

SCHEDULES

SCHEDULE 8

CONSEQUENTIAL AMENDMENTS

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 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—

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- “(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”.
- 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.

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- 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

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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)—

- (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—

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- “(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)—
- (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

(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

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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;

(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

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(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).

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—

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*“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.

- (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)—

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- (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)—
- (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)—

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- (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”.
