

SCHEDULES

SCHEDULE 1

RE-ENACTED PROVISIONS OF INDUSTRIAL RELATIONS ACT 1971

PART II

UNFAIR DISMISSAL

Right of employee not to be unfairly dismissed

[Section 22]

- 4 (1) In every employment to which this paragraph applies every employee shall have the right not to be unfairly dismissed by his employer, and the remedy of an employee so dismissed for breach of that right shall be by way of complaint to an industrial tribunal under Part III of this Schedule, and not otherwise.
- (2) This paragraph applies to every employment except in so far as its application is excluded by or under any provision of this Schedule.

Meaning of "dismissal"

[Section 23]

- 5 (1) In this Schedule "dismissal" and "dismiss" shall be construed in accordance with the following provisions of this paragraph.
- (2) Subject to sub-paragraph (3) below, an employee shall be treated for the purposes of this Act as dismissed by his employer, if, but only if,—
- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
 - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
 - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the obligatory period of that notice, the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of this Schedule be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.

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- (4) For the purposes of sub-paragraph (3) above—
- (a) if the actual period of the employer's notice (that is to say, the period beginning at the time when the notice is given and ending with the time when it expires) is equal to the minimum period which (whether by virtue of any enactment or otherwise) is required to be given by the employer to terminate the contract of employment, "the obligatory period", in relation to that notice, means the actual period of the notice;
 - (b) in any other case, "the obligatory period", in relation to an employer's notice, means that period which, being equal to the minimum period referred to in sub-paragraph (a) above, expires at the time when the employer's notice expires.
- (5) In this Schedule "the effective date of termination"—
- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires ;
 - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
 - (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

Fair and unfair dismissal

[Section 24]

- 6 (1) In determining for the purposes of this Schedule whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
 - (b) that it was a reason falling within sub-paragraph (2) below, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) In sub-paragraph (1)(b) above the reference to a reason falling within this sub-paragraph is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
 - (b) related to the conduct of the employee, or
 - (c) was that the employee was redundant, or
 - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) Where the employer has fulfilled the requirements of sub-paragraph (1) above, then, subject to paragraphs 7 and 8 below, the question whether the dismissal was fair or unfair shall be determined in accordance with the following provisions of this paragraph.

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- (4) For the purposes of this Schedule the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union;
 - (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union ; or
 - (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.
- (5) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Schedule if—
- (a) it is the practice, in accordance with a union membership agreement, for all the employees of that employer or all employees of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions ; and
 - (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or proposed to refuse to become or remain a member of that union or one of those unions ;
- unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever or on any reasonable grounds to being a member of a particular trade union, in which case the dismissal shall be regarded as unfair.
- (6) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of sub-paragraph (4) or (5) above is hereafter in this Schedule referred to as an inadmissible reason.
- (7) Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—
- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason ; or
 - (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,
- then, for the purposes of this Schedule the dismissal shall be regarded as unfair.
- (8) Subject to sub-paragraphs (4) to (7) above, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.
- (9) In this paragraph, in relation to an employee—
- (a) " capability " means capability assessed by reference to skill, aptitude, health or any other physical or mental quality ;
 - (b) " qualifications " means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held ; and

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- (c) any reference to redundancy or to being redundant shall be construed as a reference to the existence of one or other of the facts specified in paragraphs (a) and (b) of section 1(2) of the Redundancy Payments Act 1965.

Dismissal in connection with a lock-out

[Section 25]

- 7 (1) The dismissal of an employee by way of a lock-out (whether the lock-out extends to all the employees of the employer or only to some of them, and whether the dismissal occurs at the beginning of the lock-out or during the course of it) shall not be regarded as unfair if the employee is offered re-engagement as from the date of resumption of work.
- (2) Where an employee who has been so dismissed, and has not been offered re-engagement as from the date of resumption of work, claims that he was unfairly dismissed by his employer, the provisions of paragraph 6 above shall apply as if in that paragraph, for any reference to the reason or principal reason for which the employee was dismissed by his employer, there were substituted a reference to the reason or principal reason for which he was not offered re-engagement as from that date.
- (3) In this paragraph any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee, either in the position which he held immediately before the effective date of termination or in a different position which would be reasonably suitable to him.
- (4) In this paragraph—
- (a) " the date of resumption of work " means the date as from which, at or after the termination of the lock-out, the other comparable employees of the original employer, or a majority of those employees, were offered re-engagement, and
- (b) " the original employer ", in relation to an employee, means the employer who dismissed him ;
- and in this sub-paragraph " comparable employees ", in relation to an employee, means such of the employees of the original employer to whom the lock-out extended as, immediately before the effective date of termination, held positions similar to that held by that employee.

Dismissal in connection with a strike or other industrial action

[Section 26]

- 8 (1) The provisions of this paragraph shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer, where on the date of dismissal he was taking part in a strike or other industrial action.
- (2) If the reason or principal reason for the dismissal was that the employee took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown—

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- (a) that one or more employees of the same employer (in this paragraph referred to as "the original employer"), who also took part in that action, were not dismissed for taking part in it, or
 - (b) that one or more such employees, who were dismissed for taking part in it, were offered re-engagement on the termination of the industrial action and that the employee was not offered such re-engagement,
- and that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal or not offered re-engagement was an inadmissible reason.
- (3) In this paragraph any reference to the date of dismissal—
- (a) where the employee's contract of employment was terminated by notice, whether given by his employer or by him, is a reference to the date on which that notice was given, and
 - (b) in any other case, is a reference to the effective date of termination ;
- and any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee, either in the position which he held immediately before the date of dismissal or in a different position which would be reasonably suitable to him.

Excluded classes of employment

[Section 27]

- 9 (1) Paragraph 4 above does not apply to any of the following, that is to say,—
- (a) any employment in an undertaking in which immediately before the effective date of termination there were in the aggregate (including the dismissed employee) less than four employees who had been continuously employed for a period of not less than thirteen weeks, whether they are, or had been, all employed at the same place or are, or had been, employed at different places;
 - (b) any employment where the employer is the husband or wife or a close relative of the employee ;
 - (c) any employment as a registered dock worker, as defined by any scheme for the time being in force under the Dock Workers (Regulation of Employment) Act 1946, not being employment by virtue of which the employee is wholly or mainly engaged in work which is not dock work as defined by the scheme ;
 - (d) any employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel;
 - (e) any employment as a teacher to whom section 85 of the Education (Scotland) Act 1962 (dismissal of teachers) applies ;
 - (f) any employment under a contract which normally involves employment for less than twenty-one hours weekly.
- (2) Paragraph 4 above does not apply to any employment where under his contract of employment the employee ordinarily works outside Great Britain.
- (3) For the purposes of sub-paragraph (2) above a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
- (a) the employment is wholly outside Great Britain, or

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(b) he is not ordinarily resident in Great Britain,
 be regarded as a person who under his contract ordinarily works in Great Britain.

- (4) In this paragraph "close relative", in relation to a person, means that person's father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.
- (5) The foregoing provisions of this paragraph shall have effect subject to any order made under paragraph 11 below.

Qualifying period and upper age limit

[Section 28]

- 10 Subject to paragraph 11 below, paragraph 4 above does not apply to the dismissal of an employee from any employment if the employee—
- (a) was not continuously employed for a period of not less than 26 weeks ending with the effective date of termination, or
 - (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an employee holding the position which he held, or, if a man, attained the age of sixty-five, or, if a woman, attained the age of sixty;
- but this paragraph shall have effect in a case where the effective date of termination falls within the period of six months beginning with the commencement of this Schedule as if the reference in sub-paragraph (a) to 26 weeks were a reference to 52 weeks.

Supplementary provisions relating to paragraphs 9 and 10

[Section 29]

- 11 (1) Paragraphs 9(1)(a) and 10 above shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason.
- (2) The Secretary of State may by order made by statutory instrument add to or vary any of the provisions of paragraphs 9 and 10 above or exclude the operation of any of those provisions.
- (3) No order shall be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Exclusion of certain contracts for a fixed term

[Section 30]

- 12 Paragraph 4 above does not apply—
- (a) to dismissal from employment under a contract for a fixed term of two years or more, where the contract was made before 28th February 1972 and is not a contract of apprenticeship, and the dismissal consists only of the expiry of that term without its being renewed, or

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- (b) to dismissal from employment under a contract for a fixed term of two years or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that paragraph in relation to that contract.

Exclusion in respect of dismissal procedures agreement

[Section 31]

- 13 (1) An application may be made jointly to the Secretary of State by all the parties to a dismissal procedures agreement to make an order designating that agreement for the purposes of this paragraph.
- (2) On any such application the Secretary of State may make such an order if he is satisfied—
- (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union ;
 - (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed ;
 - (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies ;
 - (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Schedule ;
 - (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
 - (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.
- (3) Where a dismissal procedures agreement is designated by an order under this paragraph which is for the time being in force, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under paragraph 4 above; and accordingly that paragraph shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

Revocation of exclusion under paragraph 13

[Section 32]

- 14 (1) At any time when an order under paragraph 13 above is in force, any of the parties to the dismissal procedures agreement to which the order relates may apply to the Secretary of State for the order to be revoked.
- (2) If on any such application the Secretary of State is satisfied either—

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- (a) that it is the desire of all the parties to the dismissal procedures agreement that the order should be revoked, or
- (b) that the agreement has ceased to fulfil all the conditions specified in paragraph 13(2) above,

the Secretary of State shall revoke the order by a further order made under this paragraph.

- (3) Any order made under this paragraph may contain such transitional provisions as appear to the Secretary of State to be appropriate in the circumstances, and, in particular, may direct—
 - (a) that, notwithstanding paragraph 13(3) above, an employee shall not be excluded from his rights under paragraph 4 above where the effective date of termination falls within a transitional period which is specified in the order and is a period ending with the date on which the order under this paragraph takes effect and shall have an extended time for presenting a complaint under Part III of this Schedule in respect of a dismissal where the effective date of termination falls within that period, and
 - (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of termination falls within that transitional period, an industrial tribunal shall have regard to such considerations (in addition to those specified in Part III of this Schedule) as may be specified in the order.

Pressure on employer to dismiss unfairly

[Section 33]

- 15 In determining, for the purposes of this Part of this Schedule any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of paragraph 6(1)(b) above or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—
 - (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
 - (b) any such question shall be determined as if no such pressure had been exercised.