

SCHEDULES

SCHEDULE 1

Section 3.

POLITICAL FUND BALLOTS

- 1 In section 74(3) of the 1992 Act (requirements which Certification Officer must be satisfied would be met in relation to political fund ballot held by trade union in accordance with its rules), after the entry relating to section 77 there shall be inserted—
- “section 77A (counting of votes etc. by independent person), and”.
- 2 In section 75 of that Act (appointment of independent scrutineer for political fund ballot)—
- (a) in paragraph (a) (scrutineer to supervise certain matters) of subsection (3) (terms of appointment of scrutineer), for the words “and distribution of the voting papers” there shall be substituted the words “of the voting papers and (unless he is appointed under section 77A to undertake the distribution of the voting papers) their distribution”,
- (b) after that paragraph there shall be inserted—
- “(aa) to—
- (i) inspect the register of names and addresses of the members of the trade union, or
- (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),
- whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;”,
- (c) in paragraph (d) (scrutineer to retain custody of voting papers) of that subsection—
- (i) after the words “purposes of the ballot” there shall be inserted the words “and the copy of the register supplied to him in accordance with subsection (5A)(a)”, and
- (ii) after the words “of the papers” there shall be inserted the words “or copy”,
- (d) after that subsection there shall be inserted—
- “(3A) The conditions referred to in subsection (3)(aa) are—
- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
- (b) that the scrutineer does not consider that the member’s suspicion is ill-founded.

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(3B) In subsection (3A) “the appropriate period” means the period—

- (a) beginning with the day on which the scrutineer is appointed, and
- (b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.”,

(e) after subsection (5) there shall be inserted—

“(5A) The trade union shall—

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.”, and

(f) after subsection (7) there shall be inserted—

“(8) In this section “the relevant date” means—

- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.”.

3 After section 77 of that Act there shall be inserted—

“77A Counting of votes etc. by independent person.

(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
 - (b) the counting of the votes cast in the ballot,
- are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to a ballot if—

- (a) he is the scrutineer, or
- (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of

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requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

- (4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—
 - (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
 - (b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and
 - (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.”.

4 In section 78 of that Act (scrutineer’s report on ballot)—

- (a) in subsection (1), after paragraph (d) there shall be inserted “and
 - (e) the name of the person (or of each of the persons) appointed under section 77A or, if no person was so appointed, that fact.”,
- (b) in subsection (2)(b), after the word “made” there shall be inserted “(whether by him or any other person)”, and
- (c) after that subsection there shall be inserted—
 - “(2A) The report shall also state—
 - (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 75(5A)(a),
 - (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
 - (c) whether he declined to act on any such request, and
 - (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

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- (2B) Where one or more persons other than the scrutineer are appointed under section 77A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—
- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
 - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.”.

SCHEDULE 2

Section 23.

MATERNITY: THE RIGHT TO RETURN TO WORK

Right to return to work

Right to return to work.

- 39 (1) An employee who—
- (a) has the right conferred by section 33, and
 - (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,
- shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.
- (2) An employee's right to return to work under this section is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—
- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period,
 - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases)), and
 - (c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.
- (3) The Secretary of State may by order vary the period of two years specified in subsection (1) or that period as so varied.
- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Requirement to give notice of return to employer.

- 40 (1) An employee shall not have the right to return to work under section 39 unless she includes with the information required by section 37(1) the information that she intends to exercise the right.
- (2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with subsection (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under section 39, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (3) A request under subsection (2) shall be—
- (a) made in writing, and
 - (b) accompanied by a written statement of the effect of that subsection.

Special provision where redundancies occur before return to work.

- 41 (1) Where an employee has the right to return to work under section 39, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (2).
- (2) The new contract of employment must be such that—
- (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
 - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work pursuant to her right to return.

Exercise of right to return to work.

- 42 (1) An employee shall exercise the right to return to work under section 39 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).
- (2) An employer may postpone an employee’s return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and

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- (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks;
- if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.
- (6) If—
- (a) no day of return has been notified,
 - (b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and
 - (c) in consequence, the employee does not notify a day of return,
- the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.
- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
 - (b) refrained from notifying the day of return in the circumstances described in subsection (6),
- the other of those subsections shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

Supplementary.

- 43 (1) Schedule 2 shall have effect for the purpose of supplementing the preceding sections in relation to an employee's right to return to work under section 39.
- (2) Sections 56 and 86 also have effect for that purpose.
- (3) Subject to subsection (4), in sections 56 and 86 and Schedule 2 "notified day of return" has the same meaning as in section 42.

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- (4) Where—
- (a) an employee’s return is postponed under subsection (2) or (3)(a) of section 42, or
 - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) of that section,
- then, subject to subsection (4) of that section, references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

Contractual rights.

- 44 (1) An employee who has the right to return to work under section 39 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 39, 41 to 43, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return to work under section 39.

SCHEDULE 3

Section 25.

SUSPENSION FROM WORK ON MATERNITY GROUNDS

Suspension from work on maternity grounds

Suspension from work on maternity grounds

- 45 (1) For the purposes of sections 46 and 47 an employee is suspended on maternity grounds where, in consequence of—
- (a) any requirement imposed by or under any relevant provision of any enactment or of any instrument made under any enactment, or
 - (b) any recommendation in any relevant provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,
- she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.
- (2) For the purposes of this section, sections 46 and 47 and section 61 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of section 46) does not perform the work she normally performed before the suspension.
- (3) For the purposes of subsection (1) a provision is a “relevant provision” if it is for the time being specified as a relevant provision in an order made by the Secretary of State under this subsection.

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Right to offer of alternative work

- 46 (1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.
- (2) For alternative work to be suitable for an employee for the purposes of this section—
- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
 - (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.
- (3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of subsection (1).
- (4) An industrial tribunal shall not entertain a complaint under subsection (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.
- (6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under subsection (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

Right to remuneration on suspension

- 47 (1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.
- (2) An employee shall not be entitled to remuneration under this section in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of section 46 and the employee has unreasonably refused to perform that work.
- (3) The amount of remuneration payable by an employer to an employee under this section shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
- (4) Subject to subsection (5), a right to remuneration under this section shall not affect any right of an employee in relation to remuneration under her contract of employment (in subsection (5) referred to as "contractual remuneration").
- (5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this section in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this section in respect of any period shall go towards

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discharging any obligation of the employer to pay contractual remuneration in respect of that period.

- (6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this section.
- (7) An industrial tribunal shall not entertain a complaint relating to remuneration under this section in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (8) Where an industrial tribunal finds a complaint under subsection (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

SCHEDULE 4

Section 26.

PROVISIONS SUBSTITUTED FOR SECTIONS 1 TO 6 OF 1978 ACT

PART I

EMPLOYMENT PARTICULARS

Written particulars of employment

Employer's duty to give statement of employment particulars

- 1 (1) Not later than two months after the beginning of an employee's employment with an employer, the employer shall give to the employee a written statement which may, subject to subsection (3) of section 2, be given in instalments before the end of that period.
- (2) The statement shall contain particulars of—
 - (a) the names of the employer and employee,
 - (b) the date when the employment began, and
 - (c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).
- (3) The statement shall also contain particulars, as at a specified date not more than seven days before the statement or instalment of the statement containing them is given, of—
 - (a) the scale or rate of remuneration or the method of calculating remuneration,
 - (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
 - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),

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- (d) any terms and conditions relating to any of the following—
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay, and
 - (iii) pensions and pension schemes,
 - (e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,
 - (f) the title of the job which the employee is employed to do or a brief description of the work for which the employee is employed,
 - (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,
 - (h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,
 - (j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and
 - (k) where the employee is required to work outside the United Kingdom for a period of more than one month—
 - (i) the period for which he is to work outside the United Kingdom,
 - (ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,
 - (iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and
 - (iv) any terms and conditions relating to his return to the United Kingdom.
- (4) Subsection (3)(d)(iii) shall not apply to the employees of any body or authority if—
- (a) the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act of Parliament, and
 - (b) the body or authority are required by any such provision to give to new employees information concerning their pension rights or the determination of questions affecting their pension rights.

Section 1: supplementary

- 2 (1) If, in the case of a statement under section 1, there are no particulars to be entered under any of the heads of paragraph (d) or (k) of subsection (3) of that section, or under any of the other paragraphs of subsection (2) or (3) of that section, that fact shall be stated.
- (2) A statement under section 1—
- (a) may refer the employee to the provisions of some other document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment, or

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- (ii) is made reasonably accessible to him in some other way,
for particulars of any of the matters specified in heads (ii) and (iii) of paragraph (d) of subsection (3) of section 1, and
 - (b) may refer the employee to the law, or, subject to subsection (3), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for particulars of either of the matters specified in paragraph (e) of that subsection.
- (3) A statement under section 1 may refer the employee to the provisions of a collective agreement under subsection (2)(b) if, and only if, it is an agreement which—
 - (a) the employee has reasonable opportunities of reading in the course of his employment, or
 - (b) is made reasonably accessible to him in some other way.
- (4) The particulars required by section 1(2) and the following provisions of subsection (3)—
 - (a) paragraphs (a) to (c),
 - (b) head (i) of paragraph (d),
 - (c) paragraph (f), and
 - (d) paragraph (h),shall be included in a single document (in this Part referred to as the “principal statement”).
- (5) Where before the end of the period of two months after the beginning of his employment an employee is to begin to work outside the United Kingdom for a period of more than one month, the statement under section 1 shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.
- (6) A statement shall be given to a person under section 1 notwithstanding that his employment ends before the end of the period within which the statement is required to be given.

Statement to include note about disciplinary procedures

- 3 (1) A statement under section 1 shall include a note—
- (a) specifying any disciplinary rules applicable to the employee or referring the employee to the provisions of a document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment, or
 - (ii) is made reasonably accessible to him in some other way,and which specifies such rules,
 - (b) specifying, by description or otherwise—
 - (i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him, and
 - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,and the manner in which any such application should be made,
 - (c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document which—

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- (i) the employee has reasonable opportunities of reading in the course of his employment, or
 - (ii) is made reasonably accessible to him in some other way,
 - and which explains them, and
 - (d) stating whether a contracting-out certificate is in force for the employment.
- (2) Subsection (1)(a) to (c) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.
- (3) The note need not comply with the following provisions of subsection (1)—
- (a) paragraph (a),
 - (b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i), and
 - (c) paragraph (c),
- if on the date when the employee's employment began the relevant number of employees was less than twenty.
- (4) In subsection (3) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.

Employer's duty to give statement of changes

- 4 (1) If, after the date to which a statement given under section 1 relates, or, where no such statement is given, after the end of the period within which a statement under section 1 is required to be given, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall at the earliest opportunity and, in any event, not later than—
- (a) one month after the change, or
 - (b) where the change results from the employee being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier,
- give to the employee a written statement containing particulars of the change.
- (2) In a case where the statement under section 1 is given in instalments, subsection (1) applies—
- (a) in relation to—
 - (i) matters particulars of which are required to be (whether they are or not) included in the instalment comprising the principal statement, and
 - (ii) other matters particulars of which are included or referred to in that instalment;
 - (b) in relation to matters particulars of which are included or referred to in any other instalment; and
 - (c) in relation to any change occurring after the end of the two-month period within which a statement under section 1 is required to be given in matters particulars of which were required to be included in the statement given under section 1 but which were not included in any instalment;
- as it applies in relation to matters particulars of which are required to be included or referred to in a statement under section 1 not given in instalments.

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- (3) A statement under subsection (1)—
- (a) may refer the employee to the provisions of some other document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment, or
 - (ii) is made reasonably accessible to him in some other way,for a change in any of the matters specified in sections 1(3)(d) (ii) and (iii) and 3(1)(a) and (c), and
 - (b) may refer the employee to the law, or, subject to subsection (4), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for a change in either of the matters specified in section 1(3)(e).
- (4) A statement under subsection (1) may refer the employee to the provisions of a collective agreement under subsection (3)(b) if, and only if, it is an agreement which—
- (a) the employee has reasonable opportunities of reading in the course of his employment, or
 - (b) is made reasonably accessible to him in some other way.
- (5) Where after an employer has given to an employee a statement under section 1—
- (a) either—
 - (i) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer, or
 - (ii) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken, and
 - (b) the change does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by sections 1 to 3 to be included in the statement,
- the person who immediately after the change is the employer shall not be required to give to the employee a statement under section 1 but the change shall be treated as a change falling within subsection (1) of this section.
- (6) A statement under subsection (1) which informs an employee of a change such as is referred to in subsection (5)(a)(ii) shall specify the date on which the employee's period of continuous employment began.

Exclusion of sections 1 to 4 in case of certain employees

- 5 (1) Sections 1 to 4 shall not apply to an employee if—
- (a) his employment continues for less than one month, or
 - (b) he is employed under a contract which normally involves employment for less than eight hours weekly.
- (2) Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by subsection (1)(b) and sections 141 and 144, and under section 149, as if his employment with his employer terminated or began at that time.

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- (3) The fact that section 1 is directed by subsection (2) to apply to an employee as if his employment began on his ceasing to come within the exceptions referred to in that subsection shall not affect the obligation under section 1(2)(b) to specify the date on which his employment actually began.

Power of Secretary of State to require particulars of further matters

- 6 The Secretary of State may by order provide that section 1 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that section; and, for that purpose, the order may include such provisions amending that section as appear to the Secretary of State to be expedient.

SCHEDULE 5

Section 28.

EMPLOYMENT PROTECTION IN HEALTH AND SAFETY CASES

- 1 After section 22 of the 1978 Act there shall be inserted—

“Right not to suffer detriment in health and safety cases

22A Right not to suffer detriment in health and safety cases.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out, or proposed to carry out, any such activities,
 - (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—
 - (i) in accordance with arrangements established under or by virtue of any enactment, or
 - (ii) by reason of being acknowledged as such by the employer, he performed, or proposed to perform, any functions as such a representative or a member of such a committee,
 - (c) being an employee at a place where—
 - (i) there was no such representative or safety committee, or
 - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
 he brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
 - (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or

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- (e) in circumstances of danger which he reasonably believed to be serious and imminent, he took, or proposed to take, appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
- (3) An employee shall not be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have treated him as the employer did.
- (4) Except where an employee is dismissed in circumstances in which, by virtue of section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.

22B Proceedings for contravention of section 22A.

- (1) An employee may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of section 22A.
- (2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.
- (3) An industrial tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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 it considers reasonable.
- (4) For the purposes of subsection (3)—
 - (a) where an act extends over a period, the “date of the act” means the last day of that period, and
 - (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

22C Remedies.

- (1) Where the industrial tribunal finds that a complaint under section 22B is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.

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

- (2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.
- (3) The loss shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.
- (4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or Scotland.
- (5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.”.

2 In subsection (3) of section 57 of that Act (general provisions as to fairness of dismissal), for the words “sections 59 to 61” there shall be substituted the words “sections 57A to 61”.

3 After that section there shall be inserted—

“57A Dismissal in health and safety cases.

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
 - (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,
 - (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—
 - (i) in accordance with arrangements established under or by virtue of any enactment, or
 - (ii) by reason of being acknowledged as such by the employer, performed, or proposed to perform, any functions as such a representative or a member of such a committee,
 - (c) being an employee at a place where—
 - (i) there was no such representative or safety committee, or
 - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
 brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
 - (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger

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- persisted) refused to return to, his place of work or any dangerous part of his place of work, or
- (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
- (3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.”.
- 4 In section 59 of the 1978 Act (dismissal on ground of redundancy), in subsection (2) (inserted by section 24(2) of this Act), between the words “section” and “60” there shall be inserted the words “57A(1) (read with (2) and (3))”.
- 5 In section 64 of the 1978 Act (qualifying period etc for right not to be unfairly dismissed), in subsection (4) (inserted by section 24(3) of this Act), between the words “section” and “60” there shall be inserted the words “57A(1) (read with (2) and (3))”.
- 6 In section 71 of the 1978 Act (compensation for failure to comply with section 69)
-
- (a) in subsection (2)(b) (additional award), after the word “unless” there shall be inserted the words “the case is one where this paragraph is excluded or”; and
- (b) after that subsection there shall be inserted—
- “(2A) Subsection (2)(b) is excluded where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.
- (2B) For the purposes of subsection (2A) a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).”.
- 7 In section 72 of the 1978 Act (compensation for unfair dismissal) there shall be inserted at the end the following—
- “(2) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason, then, unless—
- (a) the complainant does not request the tribunal to make an order under section 69, or
- (b) the case falls within section 73(2),
- the award shall include a special award calculated in accordance with section 75A.

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(3) For the purposes of subsection (2) a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).”and the preceding words shall become subsection (1) of section 72.

8 In section 73 of the 1978 Act (calculation of basic award)—

- (a) in subsection (1), for “(6)” there shall be substituted “(6A)”;
- (b) after subsection (6) there shall be inserted—

“(6A) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,700.

(6B) For the purposes of this section a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).

(6C) The Secretary of State may by order increase the sum specified in subsection (6A).

(6D) No order shall be made under subsection (6C) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.”; and

- (c) in subsection (7C), for the words following “apply” there shall be substituted the words “in a redundancy case unless the reason for selecting the employee for dismissal was an inadmissible reason; and, in that event, subsection (7B) shall apply only to so much of the basic award as is payable because of subsection (6A)”.

9 After section 75 of that Act there shall be inserted—

“75A Calculation of special award.

(1) Subject to the following provisions of this section, the amount of the special award shall be—

- (a) one week’s pay multiplied by 104, or
- (b) £13,400,

whichever is the greater, but shall not exceed £26,800.

(2) Where the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—

- (a) one week’s pay multiplied by 156, or
- (b) £20,100,

whichever is the greater, but subject to the following provisions of this section.

(3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce

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the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

- (5) Where the tribunal finds that the complainant has unreasonably—
- (a) prevented an order under section 69 from being complied with, or
 - (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed,
- the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums specified in subsections (1) and (2).
- (8) No order shall be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.”.

10 After section 76 of that Act there shall be inserted—

“Interim relief

77 Interim relief pending determination of complaint of unfair dismissal.

- (1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in section 57A(1)(a) and (b) may apply to the tribunal for interim relief.
- (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
- (3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
- (4) The tribunal shall give to the employer (not later than seven days before the date of the hearing) a copy of the application together with notice of the date, time and place of the hearing.
- (5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

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77A Procedure on hearing of application and making of order.

- (1) If on hearing an employee's application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal was one of those specified in section 57A(1)(a) and (b) the following provisions shall apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
 - (a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or
 - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (3) For this purpose “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
 - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
 - (b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order.
- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

78 Orders for continuation of contract of employment.

- (1) An order under section 77A for the continuation of a contract of employment is an order that the contract of employment continue in force—
 - (a) for the purposes of pay or of any other benefit derived from the employment, seniority, pension rights and other similar matters, and

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- (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed, from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
- (3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
 - (a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
 - (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, shall go towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

78A Application for variation or revocation of order.

- (1) At any time between the making of an order under section 77A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 77 and 77A apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 77(4) has effect with the substitution of a reference to the employee for the reference to the employer.

79 Consequence of failure to comply with order.

- (1) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 77A(4) or (5), the tribunal shall—
 - (a) make an order for the continuation of the employee’s contract of employment, and
 - (b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—
 - (i) to the infringement of the employee’s right to be reinstated or re-engaged in pursuance of the order, and
 - (ii) to any loss suffered by the employee in consequence of the non-compliance.
- (2) Section 78 applies to an order under subsection (1)(a) as in relation to an order under section 77A.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.
- (4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.
- (5) If on that date the tribunal also determines the employee’s complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.”.

SCHEDULE 6

Section 39(2).

COMPROMISE CONTRACTS

Sex Discrimination Act 1975 (c. 65)

- 1 In section 77 of the Sex Discrimination Act 1975 (validity, etc. of contracts)—
 - (a) in subsection (4), after paragraph (a), there shall be inserted—
 - “(aa) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the Equal Pay Act 1970 applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;”;
 - (b) after subsection (4) there shall be inserted—

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

“(4A) The conditions regulating compromise contracts under this Act are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Act are satisfied.

(4B) In subsection (4A)—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) as respects proceedings in England and Wales—
 - (i) a barrister, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor of the Supreme Court who holds a practising certificate;
- (b) as respects proceedings in Scotland—
 - (i) an advocate, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor who holds a practising certificate.

(4C) For the purposes of subsection (4B) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

Race Relations Act 1976 (c. 74)

2 In section 72 of the Race Relations Act 1976 (validity, etc. of contracts)—

- (a) in subsection (4), after paragraph (a) there shall be inserted—
 - “(aa) to a contract settling a complaint to which section 54(1) applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;”;
- (b) after subsection (4) there shall be inserted—

“(4A) The conditions regulating compromise contracts under this Act are that—

- (a) the contract must be in writing;

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

- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Act are satisfied.

(4B) In subsection (4A)—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) as respects proceedings in England and Wales—
 - (i) a barrister, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor of the Supreme Court who holds a practising certificate.
- (b) as respects proceedings in Scotland—
 - (i) an advocate, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor who holds a practising certificate.

(4C) For the purposes of subsection (4B) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

Wages Act 1986 (c. 48)

3 In section 6 of the Wages Act 1986 (remedies for Part I contraventions and restriction on contracting out)—

- (a) in subsection (3) after the words “apply to” there shall be inserted “(a)” and at the end of the words so constituted paragraph (a) there shall be inserted the words “; or
- (b) an agreement to refrain from presenting or continuing with a complaint if the conditions regulating compromise agreements under this Part of this Act are satisfied in relation to the agreement”; and
- (b) after subsection (3) there shall be inserted—

“(4) The conditions regulating compromise agreements under this Part of this Act are that—

- (a) the agreement must be in writing;

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

- (b) the agreement must relate to the particular complaint;
- (c) the worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the worker in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser; and
- (f) the agreement must state that the conditions regulating compromise agreements under this Part of this Act are satisfied.

(5) In subsection (4)—

“independent”, in relation to legal advice to the worker, means that it is given by a lawyer who is not acting in the matter for the employer or for a person who is connected with the employer; and

“qualified lawyer” means—

(a) as respects proceedings in England and Wales—

- (i) a barrister, whether in practice as such or employed to give legal advice, or
- (ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

- (i) an advocate, whether in practice as such or employed to give legal advice, or
- (ii) a solicitor who holds a practising certificate.

(6) For the purposes of subsection (5) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

4 In section 288 of the 1992 Act (restrictions on contracting out)—

(a) after subsection (2) there shall be inserted—

“(2A) Subsection (1) does not apply to an agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in section 290 before an industrial tribunal if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

(2B) The conditions regulating compromise agreements under this Act are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular complaint;

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- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
 - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
 - (e) the agreement must identify the adviser; and
 - (f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.
- (2C) The proceedings excepted from subsection (2A) are proceedings on a complaint of non-compliance with section 188.”; and
- (b) after subsection (3) there shall be inserted—
- “(4) In subsection (2B)—
- “independent”, in relation to legal advice to the complainant means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and
- “qualified lawyer” means—
- (a) as respects proceedings in England and Wales—
 - (i) a barrister, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor of the Supreme Court who holds a practising certificate;
 - (b) as respects proceedings in Scotland—
 - (i) an advocate, whether in practice as such or employed to give legal advice, or
 - (ii) a solicitor who holds a practising certificate.
- (5) For the purposes of subsection (4) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

SCHEDULE 7

Section 49(1).

MISCELLANEOUS AMENDMENTS

Unfair selection for dismissal in redundancy cases: exclusion of qualifying conditions

- 1 In section 154 of the 1992 Act (exclusion of requirement for qualifying period of employment, etc where reason for dismissal related to trade union membership or activities)—
- (a) for the words “was one of those specified in section 152(1)” there shall be substituted the words “or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.”, and

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(b) there shall be inserted after those words, as subsection (2), the following—

“(2) For the purposes of this section—

“inadmissible”, in relation to a reason, means that it is one of those specified in section 152(1); and

“a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees required by section 153(a) is also shown.”, and the words preceding that subsection (2) shall become subsection (1).

Qualifying period for unfair dismissal protection: small businesses

2 Section 64A of the 1978 Act (extended qualifying period for right not to be unfairly dismissed where no more than twenty employees) shall be omitted.

Application of 1978 Act to Crown Employment and House of Commons Staff

3 In section 138 of the 1978 Act (application to Crown)—

(a) in subsection (1) (which applies Part I to Crown employees only so far as it relates to itemised pay statements), the words “(so far as it relates to itemised pay statements)” shall be omitted, and

(b) in subsection (4) (disapplication of any provision which would otherwise apply to Crown employment where national security certificate in force), for the words “For the purposes of this section, Crown employment does not include any employment” there shall be substituted the words “Part I (so far as it relates to itemised pay statements), Part II (except sections 22A to 22C and 31A), section 53 (apart from subsection (2A)), Part V (except so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60) and Part VIII and this Part (so far as relating to any of those provisions) shall not have effect in relation to any Crown employment”.

4 In section 139(1) of the 1978 Act (application of Part I to House of Commons staff only so far as it relates to itemised pay statements), the words “(so far as it relates to itemised pay statements)” shall be omitted.

Restrictions on disclosure of information, etc on grounds of national security

5 After section 146 of the 1978 Act there shall be inserted—

“146A National Security.

(1) Where in the opinion of any Minister of the Crown the disclosure of any information would be contrary to the interests of national security—

(a) nothing in any of the provisions to which this section applies shall require any person to disclose the information, and

(b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

(2) This section applies to—

(a) Part I so far as it relates to employment particulars,

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- (b) sections 22A to 22C and section 31A,
 - (c) Part III,
 - (d) section 53(2A),
 - (e) Part V so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60, and
 - (f) Part VIII and this Part so far as relating to any of the provisions in paragraphs (a) to (e).”.
- 6 In Schedule 9 of the 1978 Act (industrial tribunals)—
- (a) in paragraph 1 (regulations as to procedure), after sub-paragraph (4), there shall be inserted—
 - “(4A) Without prejudice to sub-paragraph (5) or paragraph 2, a Minister of the Crown may on grounds of national security direct an industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.”, and
 - (b) in paragraph 2 (national security), in sub-paragraph (2), for the words “A certificate” there shall be substituted the words “Except where the complaint is that a dismissal is unfair by reason of section 57A, 59(1)(a) or 60, a certificate”.
- 7 In paragraph 18 of Schedule 11 to the 1978 Act (Employment Appeal Tribunal Rules), for sub-paragraph (c) (power for rules to enable private hearings) there shall be substituted—
- “(c) for requiring or enabling the Appeal Tribunal to sit in private in circumstances in which an industrial tribunal is required or empowered to sit in private by virtue of paragraph 1 of Schedule 9;”.

Extension of employment protection provisions and related legislation to House of Lords Staff

- 8 In section 1 of the Equal Pay Act 1970 (requirement of equal treatment for men and women), after subsection (10A) there shall be inserted—
- “(10B) This section applies in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.
- In this subsection “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.
- 9 After section 85A of the Sex Discrimination Act 1975 (application to House of Commons staff) there shall be inserted—

“85B Application to House of Lords staff.

- (1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.
- (2) In this section “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.

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

- 10 After section 75A of the Race Relations Act 1976 (application to House of Commons staff) there shall be inserted—

“75B Application to House of Lords staff.

- (1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.
- (2) In this section “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.

- 11 After section 139 of the 1978 Act there shall be inserted—

“House of Lords staff

139A Provisions as to House of Lords staff.

- (1) The provisions of Parts I, II, III, V and VIII, and this Part and section 53 shall apply in relation to employment as a relevant member of the House of Lords staff as they apply to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Lords staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by a person who is not such a member.
- (3) For the purposes of the application of the enactments applied by subsection (1) in relation to a relevant member of the House of Lords staff—
 - (a) the reference in paragraph 1(5)(c) of Schedule 9 to a person’s undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and
 - (b) any other reference to an undertaking shall be construed as a reference to the House of Lords.
- (4) Where the terms of his contract of employment restrict the right of a relevant member of the House of Lords staff to take part in—
 - (a) certain political activities, or
 - (b) activities which may conflict with his official functions,nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.
- (5) In this section—

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

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“the court” means the High Court or the county court.

- (6) For the purposes of the application of the enactments applied by subsection (1) and of any civil employment claim in relation to a person continuously employed in or for the purposes of the House of Lords up to the time when he became so employed under a contract of employment with the Corporate Officer of the House of Lords, his employment shall not be treated as having been terminated by reason only of a change in his employer before or at that time.”.

12 In section 277 of the 1992 Act (House of Lords staff)—

- (a) in subsection (1), for the words “Sections 137 to 143 (rights in relation to trade union membership: access to employment)” there shall be substituted the words “The provisions of this Act (except those specified below)”,
- (b) after that subsection there shall be inserted—

“(1A) The following provisions are excepted from subsection (1)—
sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information),
Chapter II of Part IV (procedure for handling redundancies).”.

- (c) in subsection (2), after the word “bringing” there shall be inserted the words “a civil employment claim before the court or from bringing”,
- (d) after that subsection there shall be inserted—

“(2A) For the purposes of the application of the other provisions of this Act as they apply by virtue of this section—

- (a) the reference in section 182(1)(e) (disclosure of information for collective bargaining: restrictions) to a person’s undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and
- (b) any other reference to an undertaking shall be construed as a reference to the House of Lords.”, and
- (e) for subsections (3) to (6) there shall be substituted—

“(3) In this section—

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

“the court” means the High Court or a county court.”.

Power to extend 1978 Act in certain health and safety cases

13 In section 149 of the 1978 Act (general power to amend Act), after subsection (2) there shall be inserted—

- “(2A) The Secretary of State may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, sections

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22A to 22C (and any other provisions of this Act so far as relating to those sections) shall apply to such descriptions of persons other than employees as may be prescribed in the order as they apply to employees (but as if references to their employer were references to such person as may be so prescribed).”.

Power to provide for continuity of employment following reinstatement or re-engagement

- 14 In Schedule 13 to the 1978 Act (computation of period of employment), in paragraph 20 (re-instatement or re-engagement of dismissed employee)—
- (a) in sub-paragraph (2)(a), for the words “complaint under section 67” there shall be substituted the words “relevant complaint of dismissal”;
 - (b) in sub-paragraph (2)(c), for the words “section 134(3)” there shall be substituted the words “his relevant conciliation powers or”;
 - (c) after sub-paragraph (2)(c), there shall be inserted—

“(d) of the making of a relevant compromise contract.”; and

- (d) after sub-paragraph (2) there shall be inserted—

“(3) In sub-paragraph (2)—

“relevant complaint of dismissal” means a complaint under section 67 of this Act, a complaint under section 63 of the Sex Discrimination Act 1975 arising out of a dismissal or a complaint under section 54 of the Race Relations Act 1976 arising out of a dismissal;

“relevant conciliation powers” means section 134(3) of this Act, section 64(2) of the Sex Discrimination Act 1975 or section 55(2) of the Race Relations Act 1976; and

“relevant compromise contract” means an agreement or contract authorised by section 140(2)(fa) or (fb) of this Act, section 77(4)(aa) of the Sex Discrimination Act 1975 or section 72(4)(aa) of the Race Relations Act 1976.”.

Codes of practice on employment : use in proceedings

- 15 In section 56A of the Sex Discrimination Act 1975 (codes of practice in the field of employment), in subsection (10) (relevance of codes in proceedings under that Act before industrial tribunals), after the words “under this Act” there shall be inserted the words “or the Equal Pay Act 1970”.

Parliamentary procedure: orders modifying application of redundancy provisions

- 16 In section 149 of the 1978 Act (general power to amend Act)—
- (a) in subsection (4) (orders to be subject to affirmative procedure), for the words “subsection (1)” there shall be inserted the words “this section, other than one to which subsection (5) applies.”, and
 - (b) after subsection (4) there shall be inserted—

“(5) This subsection applies to an order under subsection (1)(b) which specifies only provisions contained in Part VI.”.

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

Miscellaneous minor corrections and amendments

- 17 In section 21(6) of the 1992 Act (repudiation by trade union of certain acts) for the words “six months” there shall be substituted the words “three months”.
- 18 In section 34(5) of the 1992 Act (eligibility for appointment as auditor), the second sentence shall be omitted.
- 19 In section 35(5) of the 1992 Act (appointment and removal of auditors)—
- (a) for the words “subsections (1) to (6)” there shall be substituted the words “subsections (1) to (4)”, and
 - (b) for the words “subsection (7)” there shall be substituted the words “subsection (5)”.
- 20 In section 110(3) of the 1992 Act (consideration by Commissioner of application for assistance for certain legal proceedings) for the word “(f)” there shall be substituted the word “(e)” and for the words “or ballot” there shall be substituted the words “or political ballot”.
- 21 In section 158 of the 1992 Act (special award in cases of dismissal on grounds related to union membership or activities) after subsection (6) there shall be inserted—
- “(7) Schedule 14 to the Employment Protection (Consolidation) Act 1978 (calculation of a week’s pay) shall apply for the purposes of this section with the substitution, for paragraph 7, of the following:—
- For the purposes of this Part in its application to section 158 of the Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is—
- (a) where the dismissal was with notice, the date on which the employer’s notice was given;
 - (b) where paragraph (a) does not apply, the effective date of termination.”.
- 22 In section 166(1) of the 1992 Act (consequences of failure to comply with order of reinstatement or re-engagement), for “(5)(a)” there shall be substituted “(5)”.
- 23 In section 187(2) of the 1992 Act (meaning of refusal to deal where refusal on grounds of union exclusion), paragraph (c) shall become subparagraph (iii) of paragraph (b) and there shall be inserted as paragraph (c) the following, preceded by “or”, namely—
- “(c) he terminates a contract with that person for the supply of goods or services.”.
- 24 In section 228 of the 1992 Act (separate workplace ballots before action by trade union) after subsection (3) there shall be inserted—
- “(4) In this section “place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection.”.
- 25 In section 229(3) of the 1992 Act (voting paper for industrial action ballot) for the word “20(3)” there shall be substituted the word “20(2)”.

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- 26 In section 246 of the 1992 Act (minor definitions relating to industrial action provisions) the definition of “place of work” shall be omitted.
- 27 In section 278(4)(c) of the 1992 Act (House of Commons staff), after the word “in” there shall be inserted the word “section”.

SCHEDULE 8

Section 49(2).

CONSEQUENTIAL AMENDMENTS

The Factories Act 1961 (c. 34)

- 1 In section 119A of the Factories Act 1961 (notice of employment of a young person to be sent to local careers office), in subsection (2)(a) (definition of “local careers office”), for the words from “, under” to “the arrangements)” there shall be substituted the words “services are provided in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 in the area”.

The Parliamentary Commissioner Act 1967 (c. 13)

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) there shall be inserted at the appropriate place—
“Office of the Commissioner for Protection Against Unlawful Industrial Action.”.

The Chronically Sick and Disabled Persons Act 1970 (c. 44)

- 3 In section 13(2) of the Chronically Sick and Disabled Persons Act 1970 (youth employment service), for the words “section 10(1)” there shall be substituted the words “section 10(6)”.

The Employment Agencies Act 1973 (c. 35)

- 4 In section 13(7) of the Employment Agencies Act 1973 (exclusions from provisions of that Act), after paragraph (g) there shall be inserted—
“(ga) services provided in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973;”.

The Employment and Training Act 1973 (c. 50)

- 5 In section 5(2)(a) of the Employment and Training Act 1973 (power to appoint advisers with respect to performance of certain functions), for the words from “on him” to the end there shall be substituted the words “or imposed on him by sections 2, 8 to 10 and 12 of this Act; and”.

The House of Commons Disqualification Act 1975 (c. 24)

- 6 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted at the appropriate place—

“Commissioner for Protection Against Unlawful Industrial Action.”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

7 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted at the appropriate place—

“Commissioner for Protection Against Unlawful Industrial Action.”.

The Sex Discrimination Act 1975 (c. 65)

8 In section 15 of the Sex Discrimination Act 1975 (employment agencies etc.)—

(a) for subsection (2) there shall be substituted—

“(2) It is unlawful for a local education authority or education authority or any other person to do any act in providing services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 which constitutes discrimination.”, and

(b) in subsection (5), for the words “or an education authority” there shall be substituted the words “, education authority or other person”.

The Race Relations Act 1976 (c. 74)

9 In section 14 of the Race Relations Act 1976 (employment agencies etc.)—

(a) for subsection (2) there shall be substituted—

“(2) It is unlawful for a local education authority or education authority or any other person to do any act in providing services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 which constitutes discrimination.”, and

(b) in subsection (5), for the words “or an education authority” there shall be substituted the words “, education authority or other person”.

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

10 In section 11 of the 1978 Act (enforcement of right to employment particulars)—

(a) in subsection (1) (references to determine what statement an employer ought to have given the employee), after the words “as required by section 1 or 4(1) or 8” there shall be inserted the words “(that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements)”;

(b) in subsection (4)(b) (questions as to particulars which ought to have been included in a note about disciplinary procedures), for the words “a note under section 1(4)” there shall be substituted the words “the note required by section 3 to be included in the statement under section 1”;

(c) in subsection (9) (time limit of three months for applications to industrial tribunals), at the end, there shall be inserted the words—

“or—

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- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months”; and after the word “made” (in the second place where it occurs) there shall be inserted “(a)”.
- 11 In section 53 of the 1978 Act (written statement of reasons for dismissal), in subsection (4) (complaint on ground of unreasonable refusal to provide written statement under subsection (1))—
- (a) for the words “refused to provide a written statement under subsection (1)” there shall be substituted the words “failed to provide a written statement under this section”, and
- (b) for the words “that subsection” there shall be substituted the words “this section”.
- 12 In section 56 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of unfair dismissal provisions), for the words “is entitled to return to work and has exercised her right to return in accordance with section 47” there shall be substituted the words “has the right to return to work under section 39 and has exercised it in accordance with section 42”.
- 13 In section 56A of the 1978 Act (exclusion of section 56)—
- (a) in subsection (1)(a), for the words “her absence began” there shall be substituted the words “the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal)”, and
- (b) in subsections (1)(b), (2)(a) and (3)(b), for the words “section 45(1)” there shall be substituted the words “section 39”.
- 14 In section 59 of the 1978 Act (dismissal on ground of redundancy)—
- (a) for the word “he”, in both places where it occurs, and the word “him” there shall be substituted the words “the employee”,
- (b) for the words “in his case” there shall be substituted the words “in the case of the employee”, and
- (c) at the end, there shall be inserted as subsection (3)—
- “(3) For the purposes of this Part “a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.”.
- 15 In section 61 of the 1978 Act (dismissal of replacement)—
- (a) in subsection (1)(a) (dismissal of employee on return to work of employee absent because of pregnancy or confinement)—
- (i) for the words “return to work of” there shall be substituted the words “resumption of work by”, and
- (ii) for the word “confinement” there shall be substituted the word “childbirth”, and
- (b) in subsection (2) (dismissal of employee on resumption of work by employee suspended as mentioned in section 19)—
- (i) after the word “19” there shall be inserted the words “or 45”, and

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- (ii) for the words “other employee to resume his original work” there shall be substituted the words “resumption of work by the other employee”.
- 16 In section 65 of the 1978 Act (exclusion in respect of dismissal procedures agreement), in subsection (4) (disapplication of subsection (3) in case of right not to be dismissed for any reason mentioned in section 60(1) or (2)), for the words from “right” to the end there shall be substituted the words “right conferred by section 60 or 60A(1).”.
- 17 In section 86 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of redundancy provisions), for the words “is entitled to return to work and has exercised her right to return in accordance with section 47” there shall be substituted the words “has the right to return to work under section 39 and has exercised it in accordance with section 42”.
- 18 In section 122 of the 1978 Act (employee’s rights on insolvency of employer), in subsection (4) (amounts treated as arrears of pay), after paragraph (c) there shall be inserted—
- “(ca) remuneration on suspension on maternity grounds under section 47;”.
- 19 In section 132 of the 1978 Act (recoupment of benefits), in subsection (1)(b) (payments from which provision for recoupment may be made), after the words “or section” there shall be inserted the words “47 or”.
- 20 In section 133(1)(a) of the 1978 Act (conciliation)—
- (a) after the word “19”, there shall be inserted the word “22A,”, and
- (b) after the word “31A,” there shall be inserted the words “46, 47,”.
- 21 In section 140 of the 1978 Act (restrictions on contracting-out), in subsection (2) (exceptions), after paragraph (f) there shall be inserted—
- “(fa) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under section 131;”.
- 22 In section 141(1) of the 1978 Act (disapplication of sections 1 to 4 in case of employees engaged in work wholly or mainly outside Great Britain), for the words “unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer” there shall be substituted the words “unless—
- (a) the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer, or
- (b) the law which governs his contract of employment is the law of England and Wales or of Scotland”.
- 23 In section 144 of the 1978 Act (mariners), for subsection (1) there shall be substituted—
- “(1) Sections 1 to 4 and 49 to 51 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.”.
- 24 In section 149(2) of the 1978 Act (provisions to which power to make orders amending that Act does not apply)—

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- (a) after the word “57,” there shall be inserted the word “57A,”
- (b) after the word “67,” there shall be inserted the words “73(6C) and (6D),”,
and
- (c) after the word “75,” there shall be inserted the words “75A(7) and (8),”.

25 In section 153 of the 1978 Act (interpretation)—

- (a) in subsection (1) (definitions)—
 - (i) after the definition of “business” there shall be inserted—

““childbirth” means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy;”,
 - (ii) for the definition of “expected week of confinement” there shall be substituted—

““expected week of childbirth” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;”,
 - (iii) after the definition of “job” there shall be inserted—

““maternity leave period” shall be construed in accordance with sections 34 and 35;”,
 - (iv) in the definition of “notified day of return”, for the words “has the meaning given by section 47(1) and (8)” there shall be substituted the words “shall be construed in accordance with section 43(3) and (4)”, and
 - (v) after that definition there shall be inserted—

““notified leave date” shall be construed in accordance with section 36;”, and
- (b) in subsection (5) (irrelevance of what law governs a person’s employment), for the word “For” there shall be substituted the words “Subject to section 141(1)(b), for”.

26 In Schedule 2 to the 1978 Act (maternity)—

- (a) in paragraph 2—
 - (i) in sub-paragraph (1), in the substituted subsection (3), for the words “sections 59 to 61” there shall be substituted the words “sections 57A to 61”,
 - (ii) in sub-paragraph (2), for the words “section 45(3)” there shall be substituted the words “section 41(1)”, and
 - (iii) in sub-paragraph (5), for the words “the original contract of employment” there shall be substituted the words “her contract of employment immediately before the beginning of her maternity leave period”,
- (b) in paragraph 4—
 - (i) in sub-paragraph (1), for paragraph (c) there shall be substituted—

“(c) the reference in section 84(3) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.”, and

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- (ii) in sub-paragraph (4), for the words “the original contract of employment” there shall be substituted the words “her contract of employment immediately before the beginning of her maternity leave period”,
 - (c) in paragraph 5—
 - (i) after the words “return to work” there shall be inserted the words “in accordance with section 42”, and
 - (ii) for the words from “during her absence” to “confinement” there shall be substituted the words “on a day falling after the commencement of her maternity leave period and before the notified day of return”,
 - (d) in paragraph 6—
 - (i) for sub-paragraph (1) there shall be substituted—
 - “(1) This paragraph applies where an employee has the right to return to work under section 39 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.”, and
 - (ii) in sub-paragraph (2), for the words “during the period of her absence” there shall be substituted the words “after her maternity leave period” and for the words “section 48” there shall be substituted the words “section 44”, and
 - (e) in paragraph 7(1), for the words “section 48” there shall be substituted the words “section 44”.
- 27 In Schedule 3 to the 1978 Act (rights of employees in period of notice)—
- (a) in paragraph 2—
 - (i) in sub-paragraph (1), after paragraph (b) there shall be inserted—
 - “(ba) the employee is absent from work wholly or partly because of pregnancy or childbirth; or”,
 - (ii) in sub-paragraph (1), after the words “paragraphs (a), (b)” there shall be inserted “, (ba)”, and
 - (iii) in sub-paragraph (2), after the words “statutory sick pay,” there shall be inserted the words “maternity pay, statutory maternity pay,”, and
 - (b) in paragraph 3(3)—
 - (i) after paragraph (a) there shall be inserted—
 - “(aa) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth, or”, and
 - (ii) after the words “statutory sick pay,” there shall be inserted the words “maternity pay, statutory maternity pay,”.
- 28 In Schedule 9 to the 1978 Act (industrial tribunals)—
- (a) in paragraph 1(4)(b) (regulations as to procedure), for the word “confinement” there shall be substituted the word “childbirth”,
 - (b) in sub-paragraph (1) of paragraph 1A (power to authorise pre-hearing reviews), for paragraph (a) there shall be substituted—
 - “(a) for authorising the carrying out by an industrial tribunal of a preliminary consideration of any proceedings before it (“a pre-hearing review”); and”, and

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- (c) after that paragraph there shall be inserted—
- “1B The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.”.
- 29 In paragraph 18(aa) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to regulate certain applications), for the words from “an application” to the end there shall be substituted the words “any application to the Appeal Tribunal may be made;”.
- 30 In paragraph 18(e) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to provide for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16), for the word “proceedings” there shall be substituted the words “matters arising on any appeal or application to the Appeal Tribunal”.
- 31 In Schedule 13 to the 1978 Act (computation of period of employment)—
- (a) in paragraph 9(1)(d), for the word “confinement” there shall be substituted the word “childbirth”, and
- (b) in paragraph 10—
- (i) for the words “section 45(1)” there shall be substituted the words “section 39”, and
- (ii) for the word “confinement” there shall be substituted the word “childbirth”.
- 32 In Schedule 14 to the 1978 Act (calculation of week’s pay), in paragraph 7(1) (the calculation date)—
- (a) after paragraph (e) there shall be inserted—
- “(ea) where the calculation is for the purposes of section 47, the day before the suspension referred to in section 45(1) begins or where that day falls within an employee’s maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under section 39, the day before the beginning of the maternity leave period;”, and
- (b) after paragraph (i) there shall be inserted—
- “(ia) where the calculation is for the purposes of section 75A and the dismissal was with notice, the date on which the employer’s notice was given;
- (ib) where the calculation is for the purposes of section 75A but sub-paragraph (ia) does not apply, the effective date of termination;”.

The Agricultural Training Board Act 1982 (c. 9)

- 33 In section 4(1)(f) of the Agricultural Training Board Act 1982 (functions of the Agricultural Training Board), at the end there shall be inserted the words “and may provide services or arrange for the provision of services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 (careers services)”.

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

The Industrial Training Act 1982 (c. 10)

- 34 In section 5(3)(e) of the Industrial Training Act 1982 (functions of industrial training boards), at the end there shall be inserted the words “and may provide services or arrange for the provision of services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 (careers services)”.

The Insolvency Act 1986 (c. 45)

- 35 In paragraph 13(2) of Schedule 6 to the Insolvency Act 1986 (amounts treated as remuneration), in paragraph (b), after the word “Act” there shall be inserted the words “or remuneration on suspension on maternity grounds under section 47 of that Act”.

The Wages Act 1986 (c. 48)

- 36 In section 30(1) and (3) of the Wages Act 1986 (excluded employments), for the words “Parts I and II do” there shall be substituted the words “Part I does”.
- 37 In section 33(4) of that Act (commencement), for the words “paragraphs 4 to 7” there shall be substituted the words “paragraph 4”.

The Employment Act 1988 (c. 19)

- 38 In subsection (1) of section 26 (status of trainees etc.) of the Employment Act 1988—
- (a) after the words “under section 2(3)” there shall be inserted the words “or section 14A”; and
 - (b) for the words “the said section 2, or as the case may be the said section 2(3)” there shall be substituted the words “any of those three sections”.

The Legal Aid Act 1988 (c. 34)

- 39 In Part II of Schedule 2 to the Legal Aid Act 1988 (excepted proceedings), after paragraph 5A there shall be inserted—
- “5B Proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A of the Trade Union and Labour Relations (Consolidation) Act 1992.”.

The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

- 40 In section 25 of the 1992 Act (application to Certification Officer as respects failures in relation to the register of members)—
- (a) in subsection (1), after the words “section 24” there shall be inserted the words “or 24A”; and
 - (b) after subsection (7), there shall be inserted—
 - “(8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the

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- period of one year beginning with the last day on which votes could be cast in the ballot.”.
- 41 In section 26 of the 1992 Act (application to court as respects failures in relation to the register of members)—
- (a) in subsection (1), after the words “section 24” there shall be inserted the words “or 24A”; and
 - (b) after subsection (6) there shall be inserted—
- “(7) The court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.”.
- 42 In section 32 of the 1992 Act (annual return), after subsection (6) there shall be inserted—
- “(7) For the purposes of this section and section 32A “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.”.
- 43 In section 43(1) (provisions not to apply in case of newly-formed trade unions)—
- (a) in paragraph (b) (disapplication of sections 32 to 37), after the words “annual return,” there shall be inserted the words “statement for members,” and
 - (b) after that paragraph there shall be inserted—
- “(ba) sections 37A to 37E (investigation of financial affairs), and”.
- 44 In section 44 of the 1992 Act (discharge of duties in case of union having branches or sections)—
- (a) in subsections (2) and (4), for the words “sections 32 to 37” there shall be substituted the words “sections 32 and 33 to 37”, and
 - (b) after subsection (4) there shall be inserted—
- “(5) Where the duty falling on a trade union under section 32 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of subsection (2) or (4) of this section, the duties imposed by section 32A in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.”.
- 45 In section 45(1) of the 1992 Act (offences for breach of duty under sections 32 to 37 etc.), after the words “annual return,” there shall be inserted the words “statement for members,”.
- 46 In section 49(3)(a) of the 1992 Act (election scrutineer to supervise certain matters), for the words “and distribution of the voting papers” there shall be substituted the words “of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution”.

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- 47 In section 62 of the 1992 Act (right of trade union members to obtain order to prevent inducement to take part in industrial action not having support of a ballot)—
- (a) at the end of subsection (1) (stating the right) there shall be inserted the following paragraph—
- “In this section “the relevant time” means the time when the application is made.”; and
- (b) in subsection (2) (circumstances in which action has such support), for paragraphs (a) to (c) there shall be substituted—
- “(a) the union has held a ballot in respect of the action—
- (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
- (ii) in relation to which the requirements of sections 227 to 231 were satisfied, and
- (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with section 229(2) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;
- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—
- (i) section 226B so far as applicable after the holding of the ballot, and
- (ii) section 231B; and
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.”.

- 48 In section 64 of the 1992 Act (right not to be unjustifiably disciplined), in subsection (5) (enforcement provisions not to affect remedy for infringement of other rights), for the words “and nothing” there shall be substituted the words “and, subject to section 66(4), nothing”.

- 49 In section 65(7) of the 1992 Act (definitions related to unjustifiable discipline)—
- (a) in the definition of “contract of employment”, at the end, there shall be inserted the words “, “employer” includes such a person and related expressions shall be construed accordingly;”; and
- (b) at the end, there shall be inserted the following definition, preceded by the word “and”—

““wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions.”.

- 50 In section 66 of the 1992 Act (complaint of infringement of right not to be unjustifiably disciplined), for subsection (4) there shall be substituted—

“(4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).”.

- 51 In section 67 of the 1992 Act (compensation for right not to be unjustifiably disciplined)—
- (a) in subsection (8) (application of maximum and minimum limits of compensation)—
 - (i) for the words “awarded against a trade union on an application under this section” there shall be substituted the words “calculated in accordance with subsections (5) to (7)”, and
 - (ii) for the words “156(1) of this Act (minimum basic award in certain cases of unfair dismissal)” there shall be substituted the words “176(6) of this Act (minimum award by Employment Appeal Tribunal in cases of exclusion or expulsion from union)”, and
 - (b) subsection (9) (limits to be applied before reduction for failure to mitigate etc.) shall cease to have effect.
- 52 In section 97(1)(b) and (2)(b) of the 1992 Act (amalgamation or transfer of engagements), for the words “sections 99 and 100 (notice to members and passing of resolution)” there shall be substituted the words “section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)”.
- 53 In section 98(1) of the 1992 Act (instrument of amalgamation or transfer to be submitted for approval of Certification Officer before resolution to approve it is voted on by members), for the words from “the resolution” to the end there shall be substituted the words “a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.”.
- 54 In section 99(1) of the 1992 Act (notice of instrument to be supplied to members), for the words from “that, not less” to “supplied with” there shall be substituted the words “that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by”.
- 55 In section 101 of the 1992 Act (registration of instrument of amalgamation or transfer), after subsection (2) there shall be inserted—
- “(3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until section 100E(6) has been complied with in relation to the scrutineer’s report on the ballot held on the resolution to approve the instrument.”.
- 56 In section 103 of the 1992 Act (complaints about passing of resolution approving instrument of amalgamation or transfer), for subsection (1) there shall be substituted—
- “(1) A member of a trade union who claims that the union—
 - (a) has failed to comply with any of the requirements of sections 99 to 100E, or
 - (b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,may complain to the Certification Officer.”.
- 57 In section 106 of the 1992 Act (amalgamation or transfer involving Northern Ireland union)—

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- (a) in subsection (2), for the words “98 to 100 (approval of instrument; notice to members; passing of resolution)” there shall be substituted the words “98 to 100E and 101(3) (approval of instrument, notice to members and ballot on resolution)”, and
 - (b) in subsection (4), for the words “section 103” there shall be substituted the words “sections 103 and 104”.

- 58 In section 109 of the 1992 Act (proceedings in relation to which assistance may be provided by Commissioner)—
 - (a) in subsection (1)—
 - (i) in paragraph (c) after the word “members” there shall be inserted the words “or secure confidentiality”; and
 - (ii) after paragraph (d) there shall be inserted—
 - “(da) an application to the court under section 45C (remedy for failure to comply with duty to secure positions not held by certain offenders);”, and
 - (b) in subsection (2), for the words from “in the High Court” to “arise out of” there shall be substituted the words “to the extent that they consist in, or arise out of, proceedings in the High Court or the Court of Session with respect to”.

- 59 In section 110(1) of the 1992 Act (application for assistance from Commissioner for the Rights of Trade Union Members for certain legal proceedings), for the words “to the Commissioner” there shall be substituted the words “to the Commissioner for the Rights of Trade Union Members (in this Chapter referred to as “the Commissioner”)”.

- 60 In section 111 of the 1992 Act (provision of assistance by that Commissioner), for subsection (3) there shall be substituted—
 - “(3) Where assistance is provided with respect to the conduct of proceedings—
 - (a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the court in the proceedings,
 - (b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in order to avoid the proceedings or bring the proceedings to an end, and
 - (c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief (in Scotland, an interim order) to the applicant.”.

- 61 In section 117(5) of the 1992 Act (provisions operating only in relation to certain positions in case of special register bodies), for the words “Chapter IV (elections for certain union positions) only applies” there shall be substituted the words “Sections 45B and 45C (disqualification) and Chapter IV (elections) apply only”.

- 62 In section 118(4) of the 1992 Act (provisions not to apply in case of federated trade unions consisting wholly or mainly of representatives of constituent or affiliated organisations)—

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- (a) in paragraph (c) (disapplication of sections 32 to 37), after the words “annual return,” there shall be inserted the words “statement for members,” and
 - (b) after that paragraph there shall be inserted—
 - “(ca) sections 37A to 37E (investigation of financial affairs), and”.
- 63 In section 119 of the 1992 Act (expressions relating to trade unions)—
- (a) before the definition of “branch or section” there shall be inserted—
 - ““agent” means a banker or solicitor of, or any person employed as an auditor by, the union or any branch or section of the union;”, and
 - (b) after the definition of “executive” there shall be inserted—
 - ““financial affairs” means affairs of the union relating to any fund which is applicable for the purposes of the union (including any fund of a branch or section of the union which is so applicable);”.
- 64 In section 131(1) of the 1992 Act (administrative provisions applying to employers' associations)—
- (a) for the words “sections 32 to 37” there shall be substituted the words “section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37”,
 - (b) after the word “audit,” there shall be inserted—
 - “sections 37A to 37E (investigation of financial affairs),”, and
 - (c) for the words “section 45” there shall be substituted the words “sections 45 and 45A”.
- 65 For section 133 of the 1992 Act (employers' associations: amalgamations etc.) there shall be substituted—

“133 Amalgamations and transfers of engagements.

- (1) Subject to subsection (2), the provisions of Chapter VII of Part I of this Act (amalgamations and similar matters) apply to unincorporated employers' associations as in relation to trade unions.
 - (2) In its application to such associations that Chapter shall have effect—
 - (a) as if in section 99(1) for the words from “that every” to “accompanied by” there were substituted the words “that, not less than seven days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with”,
 - (b) as if the requirements imposed by sections 100A to 100E consisted only of those specified in sections 100B and 100C(1) and (3)(a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting, and
 - (c) with the omission of sections 101(3) and 107.”.
- 66 In section 135(3) of the 1992 Act (provisions not to apply in case of federated employers' associations consisting wholly or mainly of representatives of constituent or affiliated organisations)—
- (a) in paragraph (c) (disapplication of sections 32 to 37), for the words “sections 32 to 37” there shall be substituted the words “section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37”, and

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(b) after that paragraph there shall be inserted—

“(ca) sections 37A to 37E (investigation of financial affairs), and”.

- 67 In section 154 of the 1992 Act (exclusion of requirement of qualifying period), the words “and 64A” shall be omitted and for the words “Sections” and “do” there shall be substituted the words “Section” and “does”.
- 68 In section 158(2) of the 1992 Act (minimum amount of special award in certain cases), the words “, but subject to the following provisions of this section.” shall be inserted at the end.
- 69 In section 164(1)(a) of the 1992 Act (order in such a case for continuation of contract for purposes of pay or any benefit derived from the employment), for the words “any benefit” there shall be substituted the words “any other benefit”.
- 70 In section 191(1)(a) of the 1992 Act (no remuneration under protective award for period after fair dismissal for a reason other than redundancy), for the words “for a reason other than redundancy” there shall be substituted the words “otherwise than as redundant”.
- 71 In section 198(1)(b) of the 1992 Act (power to adapt provisions in case of collective agreement establishing arrangements for the handling of redundancies), for the words “the handling of redundancies” there shall be substituted the words “handling the dismissal of employees as redundant”.
- 72 In section 219 of the 1992 Act (protection of acts in contemplation or furtherance of trade dispute from certain tort liabilities), in subsection (4) for the words from “to section 226” to the end there shall be substituted the words “to sections 226 (requirement of ballot before action by trade union) and 234A (requirement of notice to employer of industrial action); and in those sections “not protected” means excluded from the protection afforded by this section or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.”.
- 73 In section 226 of the 1992 Act (act of trade union not protected unless industrial action has support of a ballot)—
- (a) at the end of subsection (1) (requiring the ballot) there shall be inserted the following paragraph—
- “In this section “the relevant time”, in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.”;
- (b) in subsection (2) (circumstances in which action has such support) for paragraphs (a) to (c) there shall be substituted—
- “(a) the union has held a ballot in respect of the action—
- (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
- (ii) in relation to which the requirements of sections 227 to 231A were satisfied, and
- (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;

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- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—
 - (i) section 226B so far as applicable after the holding of the ballot, and
 - (ii) section 231B; and
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.”; and

- (c) in subsection (3) (separate workplace ballots), for the words from “section 228(1),” to “in relation” there shall be substituted the words “section 228(1)—
 - (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and
 - (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with,

in relation”.

- 74 In section 232 of the 1992 Act (balloting of overseas members)—
 - (a) in subsection (1) (sections 227 to 230 not to apply), for the words “227 to 230” there shall be substituted the words “226B to 230 and 231B”, and
 - (b) for subsection (2) (operation of section 231) there shall be substituted—
 - “(2) Where overseas members have voted in the ballot—
 - (a) the references in sections 231 and 231A to persons entitled to vote in the ballot do not include overseas members, and
 - (b) those sections shall be read as requiring the information mentioned in section 231 to distinguish between overseas members and other members.”.
- 75 In section 235 of the 1992 Act (meaning of “contract of employment” and related expressions)—
 - (a) for “234” there shall be substituted “234A”; and
 - (b) for the words “and related expressions” there shall be substituted the words “and “employer” and other related expressions”.
- 76 In section 237 of the 1992 Act (no right to complain of unfair dismissal in case of employee taking part in unofficial industrial action), after subsection (1) there shall be inserted—
 - “(1A) Subsection (1) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in section 57A or 60 of the Employment Protection (Consolidation) Act 1978 (dismissal in health and safety cases and maternity cases).

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In this subsection “redundancy case” has the meaning given in section 59 of that Act.”.

77 In section 238 of the 1992 Act (tribunal not to determine whether or not dismissal is fair where there is a lock-out or industrial action), after subsection (2) there shall be inserted—

“(2A) Subsection (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in section 57A or 60 of the Employment Protection (Consolidation) Act 1978 (dismissal in health and safety cases and maternity cases).

In this subsection “redundancy case” has the meaning given in section 59 of that Act.”.

78 In section 254 of the 1992 Act (Certification Officer), after subsection (5) there shall be inserted—

“(5A) Subject to subsection (6), ACAS shall pay to the Certification Officer such sums as he may require for the performance of any of his functions.”.

79 For section 266 of the 1992 Act (Commissioner for the Rights of Trade Union Members) and the heading immediately preceding it there shall be substituted—

“The Commissioner for the Rights of Trade Union Members and the Commissioner for Protection Against Unlawful Industrial Action

266 The Commissioners.

(1) There—

- (a) shall continue to be an officer called the Commissioner for the Rights of Trade Union Members whose function is to provide assistance in accordance with Chapter VIII of Part I of this Act in connection with certain legal proceedings, and
- (b) shall be an officer called the Commissioner for Protection Against Unlawful Industrial Action whose function is to provide assistance in accordance with sections 235B and 235C of this Act in connection with proceedings brought by virtue of section 235A.

(2) Each of the Commissioners shall be appointed by the Secretary of State.

(3) Each of the Commissioners shall have an official seal for the authentication of documents required for the purposes of his functions.

(4) Anything authorised or required by or under this Act to be done by either of the Commissioners may be done by a member of his staff authorised by him for that purpose, whether generally or specifically.

An authorisation given for the purposes of this subsection continues to have effect during a vacancy in the office of the Commissioner concerned.

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- (5) Neither of the Commissioners nor any member of the staff of either of the Commissioners shall, in that capacity, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.”.
- 80 In section 267 of the 1992 Act (terms of appointment of Commissioner for the Rights of Trade Union Members)—
- (a) in subsection (1), for the words “The Commissioner” there shall be substituted the words “Each of the Commissioners”,
 - (b) in subsection (2), for the words “the Commissioner” there shall be substituted the words “one of the Commissioners”, and
 - (c) in subsection (3)—
 - (i) for the words “that office” there shall be substituted the words “office as one of the Commissioners”, and
 - (ii) for the words “his functions as the Commissioner” there shall be substituted the words “the functions of the office”.
- 81 In section 268 of the 1992 Act (remuneration, pension etc. of Commissioner)—
- (a) in subsection (1), for the words “the Commissioner” there shall be substituted the words “each of the Commissioners”,
 - (b) in subsection (2), for the words “any holder of the office of Commissioner” there shall be substituted the words “any person who holds office as one of the Commissioners”, and
 - (c) in subsection (3), for the words “the Commissioner” there shall be substituted the words “one of the Commissioners”.
- 82 In section 269 of the 1992 Act (staff of Commissioner)—
- (a) in subsection (1), for the words “The Commissioner” there shall be substituted the words “Each of the Commissioners”,
 - (b) in subsection (2), for the words “the Commissioner” there shall be substituted the words “one of the Commissioners”,
 - (c) in subsection (3)—
 - (i) for the words “the Commissioner becomes the Commissioner” there shall be substituted the words “one of the Commissioners becomes one of the Commissioners”, and
 - (ii) for the words “the Commissioner shall be treated for the purposes of the scheme as service as an employee of the Commissioner” there shall be substituted the words “Commissioner shall be treated for the purposes of the scheme as service as an employee”, and
 - (d) in subsection (4), for the words “The Commissioner is not” there shall be substituted the words “Neither of the Commissioners is”.
- 83 In section 270 of the 1992 Act (financial provisions relating to Commissioner)-
- (a) in subsection (1), for the words “The Commissioner” there shall be substituted the words “Each of the Commissioners”, and
 - (b) in subsection (2)—
 - (i) for the words “to the Commissioner” there shall be substituted the words “to each of the Commissioners”, and
 - (ii) for the words “by the Commissioner” there shall be substituted the words “by him”.
- 84 In section 271 of the 1992 Act (annual report and accounts of Commissioner)—

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- (a) in subsection (1), for the words “the Commissioner” there shall be substituted the words “each of the Commissioners”, and
- (b) in subsections (2) and (3), for the words “The Commissioner” there shall be substituted the words “Each of the Commissioners”.
- 85 In section 278 of the 1992 Act (House of Commons staff)—
- (a) after subsection (2) there shall be inserted—
- “(2A) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.”, and
- (b) in subsection (3) at the end there shall be inserted—
- ““civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and
- “the court” means the High Court or the county court.”.
- 86 In section 290 of the 1992 Act (functions of conciliation officers in relation to certain proceedings), after paragraph (a) there shall be inserted—
- “(aa) section 68 (right not to suffer deduction of unauthorised or excessive union subscriptions);”.
- 87 In section 291 of the 1992 Act (right of appeal from industrial tribunal)—
- (a) subsection (1) (appeal on question of law or fact in the case of section 174), and
- (b) in subsection (2) (appeal on question of law in the case of any other provision of 1992 Act) the words “any other provision of”,
- shall cease to have effect.
- 88 In section 296 of the 1992 Act (meaning of “worker” and “employer”), after subsection (2) there shall be inserted—
- “(3) This section has effect subject to section 68(11).”.
- 89 In section 299 of the 1992 Act (index of defined expressions)—
- (a) after the entry relating to “advertisement” there shall be inserted—
-
- “agent (of trade union) section 119”,
-
- (b) after the entry relating to “dismiss and dismissal” there shall be inserted—
-
- “the duty of confidentiality section 24A(3)”,
-
- (c) after the entry relating to “executive” there shall be inserted—
-
- “financial affairs (of trade union) section 119”.
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SCHEDULE 9

Section 50.

TRANSITIONAL PROVISIONS AND SAVINGS

General

- 1
- (1) An order under section 52 of this Act may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate.
 - (2) Nothing in the following provisions of this Schedule prejudices the generality of subparagraph (1) above.
 - (3) Nothing in this Schedule prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

Deduction of trade union subscriptions

- 2
- For the purposes of section 68 of the 1992 Act (as substituted by section 15 of this Act) a deduction representing a payment to a trade union in respect of a worker's membership which is made in accordance with arrangements existing between his employer and the union immediately before the day on which section 15 comes into force under which deductions were made in his case before that day shall be treated as an authorised deduction where—
- (a) the day on which the deduction is made falls before the end of the period of one year beginning with the day on which section 15 comes into force, and
 - (b) written notice from the worker stating that he does not wish such deductions to be made has not been received by the employer in time for it to be reasonably practicable for him to secure that the deduction is not made.

Employment particulars

- 3
- (1) In this paragraph “existing employee” means an employee whose employment with his employer has begun before the day on which section 26 of this Act comes into force (whether or not the provisions of sections 1 to 6 of the 1978 Act applied to him before that day).
 - (2) Subject to the following provisions of this paragraph, the provisions substituted for sections 1 to 4 and 6 of the 1978 Act by section 26 of this Act shall not apply to any existing employee.
 - (3) Where an existing employee, at any time—
 - (a) on or after the day on which section 26 of this Act comes into force, and
 - (b) either before the end of his employment or within the period of three months beginning with the day on which his employment ends,requests from his employer a statement under section 1 of the 1978 Act (as substituted by section 26), the employer shall (subject to section 5 and any other provision disapplying or having the effect of disapplying section 1) be treated as being required by section 1 to give him a written statement under that section, in accordance with the provisions of the 1978 Act as so substituted, not later than two months after the request is made; and section 4 of that Act (as so substituted) shall, subject as aforesaid, apply in relation to the existing employee after he makes the request.

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- (4) An employer shall not be required to give a statement under section 1 by virtue of sub-paragraph (3) above to an existing employee on more than one occasion by virtue of that sub-paragraph.
- (5) Where—
- (a) on or after the day on which section 26 of this Act comes into force there is in the case of any existing employee a change in any of the matters particulars of which would, had he been given a statement of particulars as at that day under section 1 of the 1978 Act (as substituted by that section), have been included or referred to in the statement, and
 - (b) he has not previously requested a statement under sub-paragraph (3) above,
- subsections (1) and (5) of section 4 of the 1978 Act (as substituted by section 26 of this Act) shall be treated (subject to section 5 and any other provision disapplying or having the effect of disapplying section 4) as requiring his employer to give him a written statement containing particulars of the change at the time specified in subsection (1) of section 4; and subsections (3) and (6) of that section shall apply accordingly.
- (6) Nothing in any enactment providing for the application of sections 1 to 4 of the 1978 Act to a person who comes or ceases to come within any of the exceptions from those sections specified in that Act shall have effect in relation to an existing employee by reason of his coming or ceasing to come within that exception by virtue of any of the amendments of the 1978 Act made by this Act.

Transfers of undertakings

- 4 The amendments of the Transfer of Undertakings (Protection of Employment) Regulations 1981 made by section 33 of this Act shall not have effect in relation to any transfer of an undertaking taking place before the date on which that section comes into force; and, accordingly, the repeal by this Act of—
- (a) section 94 of the 1978 Act, and
 - (b) section 23 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965,
- shall have effect only in relation to any change in the ownership of a business occurring on or after that date.

Wages Councils

- 5 (1) Notwithstanding the repeal of Part II of the Wages Act 1986 by section 35 of this Act, the provisions of that Part specified or referred to below shall continue to have effect, on and after the day appointed for the repeal (“the appointed day”), in accordance with the following provisions.
- (2) Section 16 (effect and enforcement of wages orders under section 14) shall have effect in relation to a failure occurring or continuing on or after the appointed day to pay, with respect to any period ending before that day, an amount equal to or exceeding the statutory minimum remuneration as it has effect in relation to such a failure before the appointed day; and, subject to the following provisions, the other sections of Part II which relate to section 16 shall continue to have effect accordingly.
- (3) Section 19(1) and (4) (obligation to keep records etc) shall have effect on and after the appointed day as if—

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- (a) the reference to the provisions of Part II being complied with in relation to the payment of remuneration were a reference to their having been complied with in relation to payments of remuneration made—
 - (i) before the appointed day, or
 - (ii) on or after the appointed day with respect to any period ending before that day;
- (b) the reference to deductions or payments made were references to deductions or payments so made; and
- (c) in a case where the three-year retention period for records would end after the expiry of the period of six months beginning with the appointed day, the retention period were—
 - (i) that period of six months, or
 - (ii) if within that period of six months a court so orders, such longer period as is specified by the court;

and, subject to the following provisions, the other sections of Part II which relate to section 19 shall continue to have effect accordingly.

- (4) Section 20 (wages inspectors) shall continue to have effect on and after the appointed day for the purposes of this paragraph; but—
 - (a) the powers conferred by subsections (3) and (4) shall not be exercisable after the end of the period of six months beginning with the appointed day, and
 - (b) subsection (6) shall not authorise the institution of proceedings by a wages inspector after the end of the period of six months beginning with the appointed day.
- (5) Paragraph 4 of Schedule 3 shall continue to have effect on and after the appointed day in relation to orders under section 14 made before that day.
- (6) In the operation of any provision of Part II by virtue of this paragraph, references to a wages order applying shall have effect as references to an order under section 14 having applied at any time before the appointed day.

SCHEDULE 10

Section 51.

REPEALS AND REVOCATIONS

<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
9 & 10 Eliz. 2 c. 34.	Factories Act 1961.	Section 117(5)(b).
1965 c. 19 (N.I.).	Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.	Sections 23 and 23A. In section 29(1), the words “(except section 23)”. Section 32(4). Section 54(2). In Schedule 5, paragraph 2.
1968 c. 73.	Transport Act 1968.	Section 94(10).

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<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
1969 c. 32.	Finance Act 1969.	In section 58(4), in the Table, the entries relating to a local education authority in England and Wales and an education authority in Scotland.
1970 c. 44.	Chronically Sick and Disabled Persons Act 1970.	Section 13(1).
1973 c. 50.	Employment and Training Act 1973.	In section 4(3)(e)(ii), the words “a local education authority,”. In section 4(5)(d), the words “a local education authority or” and “by section 8 of this Act or, as the case may be,”.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part III of Schedule 1, the first entry beginning “Member of a Wages Council”.
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1, the first entry beginning “Member of a Wages Council”.
S.I. 1976/1043 (N.I. 16).	Industrial Relations (Northern Ireland) Order 1976.	In Schedule 5, in Part II, paragraphs 19, 20 and 23(3).
1978 c. 44.	Employment Protection (Consolidation) Act 1978.	Section 11(3) and (7). In section 18, in subsection (1), the words “council or”, subsection (2)(a), in subsection (3)(a), the words “(a) or”, and in subsection (5), the words “council or”. In section 53(4), the words “against his employer”. In section 55(5) and (6), “, 64A”. Section 64A. Section 93(4). Sections 94 and 95. In section 100(1), the words “(except section 94)”.

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<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
		In section 123(4), the words “, maternity pay under Part III of this Act”.
		In section 128(4), the words “paragraph 1 of”.
		In section 133(1)(c), the words “or claims”.
		In section 138, in subsection (1) the words “(so far as it relates to itemised pay statements)” and in subsection (2) the words “, subject to subsections (3) to (5),”.
		In section 139(1), the words “(so far as it relates to itemised pay statements)”.
		In section 146(4), the words “1, 4,”.
		In section 149(1)(c), “64A(1),”.
		In section 153, in subsection (1), the definitions of “confinement”, “expected week of confinement” and “original contract of employment” and subsection (3).
		In Schedule 9, in paragraph 1A(2)(a) the words “person or” and paragraph 8.
		In Schedule 12, paragraph 13.
		In Schedule 13, in paragraph 11(1), “, 64A(1)”.
		In Schedule 15, paragraph 10(2).
1979 c. 36.	Nurses, Midwives and Health Visitors Act 1979.	In Schedule 7, paragraph 31.
1980 c. 42.	Employment Act 1980.	Section 8(1). Section 11. In Schedule 1, paragraphs 10, 21(a) and 32.

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<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
1980 c. 44.	Education (Scotland) Act 1980.	Sections 126 to 128.
S.I. 1981/1794.	Transfer of Undertakings (Protection of Employment) Regulations 1981.	In Regulation 2(1), in the definition of “undertaking”, the words from “but does not” to the end. Regulation 11(7).
1982 c. 9.	Agricultural Training Board Act 1982.	In section 4(1)(f), the words “or 8”.
1982 c. 10.	Industrial Training Act 1982.	In section 5(3)(e), the words “or 8”.
1982 c. 46.	Employment Act 1982.	In Schedule 2, paragraphs 8(1) to (4) and (5)(a).
1986 c. 48.	Wages Act 1986.	Section 9(3). Part II. Section 31(a) and (b). In section 33, in subsection (2) the entries relating to sections 24 and 25(1) to (3), in subsection (4) the words from “Part II (excluding” to “relating to Part II;” and in subsection (7) the words from “paragraphs 5” to “thereto;”. Schedules 2 and 3. In Schedule 4, paragraphs 5 to 7. In Schedule 6, paragraphs 1 to 8.
1986 c. 50.	Social Security Act 1986.	In Schedule 10, paragraph 75.
1988 c. 1.	Income and Corporation Taxes Act 1988.	In section 175(4), the words “Part II of the Wages Act 1986;”.
1989 c. 13.	Dock Work Act 1989.	Section 6(2).
1989 c. 24.	Social Security Act 1989.	In Schedule 5, paragraph 15.
1989 c. 38.	Employment Act 1989.	Section 13. In Schedule 6, paragraph 18.

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<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
1990 c. 35.	Enterprise and New Towns (Scotland) Act 1990.	In section 2(3), the word “and” at the end of paragraph (b).
1992 c. 24.	Offshore Safety (Protection Against Victimisation) Act 1992.	The whole Act.
1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	Section 24(4). In Section 32(3), the word “and” at the end of paragraph (b). In section 34(5), the second sentence. In section 43(1), the word “and” at the end of paragraph (b). In section 52(1), the word “and” at the end of paragraph (c). In section 65(2), the word “or” at the end of paragraph (d). In section 65(7), the word “and” following the definition of “contract of employment”. Section 67(9). In section 74(3), the word “and” at the end of the entry relating to section 77. In section 78(1), the word “and” at the end of paragraph (c). Sections 115 and 116. In section 118(4), the word “and” at the end of paragraph (c). In section 135(3), the word “and” at the end of paragraph (c). In section 154, the words “and 64A”.

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<i>Chapter or Number</i>	<i>Title</i>	<i>Extent of repeal or revocation</i>
		In section 188(4), the word “and” at the end of paragraph (d).
		Section 190(3).
		In section 209, the words from “and in particular” to the end.
		In section 246, the definition of “place of work”.
		In section 249(2), the first sentence.
		Section 256(4).
		Section 273(4)(c).
		In section 277(2), the words “under those sections”.
		Section 283.
		In section 288(1)(b), the word “unreasonable”.
		In section 290(e), the word “unreasonable” and the words “where employment subject to union membership agreement”.
		In section 291, subsection (1) and, in subsection (2), the words “any other provision of”.
		In section 299, the entries relating to “the Commissioner” and “redundancy”.
		In Schedule 2, paragraphs 15, 24(3) and 34(3).