

SCHEDULES

SCHEDULE 1

RE-ENACTED PROVISIONS OF INDUSTRIAL RELATIONS ACT 1971

PART IV

CONCILIATION OFFICERS, AND MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Conciliation officers

[Section 146]

- 26 (1) The Secretary of State shall appoint conciliation officers to perform the functions specified in the following provisions of this paragraph, subject to the approval of the Minister for the Civil Service as to their numbers and as to their terms and conditions of service.
- (2) Where a complaint has been presented to an industrial tribunal by the complainant under paragraph 17 above, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
- (a) if he is requested to do so by the complainant and by the employer against whom it was presented, or
 - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this sub-paragraph with a reasonable prospect of success, to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (3) For the purpose of promoting such a settlement, in a case where the complainant has ceased to be employed by the employer against whom the complaint was made,—
- (a) the conciliation officer shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or his engagement by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable ; but
 - (b) where such reinstatement, re-engagement or engagement is not practicable or cannot be agreed between the parties to the complaint,
- and they desire the conciliation officer to act under this paragraph, he shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- (4) Where at any time—
- (a) after the complainant has ceased to be employed by an employer, in circumstances where the employee claims that he was unfairly dismissed, but

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(b) before any complaint relating to that claim has been presented by the claimant under paragraph 17 above,

a request is made to a conciliation officer (whether by the employer or by the employee) to make his services available to them, the conciliation officer shall act in accordance with sub-paragraph (2) and (3) above as if a complaint had been presented in pursuance of that claim.

- (5) Anything communicated to a conciliation officer in connection with the performance of his functions under this paragraph shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.

Teacher in aided school dismissed on requirement of local education authority

[Section 148]

- 27 (1) Where a teacher in an aided school is dismissed by the governors or managers of the school in pursuance of a requirement of the local education authority under paragraph (a) of the proviso to section 24(2) of the Education Act 1944, Parts II and III of this Schedule shall have effect in relation to the dismissal as if—
- (a) the local education authority had at all material times been the teacher's employer, and
 - (b) the local education authority had dismissed him, and the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.
- (2) For the purposes of a complaint under paragraph 17 above as applied by this paragraph, paragraph 19 above shall have effect as if—
- (a) in sub-paragraph (4)(b), for the words " the employer in question refused or failed to make such an offer, and the tribunal considers that he acted unreasonably in doing so " there were substituted the words " the local education authority refused or failed to permit the aggrieved party to be re-engaged, and the tribunal considers that they acted unreasonably in doing so " , and
 - (b) in sub-paragraph (5), any reference to the employer were a reference to the local education authority.

Race Relations Act 1968

[Section 149]

- 28 (1) Where under the Race Relations Act 1968 a complaint is made to the Secretary of State or the Race Relations Board that an act has been done which is unlawful by virtue of section 3(1) of that Act, or a matter falling to be investigated by that Board raises the question whether any such act has been done, then, if it appears to the Secretary of State or the Board—
- (a) that that act is one in respect of which a complaint of unfair dismissal has been presented to an industrial tribunal under paragraph 17 above, or in respect of which a complaint could be so presented (or could have been so presented if the requirements of industrial tribunal regulations relating to it had been complied with), and

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- (b) that a complaint so presented to an industrial tribunal has not been dismissed by virtue of any provision contained in or made under paragraphs 9 to 13 above or (as the case may be) would not fall or have fallen to be so dismissed, the Secretary of State or the Board shall not proceed any further under that Act in relation to that act, except to the extent provided by the following provisions of this paragraph.
- (2) If, on determining a complaint of unfair dismissal presented under paragraph 17 above, an industrial tribunal has recorded a finding that the dismissal of the claimant was unfair and also that the reason or one of the reasons for the dismissal was the complainant's colour, race or ethnic or national origin, then, sub-paragraph (1) above shall not preclude the Secretary of State or the Race Relations Board—
- (a) from proceeding under that Act for the purpose of securing a written assurance against a repetition of that action, in accordance with section 15(3)(b) of that Act or in accordance with paragraph 3 of Schedule 2 or paragraph 2 or 8 of Schedule 3 to that Act, or
- (b) from proceeding under that Act (whether by way of bringing proceedings or otherwise) in consequence of forming an opinion or receiving a report that a written assurance so secured has been broken.
- (3) The Secretary of State or the Race Relations Board may proceed in accordance with sub-paragraph (2)(a) or (b) above notwithstanding any limitation imposed by the Race Relations Act 1968 as to the time within which anything may be done under that Act.
- (4) In this paragraph any reference to the Race Relations Board shall be construed as including references—
- (a) to any conciliation committee constituted under the Race Relations Act 1968, and
- (b) to any other body of persons to whom a matter could be referred for investigation under Schedule 2 or Schedule 3 to that Act.

Redundancy payments

[Section 150]

- 29 (1) Regulations may make provision with respect to cases where a complaint of unfair dismissal is presented to an industrial tribunal under paragraph 17 above, and a redundancy payment or an equivalent payment has been paid, or has been or is claimed, in respect of the same dismissal.
- (2) Any such regulations may make such modifications of the provisions of Part III of this Schedule or of the Redundancy Payments Act 1965, as the Secretary of State may consider appropriate, including—
- (a) provisions excluding the right to a redundancy payment or equivalent payment, or requiring any such payment to be repaid, or
- (b) provisions requiring a rebate under section 30 of that Act or a sum payable under section 41(2) of that Act to be withheld or reduced, or (where already paid) to be recoverable in whole or in part, and on being so recovered to be paid into the Redundancy Fund,
- in such circumstances as may be prescribed by the regulations.

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- (3) In section 21 of the Redundancy Payments Act 1965 (claims for redundancy payments), at the end of paragraph (c) there shall be added the words “or
- (d) a complaint relating to his dismissal has been presented by the employee under paragraph 17 of Schedule 1 to the Trade Union and Labour Relations Act 1974”.
- (4) In this paragraph " equivalent payment" means any payment which is either—
- (a) a payment made or falling to be made as mentioned in paragraph (b) or paragraph (c) of section 30(1) of the Redundancy Payments Act 1965, or
- (b) a payment in respect of the termination of a person's employment, made in accordance with a scheme under section 1 of the Superannuation Act 1972 or in accordance with any such arrangements as are mentioned in section 41(3) of the Redundancy Payments Act 1965.
- (5) No regulations shall be made under this paragraph unless a draft of the regulations has been laid before Parliament and approved by resolution of each House of Parliament.

Period of continuous employment

[Section 151]

- 30 (1) The provisions of Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment), and the provisions of any order for the time being in force under section 10 of that Act in so far as it modifies that Schedule, shall have effect for the purposes of this Act in determining for what period an employee has been continuously employed.
- (2) For the purposes of any proceedings under this Schedule a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.
- (3) Regulations made by the Secretary of State may make provision—
- (a) for preserving the continuity of a person's period of employment for the purposes of Schedule 1 to the Contracts of Employment Act 1972, or for the purposes of that Schedule as applied by or under any other enactment specified in the regulations, or
- (b) for modifying or excluding the operation of section 24 of the Redundancy Payments Act 1965 (which requires the continuity of the period of employment to be treated as broken for the purposes of that Act where a redundancy payment is paid to an employee and he is subsequently re-engaged), subject to the recovery of any sum which, in accordance with subsection (3) of that section, is treated as payment of a redundancy payment, in cases where, in consequence of action to which sub-paragraph (4) below applies, a dismissed employee is re-engaged by his employer or is engaged by a successor of that employer or by an associated employer.
- (4) This sub-paragraph applies to any action taken in relation to the dismissal of an employee which consists—
- (a) of the presentation by him of a complaint under paragraph 17 above, or
- (b) of his making a claim in accordance with a dismissal procedures agreement designated by an order under paragraph 13 above, or
- (c) of any action taken by a conciliation officer under paragraph 26(4) above.

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Nominations by members of trade unions

[Section 155]

- 31 (1) Regulations may make provision—
- (a) for enabling members of trade unions who are not under sixteen years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union of which he is a member ; and
 - (b) for enabling any money payable out of the funds of a trade union on the death of a member of the trade union, to an amount not exceeding £500, to be paid or distributed on his death (whether in accordance with such a nomination or otherwise) without letters of administration, probate of any will or confirmation.
- (2) Any regulations made in accordance with sub-paragraph (1)(a) above—
- (a) may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked, and
 - (b) may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed by the regulations.
- (3) Any regulations under this section may include such incidental, transitional or supplementary provisions as the Secretary of State may consider appropriate and, in particular, any such regulations made in accordance with sub-paragraph (1)(a) above may include provision for securing, to such extent and subject to such conditions as may be prescribed in the regulations, that nominations made under the Trade Union Act Amendment Act 1876 shall have effect as if they have been made under the regulations and may be varied or revoked accordingly.
- (4) The Secretary of State may by order made by statutory instrument direct that, in relation to deaths occurring after the end of the period of one month beginning with the date on which the order comes into force, sub-paragraph (1)(b) above shall have effect as if, for the reference to £500, there were substituted a reference to such higher amount as may be specified in the order.
- (5) No order shall be made under sub-paragraph (4) above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Restrictions on contracting out

[Section 161]

- 32 (1) Except as provided by sub-paragraph (2) below, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Act; or
 - (b) to preclude any person from presenting a complaint to or bringing any proceedings before an industrial tribunal under this Act.
- (2) Sub-paragraph (1) above shall not apply—

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- (a) to any union membership agreement;
- (b) to any provision of an agreement relating to dismissal from employment such as is mentioned in paragraph 12(b) above;
- (c) to any provision in a dismissal procedures agreement excluding rights under paragraph 4 above if that provision is not to have effect unless an order under paragraph 13 above is for the time being in force in respect of it;
- (d) to any agreement to refrain from presenting a complaint under paragraph 17 above, where in compliance with a request under paragraph 26(4) above a conciliation officer has taken action in accordance with that sub-paragraph;
- (e) to any agreement to refrain from proceeding with a complaint presented under paragraph 17 above where a conciliation officer has taken action in accordance with paragraph 26(2) and (3) above.

Employment under the Crown

[Section 162]

- 33 (1) Subject to the following provisions of this paragraph, the provisions of this Act shall have effect in relation to Crown employment and to workers in Crown employment as they have effect in relation to other employment and to other workers.
- (2) In this paragraph (subject to sub-paragraph (4) below) "Crown employment" means employment under or for the purposes of a government department, otherwise than as a member of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council, and "Crown employee" means a person who is for the time being in Crown employment or (where it has ceased) was in Crown employment.
- (3) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with sub-paragraph (1) above—
- (a) any reference to an employee shall be construed as a reference to a Crown employee ;
 - (b) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
 - (c) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to Crown employment;
 - (d) the reference in paragraph 21(5)(c) above to any person's undertaking or an undertaking in which he works shall be construed as a reference to the national interest; and
 - (e) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge, and, in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.
- (4) For the purposes of this Act—
- (a) none of the bodies specified in Schedule 3 to the Redundancy Payments Act 1965 (national health service employers) shall be regarded as performing

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functions on behalf of the Crown, and their employees shall not be regarded as being employed under or for the purposes of a government department, and accordingly employment by any such body shall not be Crown employment within the meaning of this paragraph;

- (b) associations established for the purposes of the Auxiliary Forces Act 1953 shall be treated as if they were government departments, and accordingly employment by any such association shall be Crown employment within the meaning of this paragraph ;

and for the purposes of this paragraph Crown employment does not include any employment in respect of which a certificate to which sub-paragraph (5) below applies is for the time being in force.

- (5) This sub-paragraph applies to any certificate issued by or on behalf of a Minister of the Crown and certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or at a time specified in the certificate was) required to be excepted from sub-paragraph (1) above for the purpose of safeguarding national security; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.