

SCHEDULES

SCHEDULE 1

Section 3(5).

FURTHER PROVISIONS RELATING TO ACCESS TO EMPLOYMENT

PART I

PROCEEDINGS, REMEDIES AND RELATED MATTERS

Introduction

- 1 The provisions of this Part of this Schedule apply in relation to a complaint under section 1 or 2 (refusal of employment or refusal of service of employment agency on grounds related to trade union membership).

Restriction of proceedings

- 2 (1) The remedy of a person for conduct which is unlawful by virtue of either of those sections is by way of a complaint to an industrial tribunal in accordance with those sections and this Schedule, and not otherwise.
- (2) No other legal liability arises by reason that conduct is unlawful by virtue of either of those sections.

Time limit

- 3 (1) An industrial tribunal shall not consider the complaint unless it is presented to the tribunal—
- (a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (2) The date of the conduct to which a complaint under section 1 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
 - (b) in the case of a deliberate omission—
 - (i) to entertain and process the complainant's application or enquiry, or
 - (ii) to offer employment,the end of the period within which it was reasonable to expect the employer to act;
 - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, or not to accept an offer of employment, the date of that conduct;

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- (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
 - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (3) The date of the conduct to which a complaint under section 2 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
 - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
 - (c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;
 - (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

Conciliation

- 4 In section 133(1) of the Employment Protection (Consolidation) Act 1978 (functions of conciliation officers in relation to certain proceedings), after paragraph (f) insert—
- “(g) under section 1 or 2 of the Employment Act 1990.”.

Remedies

- 5 (1) Where the industrial tribunal finds that the complaint is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—
- (a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;
 - (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.
- (4) The total amount of compensation shall not exceed the limit for the time being imposed by section 75 of the Employment Protection (Consolidation) Act 1978 (limit on compensation for unfair dismissal).

Complaint against employer and employment agency

- 6 (1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

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- (2) If a complaint is brought against one only, he or the complainant may request the tribunal to join or sist the other as a party to the proceedings.

The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

- (3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined or sisted as a party to the proceedings, and the tribunal—

- (a) finds that the complaint is well-founded as against the employer and the agency, and
(b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

Awards against third parties

- 7 (1) If in proceedings on a complaint under section 1 or 2 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

- (3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—

- (a) finds that the complaint is well-founded,
(b) makes an award of compensation, and
(c) also finds that the claim in sub-paragraph (1) above is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

- (4) Where by virtue of paragraph 6 (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

Appeal from decision of tribunal

- 8 In section 136 of the Employment Protection (Consolidation) Act 1978 (appeals from industrial tribunals to Employment Appeal Tribunal), in subsection (1) (right of appeal on questions of law arising under certain Acts), after paragraph (f) insert—

“(g) the Employment Act 1990.”.

PART II

SCOPE OF APPLICATION OF PROVISIONS

Introduction

- 9 The provisions of this Part of this Schedule apply with respect to the operation of sections 1 to 3 and this Schedule (referred to below as “the provisions of this Act relating to access to employment”).

Restriction on contracting out

- 10 (1) An agreement is void in so far as it purports—
- (a) to exclude or limit the operation of any of the provisions of this Act relating to access to employment, or
 - (b) to preclude a person from presenting a complaint to, or bringing any proceedings under those provisions before, an industrial tribunal.
- (2) Sub-paragraph (1) does not apply to an agreement to refrain from instituting or continuing proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 133(2) or (3) of the Employment Protection (Consolidation) Act 1978.

Crown employment and House of Commons and House of Lords staff

- 11 (1) The provisions of this Act relating to access to employment have effect in relation to Crown employment as in relation to other employment.
- (2) Crown employment means employment under or for the purposes of—
- (a) a government department, or
 - (b) any officer or body exercising on behalf of the Crown functions conferred by an enactment;
- and, subject to the following provisions, this paragraph applies to all Crown employment.
- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown but does apply to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980 (territorial, auxiliary and reserve forces associations).
- (4) This paragraph does not apply to employment in respect of which there is in force a certificate under section 138(4) of the Employment Protection (Consolidation) Act 1978 (employment excepted from that Act for the purpose of safeguarding national security).
- 12 (1) The provisions of this Act relating to access to employment apply in relation to employment as a relevant member of the House of Commons or House of Lords staff as in relation to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament prevents a person from bringing before an industrial tribunal proceedings of any description under those provisions which could be brought before such a tribunal in relation to other employment.

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- (3) In this paragraph “relevant member of the House of Commons staff” has the same meaning as in section 139 of the Employment Protection (Consolidation) Act 1978 (which provides for the application of provisions of that Act to such staff); and subsections (3) to (6) and (9) of that section (person to be treated as employer) apply, with any necessary adaptations, for the purposes of the provisions of this Act relating to access to employment.
- (4) In this paragraph “relevant member of the House of Lords staff” means a member of the House of Lords staff appointed by the Clerk of the Parliaments or the Gentleman Usher of the Black Rod.
- (5) For the purposes of the provisions of this Act relating to access to employment the holder for the time being of the office of Clerk of the Parliaments or Gentleman Usher of the Black Rod is the employer in relation to employment to which a person is appointed by the holder of that office; and anything done, before or after he took office, in relation to a person seeking such employment shall be treated as done by him.
- (6) If the House of Lords resolves at any time that any provision of sub-paragraphs (4) and (5) should be amended in its application to any employment as a member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

Any such Order—

- (a) may contain such incidental, supplementary or transitional provisions as appear to Her Majesty to be appropriate, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 13 In the provisions of this Act relating to access to employment references to employment include, in relation to—
- (a) Crown employment, and
 - (b) employment as a relevant member of the House of Commons or House of Lords staff,
- employment otherwise than under a contract, on terms corresponding to those of a contract of service or apprenticeship; and related expressions shall be construed accordingly.

Police service

- 14 The provisions of this Act relating to access to employment do not apply to employment as a member of any constabulary maintained by virtue of an enactment or in any other capacity by virtue of which a person has the powers or privileges of a constable.

Employment outside Great Britain

- 15 The provisions of this Act relating to access to employment do not apply to employment where under his contract of employment an employee will ordinarily work outside Great Britain.

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Mariners

- 16 (1) For the purposes of paragraph 15 employment on board a ship registered in the United Kingdom shall be treated as employment where under his contract a person will ordinarily work in Great Britain unless—
- (a) the ship is registered at a port outside Great Britain, or
 - (b) the employment is wholly outside Great Britain.
- (2) Sub-paragraph (1) does not apply where the person seeking employment or, as the case may be, seeking to avail himself of a service of an employment agency is not ordinarily resident in Great Britain.
- (3) The provisions of this Act relating to access to employment do not apply to employment as master or as a member of the crew of a fishing vessel where the remuneration is only by a share in the profits or gross earnings of the vessel.

Offshore employment

- 17 (1) Section 137 of the Employment Protection (Consolidation) Act 1978 (power to extend employment legislation to offshore employment) applies in relation to the provisions of this Act relating to access to employment.
- (2) As it so applies—
- (a) the references to a person in employment to which the section applies shall be construed as a reference to a person seeking such employment, and
 - (b) the references to section 141 and 144 of that Act shall be construed as references to paragraphs 15 and 16 above.

Crown application of provisions relating to employment agencies

- 18 (1) The provisions of this Act relating to access to employment bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply.
- (2) This does not affect the operation of those provisions in relation to Crown employment (see paragraph 11 above).

SCHEDULE 2

Section 16(1).

CONSEQUENTIAL AMENDMENTS

Employment Protection (Consolidation) Act 1978 (c. 44)

- 1 (1) The Employment Protection (Consolidation) Act 1978 is amended as follows.
- (2) In section 62 (dismissal in connection with a lock-out, strike or other industrial action), after subsection (4) add—
- “(5) The provisions of this section do not apply to an employee who by virtue of section 62A below has no right to complain of unfair dismissal; but nothing in that section affects the question who are relevant employees in relation to an employee to whom the provisions of this section do apply.”.

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- (3) In section 106 (redundancy: payments by Secretary of State to employee where employer fails to pay), in subsections (2) and (3) for “the fund” substitute “the National Insurance Fund”.
- (4) In sections 122(1), 123(1) and 125(4) (insolvency of employer: payments by Secretary of State to or in respect of employees), for “the Redundancy Fund” substitute “the National Insurance Fund”.
- (5) In section 156 (payments into the Consolidated Fund)—
 - (a) in subsections (2) and (3), for “the Redundancy Fund” substitute “the National Insurance Fund”; and
 - (b) in subsection (3) for “sections 103 to 109” substitute “sections 106 to 108”.
- (6) In section 158(2) (reciprocal arrangements with the Isle of Man: financial adjustments) for “the Redundancy Fund” substitute “the National Insurance Fund”.

Trade Union Act 1984 (c. 49)

- 2 (1) Section 10 of the Trade Union Act 1984 (industrial action taken without support of ballot) is amended as follows.
 - (2) For subsections (1) and (2) substitute—

“(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not within section 13 of the 1974 Act (protection from certain liabilities in tort) unless the industrial action has the support of a ballot.”.
 - (3) In subsection (3), for the words from “an act” to “done with” substitute “industrial action shall be regarded as having”, in paragraph (a) for the words from “strike” to “occurred” substitute “industrial action in question”, and for paragraph (c) substitute—

“(c) the requirements of section 7 of the Employment Act 1990 are satisfied;”.
 - (4) In subsection (3A), in paragraph (a), for the words from “by an act” to “performance” substitute “to take part, or continue to take part, in industrial action”, in paragraph (b) for the words from “strike” to “interference” substitute “industrial action”, and omit the words “of that breach or interference”.
 - (5) In subsection (4) omit the words “strike or other”.
 - (6) In subsection (4A), omit the words “inducing a breach or interference”, and for the words from “in the course of which” to the end substitute “to which the act relates”.
 - (7) In subsection (5) omit the definitions of “authorisation or endorsement”, “commercial contract”, “contract of employment”, “relevant act” and “tort” and the words from “and any reference” to the end.

Employment Act 1988 (c. 19)

- 3 (1) Section 1 of the Employment Act 1988 (right to a ballot before industrial action) is amended as follows.

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- (2) In subsection (1), for the words from “that the union” to “continue to take part” substitute “that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot”.
- (3) In subsection (2), for paragraphs (a) to (c) substitute “that the application is well-founded” and omit the words from “(including” to “endorsement”.
- (4) For subsections (3) and (4) substitute—
- “(3) For the purposes of this section an act shall be taken to have been done by a trade union if it was authorised or endorsed by the union; and the provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether an act is to be taken to have been so authorised or endorsed.
- Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.”.
- (5) In subsection (5) omit the words “an authorisation or endorsement by a trade union of any” and for paragraph (e) substitute—
- “(e) the requirements of section 7 of the Employment Act 1990 are satisfied.”.

SCHEDULE 3

Section 16(2).

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1975 c. 14.	Social Security Act 1975.	<p>In section 1(1)(b), the words “and into the Redundancy Fund”.</p> <p>In section 122—</p> <p style="padding-left: 20px;">(a) subsection (3)(b);</p> <p style="padding-left: 20px;">(b) subsection (4).</p> <p>In section 123, the proviso to subsection (2).</p> <p>In section 134—</p> <p style="padding-left: 20px;">(a) in subsection (1), paragraph (b) and the word “and” preceding it;</p> <p style="padding-left: 20px;">(b) in subsection (4), the definition of “appropriate employment protection allocation” and the word “and” preceding it;</p>

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		(c) in subsection (5), paragraph (b) and in paragraph (c) the words “and (b)”;
		(d) subsections (5A) to (5D).
		In section 167(1) (b), the references to section 134(5A), (5B) and (5C).
		In Schedule 20, the definition of “appropriate employment protection allocation”.
1975 c. 71.	Employment Protection Act 1975.	In section 40, subsections (1), (5) and (6).
1978 c. 44.	Employment Protection (Consolidation) Act 1978.	Section 103. Section 105. Section 109. In section 153(1), the definition of “Redundancy Fund”. Section 157(2). In Schedule 9, paragraph 3.
1980 c. 42.	Employment Act 1980.	Section 17.
1980 c. 48.	Finance Act 1980.	In Schedule 19, in paragraph 5(4), the words “and 103(3)”.
1981 c. 1.	Social Security (Contributions) Act 1981.	Section 4(6).
1981 c. 5.	Redundancy Fund Act 1981.	The whole Act.
1982 c. 2.	Social Security (Contributions) Act 1982.	Section 3(3). In Schedule 1— (a) paragraph 1; (b) paragraph 2(1).
1982 c. 46.	Employment Act 1982.	In section 15— (a) in subsection (6), the words “, notwithstanding subsection (5) above,”; (b) in subsection (7), the definition of “official” and “employed official”.
1984 c. 49.	Trade Union Act 1984.	In section 10—

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		<ul style="list-style-type: none"> (a) in subsection (3A), the words “of that breach or interference”; (b) in subsection (4), the words “strike or other”; (c) in subsection (4A), the words “inducing a breach or interference”; (d) in subsection (5), the definitions of “authorisa-tion or endorsement”, “commercial contract”, “contract of employ-ment”, “relevant act” and “tort” and the words from “and any reference” to the end.
1985 c. 53.	Social Security Act 1985.	<p>In Schedule 5—</p> <ul style="list-style-type: none"> (a) paragraph 9(b); (b) in paragraph 11(a), the words “and “the appropriate employment protection allocation” ”.
1986 c. 50.	Social Security Act 1986.	<p>In section 74, subsections (3) and (4).</p> <p>In Schedule 10, paragraph 73.</p>
1988 c. 19.	Employment Act 1988.	<p>In section 1—</p> <ul style="list-style-type: none"> (a) in subsection (2), the words from “(including” to “endorsement”; (b) in subsection (5), the words “an authorisation or endorsement by a trade union of any”.
1989 c. 24.	Social Security Act 1989.	<p>In section 1—</p> <ul style="list-style-type: none"> (a) subsection (4); (b) in subsection (8), the words “and (i)” and “and “appropriate employment protection allocation”,”. <p>In Schedule 8, paragraph 8(1).</p>
1989 c. 38.	Employment Act 1989.	In Schedule 6, paragraph 20.