

SCHEDULES

SCHEDULE 1

Section 15.

MINOR AND CONSEQUENTIAL AMENDMENTS

The Courts Act 1971 (c. 23)

- 1 In Part IA of Schedule 2 to the Courts Act 1971 (which specifies the office-holders who are eligible for appointment as a circuit judge), for the entry beginning “President of Industrial Tribunals” substitute—

“President of the Employment Tribunals (England and Wales) or member of a panel of chairmen established by regulations under section 1(1) of the Employment Tribunals Act 1996 for employment tribunals for England and Wales.”

The Sex Discrimination Act 1975 (c. 65)

- 2 For section 77(4B) and (4C) of the Sex Discrimination Act 1975 substitute—

“(4B) A person is a relevant independent adviser for the purposes of subsection (4A)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Secretary of State.

(4BA) But a person is not a relevant independent adviser for the purposes of subsection (4A)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4B)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4B)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

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- (4BB) In subsection (4B)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (4BC) In subsection (4B)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
- (4C) For the purposes of subsection (4BA) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control, or
 - (b) if both are companies of which a third person (directly or indirectly) has control.”

The Race Relations Act 1976 (c. 74)

- 3 For section 72(4B) and (4C) of the Race Relations Act 1976 substitute—
- “(4B) A person is a relevant independent adviser for the purposes of subsection (4A)(c)—
- (a) if he is a qualified lawyer,
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
 - (d) if he is a person of a description specified in an order made by the Secretary of State.
- (4BA) But a person is not a relevant independent adviser for the purposes of subsection (4A)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
 - (b) in the case of a person within subsection (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
 - (c) in the case of a person within subsection (4B)(c), if the complainant makes a payment for the advice received from him, or
 - (d) in the case of a person of a description specified in an order under subsection (4B)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4BB) In subsection (4B)(a) “qualified lawyer” means—

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- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4BC) In subsection (4B)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

(4C) For the purposes of subsection (4BA) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”

The Judicial Pensions Act 1981 (c. 20)

4 In column 1 of the Table in section 16 of the Judicial Pensions Act 1981 (which provides a list of judicial offices for the purposes of provisions about lump sums, widows' pensions etc.), for the entry beginning “President of Industrial Tribunals” substitute—

“Any office pensionable under section 12 of this Act”.

5 In section 17(4) of that Act (which makes special provision about lump sums for certain offices), for “the office of President of Industrial Tribunals, or any other” substitute “any”.

The Courts and Legal Services Act 1990 (c. 41)

6 In Schedule 11 to the Courts and Legal Services Act 1990 (which specifies judges who are barred from legal practice), for the entry beginning “President of Industrial Tribunals” substitute—

“President of the Employment Tribunals (England and Wales) or member of a panel of chairmen established by regulations under section 1(1) of the Employment Tribunals Act 1996 for employment tribunals for England and Wales”.

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

7 After section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (which is inserted by section 7 of this Act) insert—

“212B Dismissal procedures agreements

ACAS may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights Act 1996), refer any matter to the

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arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).”

8 In section 273(2) of that Act (which specifies the provisions which do not apply to persons in Crown employment), for “section 87(3) (power of court” substitute “section 87(4)(b) (power of tribunal”.

9 (1) Section 288 of that Act (which restricts contracting out of the provisions of the Act) is amended as follows.

(2) In subsection (2B)(b) (which provides that a compromise agreement must relate to the particular complaint), for “complaint” substitute “proceedings”.

(3) For subsections (4) and (5) substitute—

“(4) A person is a relevant independent adviser for the purposes of subsection (2B)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Secretary of State.

(4A) But a person is not a relevant independent adviser for the purposes of subsection (2B)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4B) In subsection (4)(a) “qualified lawyer” means—

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

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(4C) An order under subsection (4)(d) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”

10 In section 301(1) of that Act (which provides that that Act extends to England and Wales and Scotland), after “Wales and” insert “(apart from section 212A(6)) to”.

The Disability Discrimination Act 1995 (c. 50)

11 For section 9(4) and (5) of the Disability Discrimination Act 1995 substitute—

“(4) A person is a relevant independent adviser for the purposes of subsection (3)

(a)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Secretary of State.

(4A) But a person is not a relevant independent adviser for the purposes of subsection (3)(a) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4B) In subsection (4)(a) “qualified lawyer” means—

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and

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(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4C) In subsection (4)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”

The Employment Tribunals Act 1996 (c. 17)

12 (1) Section 4 of the Employment Tribunals Act 1996 (which makes provision about the composition of an employment tribunal) is amended as follows.

(2) In subsection (1) (which provides that, subject to the following provisions of that section, tribunal proceedings are to be heard by the chairman and other members), after “Subject to the following provisions of this section” insert “and to section 7(3A)”.

(3) In subsection (3)(a) (which specifies the tribunal proceedings under the Trade Union and Labour Relations (Consolidation) Act 1992 which are to be heard by the chairman alone unless he decides otherwise), after “68A” (which is inserted by section 3 of this Act) insert “, 87”.

(4) In subsection (6) (which makes provision for employment tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone), for the words from “, in such circumstances” to “tribunal may” substitute “any act which is required or authorised by the regulations to be done by an employment tribunal and is of a description specified by the regulations for the purposes of this subsection may”.

13 In section 5(1) of that Act (which provides for the payment of remuneration to the Presidents of the Employment Tribunals and to full-time chairmen of employment tribunals), at the end insert “and

- (d) any person who is a legal officer appointed in accordance with such regulations.”.

14 (1) Section 7 of that Act (which authorises the making of employment tribunal procedure regulations) is amended as follows.

(2) Omit subsection (3)(f)(i) (which authorises the making of regulations about the persons entitled to appear and be heard on behalf of parties in tribunal proceedings).

(3) In subsection (4) (which provides that it is an offence to fail to comply with certain requirements imposed by an employment tribunal by virtue of regulations), after paragraph (b) insert “, or

- (c) any requirement imposed by virtue of employment tribunal procedure regulations to give written answers for the purpose of facilitating the determination of proceedings as mentioned in subsection (3A), (3B) or (3C),”.

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- 15 In section 9(4) of that Act (which enables employment tribunal procedure regulations to provide that issues relating to the entitlement to bring or contest proceedings may be heard and determined in advance), for the words “any issue” onwards substitute “separately any preliminary issue of a description prescribed by the regulations which is raised by any case.”
- 16 In section 18(1)(b) of that Act (which specifies the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to which the provisions about conciliation apply), after “68” insert “, 86”.
- 17 (1) Section 21 of that Act (jurisdiction of the Employment Appeal Tribunal) is amended as follows.
- (2) In subsection (1) (which specifies the decisions from which an appeal lies to the Employment Appeal Tribunal), at the end insert “or
(g) this Act.”
- (3) After subsection (3) insert—
- “(4) The Appeal Tribunal also has any jurisdiction in respect of matters other than appeals which is conferred on it by or under—
- (a) the Trade Union and Labour Relations (Consolidation) Act 1992,
- (b) this Act, or
- (c) any other Act.”

The Employment Rights Act 1996 (c. 18)

- 18 In section 23 of the Employment Rights Act 1996 (which makes provision for complaints to an employment tribunal in respect of unlawful deductions from wages etc.), at the end insert—
- “(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).”
- 19 In section 112(4) of that Act (which provides for the making of an award of compensation for unfair dismissal in accordance with sections 118 to 127 where no order for reinstatement or order for re-engagement is made), for “127” substitute “127A”.
- 20 In section 117(3)(a) of that Act (which provides for the making of an award of compensation for unfair dismissal in accordance with sections 118 to 127 where a complainant is not reinstated or re-engaged in accordance with an order for reinstatement or an order for re-engagement), for “127” substitute “127A”.
- 21 (1) Section 118 of that Act (which provides that an award of compensation for unfair dismissal shall consist of a basic award, a compensatory award and, in certain cases, a special award) is amended as follows.
- (2) In subsection (1)(b) (which provides that an award of compensation for unfair dismissal shall include a compensatory award calculated in accordance with sections 123, 124, 126 and 127), for “and 127” substitute “, 127 and 127A(1), (3) and (4)”.
- (3) After subsection (3) insert—

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- “(4) Where section 127A(2) applies, the award shall also include a supplementary award.”
- 22 In section 122 of that Act (which makes provision for the reduction of the amount of a basic award of compensation for unfair dismissal), after subsection (3) insert—
- “(3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.”
- 23 In section 123(1) of that Act (which makes provision for the calculation of a compensatory award in accordance with that section but subject to sections 124 and 126), for “and 126” substitute “, 126, 127 and 127A(1), (3) and (4)”.
- 24 (1) Section 203 of that Act (which restricts contracting out of the provisions of the Act) is amended as follows.
- (2) In subsection (3)(b) (which provides that a compromise agreement must relate to the particular complaint), for “complaint” substitute “proceedings”.
- (3) For subsection (4) substitute—
- “(3A) A person is a relevant independent adviser for the purposes of subsection (3) (c)—
- (a) if he is a qualified lawyer,
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
 - (d) if he is a person of a description specified in an order made by the Secretary of State.
- (3B) But a person is not a relevant independent adviser for the purposes of subsection (3)(c) in relation to the employee or worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
 - (b) in the case of a person within subsection (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,
 - (c) in the case of a person within subsection (3A)(c), if the employee or worker makes a payment for the advice received from him, or
 - (d) in the case of a person of a description specified in an order under subsection (3A)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4) In subsection (3A)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor

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- who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.”
- 25 (1) Section 219 of that Act (which enables the making of regulations for preserving continuity of employment etc. in the case of a person who is dismissed and then reinstated or re-engaged in consequence of action to which subsection (2) of the section applies) is amended as follows.
- (2) In subsection (1)—
- (a) omit “, in consequence of action to which subsection (2) applies,”,
- (b) for “or re-engaged” substitute “, re-engaged or otherwise re-employed”, and
- (c) at the end insert “in any circumstances prescribed by the regulations.”
- (3) Omit subsections (2) to (4).
- 26 In section 226(3) of that Act (which specifies the calculation date for a calculation for the purposes of section 119 or 121 which involves the notion of a week’s pay), for “or 121” substitute “, 121 or 127A”.