph—
    - “(6) This paragraph applies notwithstanding the provisions of section 99 of the Employment Protection (Consolidation) Act 1978.”.

*Income and Corporation Taxes Act 1970 (c.10)*

- 9 (1) In section 412(6) of the Income and Corporation Taxes Act 1970, for the words " section 32 of the Redundancy Payments Act 1965" there are substituted the words " section 106 of the Employment Protection (Consolidation) Act 1978 " .
- (2) In section 412(7) of the said Act of 1970—
- (a) for the words " Part II of the Redundancy Payments Act 1965 " there are substituted the words " the Employment Protection (Consolidation) Act 1978 " ;

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- (b) for the words " section 30(2) of the Redundancy Payments Act 1965 " there are substituted the words " section 104(2) of the Employment Protection (Consolidation) Act 1978 ";
- (c) for the words " Schedule 5 to the Redundancy Payments Act 1965 " there are substituted the words " Schedule 6 to the Employment Protection (Consolidation) Act 1978 ";
- (d) for the words " the Redundancy Payments Act 1965 " in paragraph (c) of the said section 412(7), there are substituted the words " the Employment Protection (Consolidation) Act 1978 ".

*Atomic Energy Authority Act 1971 (c.11)*

- 10 (1) In subsection (1) of section 10 of the Atomic Energy Authority Act 1971, for the words "section 22 of the Redundancy Payments Act 1965 " there are substituted the words " section 93 of the Employment Protection (Consolidation) Act 1978 ".
- (2) In subsection (2) of the said section 10—
- (a) for the words " section 4 of the Contracts of Employment Act 1963 " there are substituted the words " sections 1 to 4 of the Employment Protection (Consolidation) Act 1978 ";
  - (b) for the words " subsection (8) of that section", in both places where they occur, there are substituted the words " section 5 of the said Act of 1978 ";
  - (c) for the words " the said section 4 " there are substituted the words " the said sections 1 to 4 ".
- (3) In subsection (3) of the said section 10—
- (a) for the words " Section 4A(1) of the Contracts of Employment Act 1963 " there are substituted the words " Section 11 of the Employment Protection (Consolidation) Act 1978 ";
  - (b) for the words " section 4" there are substituted the words " sections 1 to 4 ".
- (4) In subsection (4) of the said section 10—
- (a) for the words from the beginning to "Redundancy Payments Act 1965 " there are substituted the words " For the purposes of Schedule 13 to the said Act of 1978 (computation of period of employment) ";
  - (b) for the words " paragraph 10" there are substituted the words " paragraph 17 ".

*Tribunals and Inquiries Act 1971 (c.62)*

- 11 In section 13 of the Tribunals and Inquiries Act 1971, the following subsection is inserted after subsection (1)—
- “(1A) Subsection (1) of this section shall not apply in relation to proceedings before industrial tribunals which arise under or by virtue of any of the enactments mentioned in section 136(1) of the Employment Protection (Consolidation) Act 1978.”.

*Civil Aviation Act 1971 (c.75)*

- 12 (1) In paragraph 1 of Schedule 9 to the Civil Aviation Act 1971—

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- (a) in sub-paragraph (1) for the words "sections 1 and 2 of the Contracts of Employment Act 1963, Schedule 1" there are substituted the words " sections 49 and 50 and Part VI of the Employment Protection (Consolidation) Act 1978, Schedule 13 ", for the words "the said Act of 1963 " there are substituted the words " the said Act of 1978 "; and for the words "twenty-one hours" there are substituted the words " sixteen hours ";
- (b) in sub-paragraph (2), for the words " Schedule 1 to the said Act of 1963 " there are substituted the words " Schedule 13 to the said Act of 1978 ";
- (c) in sub-paragraph (3), for the words " 7 of Schedule 2 to the said Act of 1963 " there are substituted the words " 10 of Schedule 14 to the said Act of 1978 " and for the words from " paragraph 10 " to the end there are substituted the words " Schedule 13 to that Act shall be construed as a reference to that Schedule as it has effect by virtue of sub-paragraph (1) above. ";
- (d) in sub-paragraph (4), for the words " the said Act of 1963 " and " Schedule 1 " there are substituted respectively the words " the said Act of 1978 " and " Schedule 13 " ;
- (e) at the end there is added the following sub-paragraph—

“(6) This paragraph applies notwithstanding the provisions of section 99 of the Employment Protection (Consolidation) Act 1978.”.

- (2) In paragraph 4 of the said Schedule 9—
  - (a) for the words " paragraph 10(2) of Schedule 1 to the Contracts of Employment Act 1963 and section 13(1) of the Redundancy Payments Act 1965 " there are substituted the words " section 94(1) of and paragraph 17(2) of Schedule 13 to the Employment Protection (Consolidation) Act 1978 ";
  - (b) for the words "the said section 13(1)" there are substituted the words " the said section 94(1) ";
  - (c) for the words from " the said Act of 1963 " to " Act of 1965 " there are substituted the words " the said paragraph 17(2) and the references to the said section 94(1) ", and after the words " a reference " there are inserted the words " to paragraph 10(2) of Schedule 1 ".

*Transport Holding Company Act 1972 (c.14)*

- 13 (1) In section 2(3)(c) of the Transport Holding Company Act 1972, for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal. ".
- (2) In section 2(7) of the said Act of 1972, for the words "a tribunal established under section 12 of the Industrial Training Act 1964 " there are substituted the words " an industrial tribunal ".

*Finance Act 1972 (c.41)*

- 14 In paragraph 1(b) of Part V of Schedule 12 to the Finance Act 1972, for the words "Redundancy Payments Act 1965" there are substituted the words " Employment Protection (Consolidation) Act 1978 ".



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*British Library Act 1972 (c.54)*

- 15 In paragraph 13(3)(a) of the Schedule to the British Library Act 1972, for the words " the Acts of 1963 and 1965 " there are substituted the words " the Employment Protection (Consolidation) Act 1978 ".

*Gas Act 1972 (c.60)*

- 16 In section 36(5) of the Gas Act 1972, for the words from " a tribunal" to the end there are substituted the words " an industrial tribunal. ".

*Health and Safety at Work etc. Act 1974 (c. 37)*

- 17 The following subsection is inserted in section 80 of the Health and Safety at Work etc. Act 1974 after subsection (2)—
- “(2A) Subsection (1) above shall apply to provisions in the Employment Protection (Consolidation) Act 1978 which re-enact provisions previously contained in the Redundancy Payments Act 1965, the Contracts of Employment Act 1972 or the Trade Union and Labour Relations Act 1974 as it applies to provisions contained in Acts passed before or in the same Session as this Act”.

*Trade Union and Labour Relations Act 1974 (c.52)*

- 18 In section 8(7) of the Trade Union and Labour Relations Act 1974, for the words " section 88(3) of the Employment Protection Act 1975 " there are substituted the words " section 136(3) of the Employment Protection (Consolidation) Act 1978 ".

*Social Security Act 1975 (c. 14)*

- 19 (1) In section 114 of the Social Security Act 1975, the following subsection is inserted after subsection (2)—
- “(2A) It is hereby declared for the avoidance of doubt that the power to make regulations under subsection (1) above includes power to make regulations for the determination of any question arising as to the total or partial recoupment of unemployment benefit in pursuance of regulations under section 132 of the Employment Protection (Consolidation) Act 1978 (including any decision as to the amount of benefit).”.
- (2) In section 139 of the said Act of 1975, after subsection (2) there is inserted the following subsection—
- “(2A) Subsection (1) above does not apply to regulations made under this Act and contained in a statutory instrument which states that the regulations provide only that a day in respect of which there is payable a particular description of any payment to which section 132 of the Employment Protection (Consolidation) Act 1978 (recoupment of unemployment and supplementary benefits) applies shall not be treated as a day of unemployment for the purposes of entitlement to unemployment benefit.”.

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

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*Sex Discrimination Act 1975 (c.65)*

- 20 (1) In section 65(2) of the Sex Discrimination Act 1975, for the words " paragraph 20 of Schedule 1 to the Trade Union and Labour Relations Act 1974 " there are substituted the words " section 75 of the Employment Protection (Consolidation) Act 1978 ".
- (2) In section 75(5)(c) of the said Act of 1975 for the words " paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974." there are substituted the words " paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978. "

*Scottish Development Agency Act 1975 (c. 69)*

- 21 In paragraph 6 of Schedule 3 to the Scottish Development Agency Act 1975, for sub-paragraphs (a), (b) and (c) there are substituted the words " the Employment Protection (Consolidation) Act 1978 ".

*Welsh Development Agency Act 1975 (c. 70)*

- 22 In paragraph 7 of Schedule 2 to the Welsh Development Agency Act 1975, for sub-paragraphs (a), (b) and (c) there are substituted the words " the Employment Protection (Consolidation) Act 1978 ".

*Employment Protection Act 1975 (c.71)*

- 23 (1) The Employment Protection Act 1975 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 6(2)—
- (a) the words from " in relation to " to " that is to say " shall be omitted;
  - (b) for the words " section 57 below ; and " there are substituted the words " section 27 of the Employment Protection (Consolidation) Act 1978, including guidance on the circumstances in which a trade union official is to be permitted to take time off under that section in respect of duties connected with industrial action ; and ";
  - (c) for the words " section 58 below " there are substituted the words " section 28 of the said Act of 1978, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that section for trade union activities connected with industrial action. "
- (3) In section 8(9), for the words "section 88(3) below" there are substituted the words " section 136(3) of the Employment Protection (Consolidation) Act 1978 ".
- (4) In section 102(4), for the words " Schedule 2 to the Contracts of Employment Act 1972" there are substituted the words " Schedule 3 to the Employment Protection (Consolidation) Act 1978 ",  
and for the words " section 1(1)" there are substituted the words " section 49(1) ".
- (5) In section 104(1)(a), for the words " section 30(1) of the Redundancy Payments Act 1965 " there are substituted the words " section 104(1) of the Employment Protection (Consolidation) Act 1978 ".
- (6) In section 106(3), for the words from the beginning to " Redundancy Payments Act 1965 " there are substituted the words

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“Schedule 14 to the Employment Protection (Consolidation) Act 1978 shall apply for the calculation of a week's pay for the purposes of section 102 above, and, for the purposes of Part II of that Schedule, the calculation date is—

- (a) in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph 7(1)(k) or (l) of the said Schedule 14”.

(7) In section 108(1), for the words " paragraph 21 of Schedule 1 to the 1974 Act" there are substituted the words " paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978 ".

(8) In section 119(1), for the words "Parts II and IV of this Act apply " there are substituted the words " Part IV of this Act applies ".

(9) In section 119, the following subsection is added at the end—

“(17) Schedule 13 to the Employment Protection (Consolidation) Act 1978 and, so far as they modify that Schedule, any order under section 7 of that Act and any regulations under paragraph 20 of that Schedule, shall have effect for the purposes of this section in determining for what period an employee has been continuously employed; and, for the purposes of any proceedings brought under or by virtue of this Act, a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.”.

(10) In section 121(5), for the words " Schedule 3 to the Redundancy Payments Act 1965" there are substituted the words " Schedule 5 to the Employment Protection (Consolidation) Act 1978 ".

(11) In section 121(6) and (7), for the words "section 41(3) of the Redundancy Payments Act 1965 " there are substituted the words " section 111(3) of the Employment Protection (Consolidation) Act 1978 ".

(12) In section 125(1) for the words from the beginning to " Part III of that Schedule " there are substituted the words " The provisions of the 1974 Act specified in Part III of Schedule 16 to this Act ".

(13) In section 126(1), for the words " paragraph 5 of Schedule 1 to the 1974 Act" there are substituted the words " section 55 of the Employment Protection (Consolidation) Act 1978 ".

*New Towns (Amendment) Act 1976 (c. 68)*

24 In section 13 of the New Towns (Amendment) Act 1976—

- (a) in subsection (5), for the words " Schedule 1 to the Contracts of Employment Act 1972 " there are substituted the words " Schedule 13 to the Employment Protection (Consolidation) Act 1978 ";
- (b) in subsection (6), for the words " section 13 of the Redundancy Payments Act 1965 " there are substituted the words " section 94 of the Employment Protection (Consolidation) Act 1978 ".

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*Race Relations Act 1976 (c.74)*

- 25 (1) The Race Relations Act 1976 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 56(2) for the words "paragraph 20 of Schedule 1 to the Trade Union and Labour Relations Act 1974 " there are substituted the words " section 75 of the Employment Protection (Consolidation) Act 1978 ".
- (3) In section 66(7) for the words "paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974" there are substituted the words " paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978 ".
- (4) In paragraph 11 of Schedule 2—
- (a) in sub-paragraph (3) for the words " the Redundancy Payments Act 1965 " there are substituted the words " Part VI of the Employment Protection (Consolidation) Act 1978 ";
- (b) for sub-paragraph (4)(a) and (b) there is substituted the following paragraph—
- “(a) the Employment Protection (Consolidation) Act 1978 except Part VI of that Act;”.

*Development of Rural Wales Act 1976 (c. 75)*

- 26 In both paragraph 6 of Schedule 2 and paragraph 6 of Schedule 6 to the Development of Rural Wales Act 1976, for sub-paragraphs (a), (b) and (c) there are substituted the words " the Employment Protection (Consolidation) Act 1978 ".

*Dock Work Regulation Act 1976 (c. 79)*

- 27 (1) In section 14(7) of the Dock Work Regulation Act 1976 for the words " subsections (1), (5) and (6) above " there are substituted the words " subsection (6) above ".
- (2) In paragraph 17(1) of Schedule 1 to the said Act of 1976, for the words " Schedule 1 to the Contracts of Employment Act 1972 " there are substituted the words " Schedule 13 to the Employment Protection (Consolidation) Act 1978 ".

*Aircraft and Shipbuilding Industries Act 1977 (c. 3)*

- 28 In both section 49(10) and section 50(3)(b) of the Aircraft and Shipbuilding Industries Act 1977, for the words " a tribunal established under section 12 of the Industrial Training Act 1964 or, as the case may require" there are substituted the words " an industrial tribunal or, as the case may require, a tribunal established under ".

*Social Security (Miscellaneous Provisions) Act 1977 (c. 5)*

- 29 In section 18 of the Social Security (Miscellaneous Provisions) Act 1977—
- (a) in subsection (1)(c), for " Act 1975 " there shall be substituted " (Consolidation) Act 1978 ";
- (b) in subsection (2)(a), for the words " section 43 of the Employment Protection Act 1975 " there are substituted the words " section 40 of the Employment Protection (Consolidation) Act 1978 ";

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- (c) in subsection (2)(b), for " 64(3)(a)" and " 45(1) " there are substituted " 122(3)(a) " and " 42(1) " respectively ;
- (d) in subsection (2)(e), for the words " that Act" there are substituted the words " the Employment Protection Act 1975 ".

*New Towns (Scotland) Act 1977 (c. 16)*

- 30 In section 3(6) of the New Towns (Scotland) Act 1977 for paragraphs (a), (b) and (c) there are substituted the words " Parts I, IV, V and VI of the Employment Protection (Consolidation) Act 1978 ".

*Housing (Homeless Persons) Act 1977 (c. 48)*

- 31 In section 14(4) of the Housing (Homeless Persons) Act 1977—
- (a) in paragraph (a), for the words " section 13 of the Redundancy Payments Act 1965 " there are substituted the words " section 94 of the Employment Protection (Consolidation) Act 1978 ";
  - (b) in paragraph (b), for the words " Schedule 1 to the Contracts of Employment Act 1972 " there are substituted the words " Schedule 13 to the said Act of 1978 " , and the words " sections 1 and 2 of" shall cease to have effect.

*National Health Service Act 1977 (c. 49)*

- 32 In paragraph 13(1)(6) of Schedule 14 to the National Health Service Act 1977, the reference to paragraph 106 of Schedule 4 to the National Health Service Reorganisation Act 1973 shall cease to have effect, and, accordingly, for that reference to paragraph 106 there is substituted a reference to paragraph 107 of the said Schedule 4.

*Scotland Act 1978 (c. 00)*

- 33 In section 33 of the Scotland Act 1978—
- (a) in subsection (1), for paragraphs (a) and (b) there is substituted the following paragraph—
    - “(a) Parts I (so far as it relates to itemised pay statements), II, III (except section 44), V, VIII and IX and section 53 of the Employment Protection (Consolidation) Act 1978 ; and  
”;and for the words " section 121 of the Employment Protection Act 1975 " there are substituted the words " section 138 of the Employment Protection (Consolidation) Act 1978
  - (b) in subsection (2), for the words "paragraph 21(5)(c) of Schedule 1 to the Act of 1974" there are substituted the words " paragraph 1(5)(c) of Schedule 9 to the Employment Protection (Consolidation) Act 1978 ".

*House of Commons (Administration) Act 1978 (c.36)*

- 34 In paragraph 1 of Schedule 2 to the House of Commons (Administration) Act 1978, after the words " the Employment Protection Act 1975 " there are inserted the words " and section 139 of the Employment Protection (Consolidation) Act 1978 ".

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## SCHEDULE 17

Section 159.

## REPEALS

Chapter	Short Title	Extent of Repeal
1964 c. 16.	Industrial Training Act 1964.	Section 12(2B), (3) and (4).
1965 c. 62.	Redundancy Payments Act 1965.	Sections 1 to 26. Sections 30 to 44. Sections 46 to 55 except section 55(6)(b). Sections 56 to 58. In section 59, subsection (2) and in subsection (3) the words " except the last preceding section ". Schedules 1 to 9.
1967 c. 17.	Iron and Steel Act 1967.	In section 31, in subsection (3), paragraph (c) and all the words following paragraph (c), and subsections (4)(b) and (6).
1967 c. 28.	Superannuation (Miscellaneous Provisions) Act 1967.	Section 9.
1968 c. 13.	National Loans Act 1968.	In Schedule 1, the paragraph relating to the Redundancy Payments Act 1965.
1969 c. 8.	Redundancy Rebates Act 1969.	The whole Act.
1969 c. 48.	Post Office Act 1969.	In Schedule 9, paragraph 34.
1970 c. 41.	Equal Pay Act 1970.	Section 2(7).
1971 c. 75.	Civil Aviation Act 1971.	In Schedule 9, paragraph 2.
1972 c. 11.	Superannuation Act 1972.	In Schedule 6, paragraphs 54 and 55.
1972 c. 53.	Contracts of Employment Act 1972.	The whole Act.
1972 c. 54.	British Library Act 1972.	In paragraph 13(2) of the Schedule, the definition of " the Act of 1963 ".
1972 c. 58.	National Health Service (Scotland) Act 1972.	In Schedule 6, paragraph 130.
1973 c. 32.	National Health Service Reorganisation Act 1973.	In Schedule 4, paragraph 106.

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Chapter	Short Title	Extent of Repeal
1973 c. 38.	Social Security Act 1973.	In Schedule 27, paragraphs 54 to 59.
1973 c. 50.	Employment and Training Act 1973.	In Schedule 2 in Part I, paragraph 15.
1974 c. 52.	Trade Union and Labour Relations Act 1974.	In section 1(2), paragraphs (6) and (c) and, in paragraph (d), the references to sections 146, 148, 149, 150 and 151 of the 1971 Act.  In section 30(1), the definitions of "dismissal procedures agreement", "position" and "job".  In Schedule 1, paragraphs 4 to 16, 17(1), 18, 20 to 27 and 30, in paragraph 32, sub-paragraphs (1)(b) and (2)(b) to (e) and, in paragraph 33, sub-paragraphs (3)(c) and (d) and (4A).  In Schedule 3, paragraph 16.  In Schedule 4, paragraphs 1, 3 and 6(4).
1975 c. 18.	Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraphs 19 to 23.
1975 c. 60.	Social Security Pensions Act 1975.	Section 30(5).
1975 c. 71.	Employment Protection Act 1975.	Part II except section 40. Section 108(2) to (8). Section 109. Section 112. In section 118(2), in paragraph (a) the words "section 22 above or" and "section 28 or, as the case may be," and paragraphs (b) and (c). In section 119— subsection (2); in subsection (3) the figures from "22" to "70";

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Chapter	Short Title	Extent of Repeal
		<p>in subsection (4) the figures from "22" to "81";</p> <p>in subsection (5), the figures from " 22 " to " 81 ";</p> <p>in subsection (7) the figures " 22 " and " 29 ";</p> <p>subsections (8) to (11);</p> <p>in subsection (12) the figures from "59" to "81".</p> <p>Section 120.</p> <p>In section 121—</p> <p>in subsection (1), the reference to sections 47 and 63 to 69;</p> <p>in subsection (5), the reference to sections 47(3) and (4) and 68(3) and (4);</p> <p>subsection (8).</p> <p>In section 122(1), the words " Schedule 1 to the Contracts of Employment Act 1972 and Parts I and n of Schedule 1 to the 1974 Act"; and in paragraph (d), the words "paragraph 21(5)(c) of Schedule 1 to the 1974 Act and".</p> <p>In section 122, subsection (3), in subsection (4) the definition of " civil employment claim " and in subsection (5) the words from "and of the Redundancy" to "employment claim ".</p> <p>In section 123(2)(6) the words " 28 or ".</p> <p>In section 124, subsections (2) to (4).</p> <p>In section 126—</p> <p>in subsection (1), the definitions of "</p>



Chapter	Short Title	Extent of Repeal
		<p>guarantee payment " and " maternity pay"; subsections (3) and (5).</p> <p>In section 127—  in subsection (1), paragraphs (c) and (d);  in subsection (3)(g), the words from " the following " to " also of".</p> <p>In section 128—  in subsection (1), the words "or of the 1974 Act so far as it relates to unfair dismissal " and " and the 1974 Act";  subsection (2);  in subsection (3), the words " and the relevant provisions of the 1974 Act" in both places where they occur, and the words " or the relevant provisions of the 1974 Act".</p> <p>Section 129(2).</p> <p>Schedules 2 to 6.</p> <p>In Schedule 12—  in paragraph 1, the words from " and " to the end;  paragraphs 8 to 12.</p> <p>In Schedule 16—  Parts I and II;  in Part III, paragraphs 8 to 30 and 34;  in Part IV, paragraph 14.</p> <p>In Schedule 17, paragraphs 7 to 10, 16 and 17.</p>
1976 c. 7.	Trade Union and Labour Relations (Amendment) Act 1976.	Section 1(e). Section 3(5) and (6).
1976 c. 68.	New Towns (Amendment)	In section 13(5), the words " sections 1 and 2 of ".
1976 c. 71.	Act 1976. Supplementary Benefits Act 1976.	In Schedule 7, paragraph 40.

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Chapter	Short Title	Extent of Repeal
1976 c. 74.	Race Relations Act 1976.	In Schedule 3, paragraphs 1(2), (3) and (4).
1976 c. 79.	Dock Work Regulation Act 1976.	In section 14, subsections (1) to (5) and in subsection (6), paragraph (a) and so much of paragraph (b) as relates to sections 22, 29, 61, 64, 65 and 70 of the Employment Protection Act 1975.  In Schedule 1, paragraph 17(2).
1977 c. 5.	Social Security (Miscellaneous Provisions) Act 1977.	Section 16.
1977 c. 22.	Redundancy Rebates Act 1977.	The whole Act.
1977 c. 38.	Administration of Justice Act 1977.	Section 6.  Section 32(11).
1977 c. 48.	Housing (Homeless Persons) Act 1977.	In section 14(4)(b), the words " sections 1 and 2 of ".