

SCHEDULES

SCHEDULE 13

Section 151.

COMPUTATION OF PERIOD OF EMPLOYMENT

Preliminary

- 1 (1) Where an employee's period of employment is, for the purposes of any enactment (including any enactment contained in this Act), to be computed in accordance with this Schedule, it shall be computed in weeks, and in any such enactment which refers to a period of employment expressed in years, a year means fifty-two weeks (whether continuous or discontinuous) which count in computing a period of employment.
- (2) For the purpose of computing an employee's period of employment (but not for any other purpose), the provisions of this Schedule apply, subject to paragraph 14, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside Great Britain or was excluded by or under this Act from any right conferred by this Act.
- 2 Except so far as otherwise provided by the following provisions of this Schedule, any week which does not count under paragraphs 3 to 13 breaks the continuity of the period of employment.

Normal working weeks

- 3 Any week in which the employee is employed for sixteen hours or more shall count in computing a period of employment.

Employment governed by contract

- 4 Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment which normally involves employment for sixteen hours or more weekly shall count in computing a period of employment.
- 5 (1) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly and, but for that change, the later weeks would count in computing a period of employment, or would not break the continuity of a period of employment, then those later weeks shall count in computing a period of employment or, as the case may be, shall not break the continuity of a period of employment, notwithstanding that change.
- (2) Not more than twenty-six weeks shall count under this paragraph between any two periods falling under paragraph 4, and in computing the said figure of twenty-six weeks no account shall be taken of any week which counts in computing a period of

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employment, or does not break the continuity of a period of employment, otherwise than by virtue of this paragraph.

- 6 (1) An employee whose relations with his employer are governed, or have been from time to time governed, by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he satisfies the condition referred to in sub-paragraph (2), be treated for the purposes of this Schedule (apart from this paragraph) as if his contract normally involved employment fourteen hours or more weekly, and had at all times at which there was a contract during the period of employment of five years or more referred to in sub-paragraph (2) normally involved employment for sixteen hours or more weekly.
- (2) Sub-paragraph (1) shall apply if the employee, on the date by reference to which the length of any period of employment falls to be ascertained in accordance with the provisions of this Schedule, has been continuously employed within the meaning of sub-paragraph (3) for a period of five years or more.
- (3) In computing for the purposes of sub-paragraph (2) an employee's period of employment, the provisions of this Schedule (apart from this paragraph) shall apply but as if, in paragraphs 3 and 4, for the words " sixteen hours " wherever they occur, there were substituted the words " eight hours ".
- 7 (1) If an employee has, at any time during the relevant period of employment, been continuously employed for a period which qualifies him for any right which requires a qualifying period of continuous employment computed in accordance with this Schedule, then he shall be regarded for the purposes of qualifying for that right as continuing to satisfy that requirement until the condition referred to in sub-paragraph (3) occurs.
- (2) In this paragraph the relevant period of employment means the period of employment ending on the date by reference to which the length of any period of employment falls to be ascertained which would be continuous (in accordance with the provisions of this Schedule) if at all relevant times the employee's relations with the employer had been governed by a contract of employment which normally involved employment for sixteen hours or more weekly.
- (3) The condition which defeats the operation of sub-paragraph (1) is that in a week subsequent to the time at which the employee qualified as referred to in that sub-paragraph—
- (a) his relations with his employer are governed by a contract of employment which normally involves employment for less than eight hours weekly ; and
 - (b) he is employed in that week for less than sixteen hours.
- (4) If, in a case in which an employee is entitled to any right by virtue of sub-paragraph (1), it is necessary for the purpose of ascertaining the amount of his entitlement to determine for what period he has been continuously employed, he shall be regarded for that purpose as having been continuously employed throughout the relevant period.

Orders under section 7

- 8 The foregoing provisions of this Schedule shall have effect subject to any order made under section 7 and an order under that section shall affect the operation of

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this Schedule as respects periods before the order takes effect as well as respects later periods.

Periods in which there is no contract of employment

- 9 (1) If in any week the employee is, for the whole or part of the week—
- (a) incapable of work in consequence of sickness or injury, or
 - (b) absent from work on account of a temporary cessation of work, or
 - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes, or
 - (d) absent from work wholly or partly because of pregnancy or confinement,
- that week shall, notwithstanding that it does not fall under paragraph 3, 4 or 5, count as a period of employment.
- (2) Not more than twenty-six weeks shall count under paragraph (a) or, subject to paragraph 10, under paragraph (d) of sub-paragraph (1) between any periods falling under paragraph 3, 4 or 5.

Maternity

- 10 If an employee returns to work in accordance with section 47 after a period of absence from work wholly or partly occasioned by pregnancy or confinement, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 3, 4 or 5.

Intervals in employment where section 55(5) or 84(1) or 90(3) applies

- 11 (1) In ascertaining, for the purposes of section 64(1)(a) and of section 73(3), the period for which an employee has been continuously employed, where by virtue of section 55(5) a date is treated as the effective date of termination which is later than the effective date of termination as defined by section 55(4), the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not otherwise count under this Schedule.
- (2) Where by virtue of section 84(1) an employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, then, in determining for the purposes of section 81(1) or Schedule 4 whether he has been continuously employed for the requisite period, the period of that interval shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).
- (3) Where by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of section 81(4) which is later than the relevant date as defined by section 90(1), then in determining for the purposes of section 81(1) or Schedule 4 whether the employee has been continuously employed for the requisite period, the period of the interval between those two dates shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).

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Payment of previous redundancy payment or equivalent payment

- 12 (1) Where the conditions mentioned in sub-paragraph (2)(a) or (2)(b) are fulfilled in relation to a person, then in determining, for the purposes of section 81(1) or Schedule 4, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—
- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in sub-paragraph (2)(a) or, as the case may be, sub-paragraph (2)(b); or
 - (b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment, and accordingly no account shall be taken of any time before that date.
- (2) Sub-paragraph (1) has effect—
- (a) where—
 - (i) a redundancy payment is paid to an employee, whether in respect of dismissal or in respect of lay-off or short-time ; and
 - (ii) the contract of employment under which he was employed (in this section referred to as " the previous contract") is renewed, whether by the same or another employer, or he is re-engaged under a new contract of employment, whether by the same or another employer; and
 - (iii) the circumstances of the renewal or re-engagement are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement; or
 - (b) where—
 - (i) a payment has been made, whether in respect of the termination of any person's employment or in respect of lay-off or short-time, either in accordance with any provisions of a scheme under section 1 of the Superannuation Act 1972 or in accordance with any such arrangements as are mentioned in section 111(3); and
 - (ii) he commences new, or renewed, employment; and
 - (iii) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.
- (3) For the purposes of this paragraph, a redundancy payment shall be treated as having been paid if—

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- (a) the whole of the payment has been paid to the employee by the employer, or, in a case where a tribunal has determined that the employer is liable to pay part (but not the whole) of the redundancy payment, that part of the redundancy payment has been paid in full to the employee by the employer, or
- (b) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 106.

Certain weeks of employment to be disregarded for purposes of Schedule 4

- 13 In ascertaining for the purposes of Schedule 4 the period for which an employee has been continuously employed, any week which began before he attained the age of eighteen shall not count under this Schedule.

Redundancy payments: employment wholly or partly abroad

- 14 (1) In computing in relation to an employee the period specified in section 81(4) or the period specified in paragraph 1 of Schedule 4, a week of employment shall not count if—
- (a) the employee was employed outside Great Britain during the whole or part of that week, and
 - (b) he was not during that week, or during the corresponding contribution week.
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 - (i) where the week is a week of employment after 1st June 1976, an employed earner for the purposes of the Social Security Act 1975 in respect of whom a secondary Class 1 contribution was payable under that Act; or
 - (ii) where the week is a week of employment after 6th April 1975 and before 1st June 1976, an employed earner for the purposes of the Social Security Act 1975 ; or (iii) where the week is a week of employment before 6th April 1975, an employee in respect of whom an employer's contribution was payable in respect of the corresponding contribution week ;
- whether or not the contribution mentioned in paragraph (i) or (iii) of this sub-paragraph was in fact paid.
- (2) For the purposes of the application of sub-paragraph (1) to a week of employment where the corresponding contribution week began before 5th July 1948, an employer's contribution shall be treated as payable as mentioned in sub-paragraph (1) if such a contribution would have been so payable if the statutory provisions relating to national insurance which were in force on 5th July 1948 had been in force in that contribution week.
- (3) Where by virtue of sub-paragraph (1) a week of employment does not count in computing such a period as is mentioned in that sub-paragraph, the continuity of that period shall not be broken by reason only that that week of employment does not count in computing that period.
- (4) Any question arising under this paragraph whether—
- (a) an employer's contribution was or would have been payable, as mentioned in sub-paragraph (1) or (2), or

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(b) a person was an employed earner for the purposes of the Social Security Act 1975 and if so whether a secondary Class 1 contribution was payable in respect of him under that Act,

shall be determined by the Secretary of State; and any legislation (including regulations) as to the determination of questions which under that Act the Secretary of State is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the High Court or the Court of Session) shall apply to the determination of any question by the Secretary of State under this paragraph.

- (5) In this paragraph " employer's contribution " has the same meaning as in the National Insurance Act 1965, and " corresponding contribution week ", in relation to a week of employment, means a contribution week (within the meaning of the said Act of 1965) of which so much as falls within the period beginning with midnight between Sunday and Monday and ending with Saturday also falls within that week of employment.
- (6) The provisions of this paragraph shall not apply in relation to a person who is employed as a master or seaman in a British ship and is ordinarily resident in Great Britain.

Industrial disputes

- 15 (1) A week shall not count under paragraph 3, 4, 5, 9 or 10 if in that week, or any part of that week, the employee takes part in a strike.
- (2) The continuity of an employee's period of employment is not broken by a week which does not count under this Schedule, and which begins after 5th July 1964 if in that week, or any part of that week, the employee takes part in a strike.
- (3) Sub-paragraph (2) applies whether or not the week would, apart from sub-paragraph (1), have counted under this Schedule.
- (4) The continuity of the period of employment is not broken by a week which begins after 5th July 1964 and which does not count under this Schedule, if in that week, or any part of that week, the employee is absent from work because of a lock-out by the employer.

Reinstatement after service with the armed forces, etc.

- 16 (1) If a person who is entitled to apply to his former employer under Part II of the National Service Act 1948 (reinstatement in civil employment) enters the employment of that employer not later than the end of the six month period mentioned in section 35(2)(b) of that Act, his previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in the said period of six months shall be treated as continuous.
- (2) The reference in this paragraph to Part II of the National Service Act 1948 includes a reference to that Part of that Act as amended, applied or extended by any other Act passed before or after this Act.

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Change of employer

- 17 (1) Subject to this paragraph and paragraph 18, the foregoing provisions of this Schedule relate only to employment by the one employer.
- (2) If a trade or business or an undertaking (whether or not it be an undertaking established by or under an Act of Parliament) is transferred from one person to another, the period of employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.
- (3) If by or under an Act of Parliament, whether public or local and whether passed before or after this Act, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer, the employee's period of employment at the time when the modification takes effect shall count as a period of employment with the second-mentioned body corporate, and the change of employer shall not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased, the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees, and the death shall not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person, the employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees after die change, and the change shall not break the continuity of the period of employment.
- 18 If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters his employment is an associated employer of the first-mentioned employer, the employee's period of employment at that time shall count as a period of employment with the second-mentioned employer and the change of employer shall not break the continuity of the period of employment

Crown employment

- 19 (1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.
- (2) In this paragraph, subject to sub-paragraph (3), "Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.

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- (4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee's relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.
- (5) The reference in paragraph 17(2) to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown, a government department, or any other officer or body performing functions on behalf of the Crown.

Reinstatement or re-engagement of dismissed employee

- 20 (1) 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 this Schedule or for the purposes of this Schedule as applied by or under any other enactment specified in the regulations, or
 - (b) for modifying or excluding the operation of paragraph 12 subject to the recovery of any such payment as is mentioned in sub-paragraph (2) of that paragraph,
- in cases where, in consequence of action to which sub-paragraph (2) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.
- (2) 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 section 67, or
 - (b) of his making a claim in accordance with a dismissal procedures agreement designated by an order under section 65, or
 - (c) of any action taken by a conciliation officer under section 134(3).

Employment before the commencement of Act

- 21 Save as otherwise expressly provided, the provisions of this Schedule apply to periods before it comes into force as they apply to later periods.
- 22 If, in any week beginning before 6th July 1964, the employee was, for the whole or any part of the week, absent from work—
- (a) because he was taking part in a strike, or
 - (b) because of a lock-out by the employer,
- the week shall count as a period of employment.
- 23 Without prejudice to the foregoing provisions of this Schedule, any week which counted as a period of employment in the computation of a period of employment in accordance with the Contracts of Employment Act 1972 whether for the purposes of that Act, the Redundancy Payments Act 1965, the Trade Union and Labour Relations Act 1974 or the Employment Protection Act 1975, shall count as a period of employment for the purposes of this Act, and any week which did not break the continuity of a person's employment for the purposes of those Acts shall not break the continuity of a period of employment for the purposes of this Act.

Interpretation

24 (1) In this Schedule, unless the context otherwise requires.—

" lock-out " means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

" strike " means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

" week " means a week ending with Saturday.

(2) For the purposes of this Schedule the hours of employment of an employee who is required by the terms of his employment to live on the premises where he works shall be the hours during which he is on duty or during which his services may be required.