

SCHEDULE 8

Amendments to legislation and related transitional provisions

Part 1

Primary legislation

The Mines and Quarries Act 1954

1. The Mines and Quarries Act 1954(1) is amended as follows.

2.—(1) In section 42(1) (charge of winding and rope haulage apparatus when persons are carried) omit the words “who has attained the age of twenty-two years”.

(2) In section 43(2) (charge of winding and rope haulage apparatus when persons are not carried) omit the words “who has attained the age of eighteen years”.

(3) In section 44 (charge of conveyors at working faces) omit the words “who has attained the age of eighteen years”.

The Parliamentary Commissioner Act 1967

3. The Parliamentary Commissioner Act 1967(2) is amended as follows—

4.—(1) Section 1 (appointment and tenure of office) is amended in accordance with this paragraph.

(2) In subsection (2) omit the words from “, and any person” to “during good behaviour”.

(3) After subsection (2) insert—

“(2A) A person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

(2B) That period must be not more than seven years.

(2C) Subsection (2A) is subject to subsections (3) and (3A).”.

(4) For subsection (3) substitute—

“(3) A person appointed to be the Commissioner may be—

(a) relieved of office by Her Majesty at his own request, or

(b) removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.”.

(5) After subsection (3A) insert—

“(3B) A person appointed to be the Commissioner is not eligible for re-appointment.”.

5.—(1) Section 3A(3) (appointment of acting Commissioner) is amended in accordance with this paragraph.

(2) After subsection (1) insert—

(1) 1954 c. 70; relevant amendments to sections 42, 43 and 44 are made by the Employment Act 1989 (c. 38), sections 9 and 29(4) and by Schedule 7.

(2) 1967 c. 13; section 1(3A) was inserted by the Parliamentary and Health Services Commissioners Act 1987 (c. 13), section 2(1).

(3) Section 3A was inserted by the Parliamentary and Health Service Commissioners Act 1987 (c. 13), section 6(1).

Status: This is the original version (as it was originally made).

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”.

(3) In subsection (2) for the words “under this section” substitute “as an acting Commissioner”.

(4) For subsection (3) substitute—

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of section 1 and 2, and this section of this Act, as the Commissioner.”.

6. The amendments made to the Parliamentary Commissioner Act 1967 apply in relation to appointments made on or after the commencement date.

The Pilotage Act 1987

7.—(1) The Pilotage Act 1987(4) is amended in accordance with this paragraph.

(2) In section 3(2) (authorisation of pilots) omit the word “age.”.

The Social Security Contributions and Benefits Act 1992

8. The Social Security Contributions and Benefits Act 1992(5) is amended as follows.

9.—(1) Section 163(1) (interpretation of Part 11 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employer”, in relation to an employee and a contract of service of his, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract, or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16.”.

10.—(1) Section 171(1)(6) (interpretation of Part 12 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employer”, in relation to a woman who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(4) 1987 c. 21.

(5) 1992 c. 4; the definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the [Social Security Act 1998, \(c.14\)](#), section 86(1), and Schedule 7, paragraph 74.

(6) The definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the [Social Security Act 1998](#), section 86(1), and Schedule 7, paragraph 75.

(ii) the employee being under the age of 16;”.

(4) This paragraph applies in relation to any case where the expected week of confinement begins on or after 14th January 2007.

11.—(1) Section 171ZJ(7) (Part 12ZA: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employer”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(3) In subsection (2) omit paragraph (b) and the word “and” preceding it.

(4) This paragraph applies in relation to an entitlement to—

(a) statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 14th January 2007;

(b) statutory paternity pay (adoption) in respect of children—

(i) matched with a person who is notified of having been matched on or after the commencement date; or

(ii) placed for adoption on or after the commencement date.

12.—(1) Section 171ZS(8) (Part 12ZB: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employer”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(3) In subsection (2) omit paragraph (b) and the word “and” preceding it.

(4) This paragraph applies in relation to an entitlement to statutory adoption pay in respect of children—

(a) matched with a person who is notified of having been matched on or after the commencement date; or

(b) placed for adoption on or after that commencement.

13.—(1) In Schedule 11 omit paragraph 2(a) (period of entitlement not to arise if at the relevant date the employee is over 65).

(2) Sub-paragraph (1) applies in relation to a period of incapacity for work which—

(7) Section 171ZJ was inserted by the Employment Act 2002 (c. 22), section 2.

(8) Section 171ZS was inserted by the Employment Act 2002, section 4.

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

- (a) begins on or after the commencement date, or
- (b) begins before and continues on or after the commencement date.

(3) But in a case falling within sub-paragraph (2)(b), sub-paragraph (1) does not affect the application of paragraph 1 of Schedule 11 to the 1992 Act in relation to the part of the period of incapacity for work that falls before the commencement date.

The Health Service Commissioners Act 1993

14. The Health Service Commissioners Act 1993⁽⁹⁾ is amended as follows.

15.—(1) Schedule 1 (the English Commissioner)⁽¹⁰⁾ is amended in accordance with this paragraph.

(2) For paragraph 1 (appointment of Commissioners) substitute the following new paragraphs—

1. Her Majesty may by Letters Patent appoint a person to be the Commissioner.

1A. Subject to paragraphs 1C and 1D a person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

1B. That period must be not more than seven years.

1C. A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request.

1D. A person appointed to be the Commissioner may be removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.

1E. A person appointed to be the Commissioner is not eligible for re-appointment.”

(3) In paragraph 2 (appointment of acting Commissioners)—

(a) after sub-paragraph (1) insert—

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”;

(b) in sub-paragraph (2) for the words “under this paragraph” substitute “as acting Commissioner,”; and

(c) for sub-paragraph (3), substitute—

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of paragraphs 1, 4 to 10 and this paragraph, as the Commissioner.”.

16. The amendments made to the Health Service Commissioners Act 1993 apply in relation to appointments made on or after the commencement date.

The Statutory Sick Pay Act 1994

17.—(1) The Statutory Sick Pay Act 1994⁽¹¹⁾ is amended in accordance with this paragraph.

(2) In section 1(2) omit the words after paragraph (b).

(9) 1993 c. 46.

(10) The schedule heading was amended by the Government of Wales Act 1998 (c. 38), section 112, and Schedule 10, paragraph 16(2).

(11) 1994 c. 2.

The Employment Tribunals Act 1996

18. The Employment Tribunals Act 1996(12) is amended as follows.

19.—(1) Section 18(1)(13) (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (p), omit “or”.

(3) After paragraph (q), insert “or

(r) under regulation 36 of the Employment Equality (Age) Regulations 2006.”.

20.—(1) Section 21(1)(14) (jurisdiction of Appeal Tribunal) is amended in accordance with this paragraph.

(2) At the end of paragraph (q), omit “or”.

(3) After paragraph (r) insert—

“or

(s) the Employment Equality (Age) Regulations 2006.”.

The Employment Rights Act 1996

21. The 1996 Act is amended as follows.

22.—(1) Section 98 (fairness of dismissal: general) is amended as follows.

(2) In subsection (2), after paragraph (b) insert—

“(ba) is retirement of the employee.”.

(3) After subsection (2) insert—

“(2A) Subsections (1) and (2) are subject to sections 98ZA to 98ZF.”.

(4) After subsection (3) insert—

“(3A) In any case where the employer has fulfilled the requirements of subsection (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with section 98ZG.”.

(5) In subsection (4) for “Where” substitute “In any other case where”.

23. After section 98 insert—

“Retirement

No normal retirement age: dismissal before 65

98ZA.—(1) This section applies to the dismissal of an employee if—

(a) the employee has no normal retirement age, and

(b) the operative date of termination falls before the date when the employee reaches the age of 65.

(12) 1996 c. 17.

(13) Section 18(1)(p) was amended by S.I.2004/3426, regulation 34(c). Section 18(1)(q) was inserted by S.I. 2006/349, Schedule 1, paragraph 9.

(14) Section 21(1)(q) was amended by S.I.2004/3426, regulation 37(c). Section 21(r) was inserted by S.I. 2006/349, Schedule 1, paragraph 10.

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

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

No normal retirement age: dismissal at or after 65

98ZB.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

Normal retirement age: dismissal before retirement age

98ZC.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the normal retirement age.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Normal retirement age 65 or higher: dismissal at or after retirement age

98ZD.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is 65 or higher, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

- (2) In a case where—
 - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
 - (b) the contract of employment terminates on the intended date of retirement,retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.
- (3) In a case where—
 - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
 - (b) the contract of employment terminates before the intended date of retirement,retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (4) In a case where—
 - (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
 - (b) there is an intended date of retirement in relation to the dismissal, but
 - (c) the contract of employment terminates before the intended date of retirement,retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

Normal retirement age below 65: dismissal at or after retirement age

- 98ZE.**—(1) This section applies to the dismissal of an employee if—
- (a) the employee has a normal retirement age,
 - (b) the normal retirement age is below 65, and
 - (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.
- (2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (3) Subsections (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.
- (4) In a case where—
 - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
 - (b) the contract of employment terminates on the intended date of retirement,retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.
- (5) In a case where—
 - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
 - (b) the contract of employment terminates before the intended date of retirement,retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

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

(6) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
 - (b) there is an intended date of retirement in relation to the dismissal, but
 - (c) the contract of employment terminates before the intended date of retirement,
- retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal

Reason for dismissal: particular matters

98ZF.—(1) These are the matters to which particular regard is to be had in accordance with section 98ZB(5), 98ZD(5) or 98ZE(7)—

- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations;
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given;
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 6 to the 2006 Regulations.

(2) In subsection (1)(b) “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations as the date on which the employer intends to retire the employee.

Retirement dismissals: fairness

98ZG.—(1) This section applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 6 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee’s request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

Interpretation

98ZH. In sections 98ZA to 98ZG—

“2006 Regulations” means the Employment Equality (Age) Regulations 2006;

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 6 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer’s undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

Other dismissals”.

24. In section 108(15) (qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)—

- (a) at the end of paragraph (l) omit “or”; and
- (b) after paragraph (m) insert—

“or

- (n) paragraph (a) or (b) of paragraph 13(5) of Schedule 6 to the Employment Equality (Age) Regulations 2006 applies.”.

25. Omit section 109(16) (upper age limit on unfair dismissal right).

26.—(1) Section 112(17) (remedies for unfair dismissal: orders and compensation) is amended as follows.

- (2) In subsection (5)(a) after “section” insert “98ZG or”.

27.—(1) Section 119 (basic award) is amended as follows.

- (2) Omit subsections (4) and (5).

28.—(1) Section 120(18) (basic award: minimum in certain cases) is amended as follows.

- (2) In subsection (1A) after “section” insert “98ZG or”.

29. In section 126(1)(19) (acts which are both unfair dismissal and discrimination), for paragraph (b) substitute—

- “(b) any one or more of the following—
 - (i) the Sex Discrimination Act 1975;
 - (ii) the Race Relations Act 1976;
 - (iii) the Disability Discrimination Act 1995;
 - (iv) the Employment Equality (Sexual Orientation) Regulations 2003;
 - (v) the Employment Equality (Religion or Belief) Regulations 2003;
 - (vi) the Employment Equality (Age) Regulations 2006.”.

30. Section 156 (upper age limit) is repealed.

31. Section 158 (pension rights) is repealed.

(15) Section 108(1) was amended by S.I. 2004/3426, regulation 31(2)(b). Section 108(1)(m) was inserted by S.I. 2006/349, Schedule 1, paragraph 6.

(16) Section 109 has been amended but the amendments are not relevant for the purposes of these Regulations.

(17) Subsection (5) was inserted by the Employment Act 2002 (c. 22), section 34(3).

(18) Subsection (1A) inserted by the Employment Act 2002, sections 34(1) and (6).

(19) Section 126(1)(b) was substituted by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 14(3), and has been amended since, but the amendments are not relevant for the purposes of these Regulations.

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

32.—(1) Section 162 (amount of a redundancy payment) is amended in accordance with this paragraph.

(2) Subsections (4), (5) and (8) are repealed.

(3) In subsection (6), for the words “Subsections (1) to (5)” substitute “Subsections (1) to (3)”.

33. In relation to any case where the date that is the relevant date by virtue of section 153 of the 1996 Act falls before the commencement date, paragraphs 30 to 32 do not apply.

34.—(1) Section 209 (powers to amend Act) is amended as follows.

(2) In subsection (5)(20) omit “109(1),”.

35.—(1) Section 211 (period of continuous employment) is amended in accordance with this paragraph.

(2) In paragraph (a) of subsection (1) for the words “subsections (2) and” substitute “subsection”.

(3) Subsection (2) is repealed.

The Employment Act 2002

36.—(1) The Employment Act 2002 is amended in accordance with this paragraph.

(2) At the end of each of the following Schedules—

- (a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);
- (b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and
- (c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

insert—

“Regulation 36 of the Employment Equality (Age) Regulations 2006 (discrimination in the employment field)”.

The Equality Act 2006

37. The Equality Act 2006(21) is amended as follows.

38.—(1) Section 14(1) (codes of practice) is amended in accordance with this paragraph.

(2) At the end of paragraph (g) omit “and”.

(3) After paragraph (h) insert—

“and

- (i) Parts 2 and 3 of the Employment Equality (Age) Regulations 2006.”.

39.—(1) Section 27(1) (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (f) omit “or”.

(3) After paragraph (g) insert—

(20) Section 209(5) was amended by the Employment Relations Act 1999 (c. 26), section 44 and Schedule 9.

(21) 2006 c. 3.

“or

- (h) regulation 39 of the Employment Equality (Age) Regulations 2006 (Jurisdiction of County and Sheriff Courts).”.

40.—(1) Section 33(1) (equality and human rights enactments) is amended in accordance with this paragraph.

- (2) At the end of paragraph (g) omit “and”.
- (3) After paragraph (h) insert—

“and

- (i) the Employment Equality (Age) Regulations 2006.”.