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*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act 1988, SCHEDULE 3. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 3

Section 33.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

#### TRADE UNIONS

##### *The Trade Union Act 1913 (c. 30)*

- 1 (1) In section 4 of the 1913 Act (ballots on the application of funds for political purposes)
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- (a) in subsection (1), after the words “subsections (1A) to (1F) below” there shall be inserted the words “and of subsections (2) to (7) of section 15 of the Employment Act 1988”; and
  - (b) in subsection (1B), at the end there shall be inserted the words “; and each voting paper—
    - (a) must clearly specify the address to which, and the date by which, the voting paper is to be returned;
    - (b) must be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot; and
    - (c) must be marked with its number.”
- (2) The approval which is required under section 4 of the 1913 Act to be given in relation to any ballot taken after the coming into force of this paragraph shall be an approval given after the coming into force of this paragraph.

##### *The Employment Protection (Consolidation) Act 1978 (c. 44)*

- 2 (1) For subsection (7) of section 23 of the 1978 Act (references to a trade union to include references to a branch or section of a trade union) there shall be substituted the following subsection—
- “(7) In this section references to being, becoming or ceasing to remain a member of a trade union shall include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union, and references to taking part in the activities of a trade union shall be similarly construed.”

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- (2) In section 58 of that Act (dismissal relating to union membership)—
- (a) in subsection (13), in the words after paragraph (b), for the words “subsections (1)(c) and (3)(b)” there shall be substituted the words “subsection (1)(c)”; and
  - (b) for subsection (14) there shall be substituted the following subsection—
 

“(14) In this section references to being, becoming or ceasing to remain a member of a trade union shall include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union, and references to taking part in the activities of a trade union shall be similarly construed.”
- (3) In section 133(1) of that Act (industrial tribunal proceedings in relation to which conciliation officers exercise functions), after paragraph (e) there shall be inserted “; or
- (f) arising out of an infringement, or alleged infringement, of the right conferred by section 3 of the Employment Act 1988.”
- (4) In section 136(5) of that Act (appeals under certain enactments to lie only to the Employment Appeal Tribunal), after the words “the <sup>M1</sup>Employment Act 1980” there shall be inserted the words “or section 4 or 5 of the Employment Act 1988”.
- (5) In paragraphs 18 and 21A of Schedule 11 to that Act (rules and powers of the Employment Appeal Tribunal), after the words “section 5 of the Employment Act 1980”, wherever they occur, there shall be inserted the words “or section 5 of the Employment Act 1988”.

**Marginal Citations**

**M1** 1980 c. 42.

*The Employment Act 1980 (c. 42)*

- 3 (1) In section 2 of the Employment Act 1980 (secret ballots on employers’ premises)—
- (a) in subsection (1), at the end there shall be inserted the words “unless the ballot is one in which every person who is entitled to vote must be given a convenient opportunity to vote by post.”; and
  - (b) in subsection (9), at the end there shall be inserted the words “; and in this section “post” has the same meaning as in Part I of the <sup>M2</sup>Trade Union Act 1984.”
- (2) In section 5 of that Act—
- (a) in subsection (8) (limit in certain cases on compensation for unreasonable exclusion or expulsion from a trade union), at the beginning there shall be inserted the words “Subject to subsection (8A) below,” and at the end there shall be inserted the words—

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“and shall not be less than the amount for the time being specified in section 73(4A) of that Act (minimum basic award in certain cases of unfair dismissal).”;

and

(b) after that subsection there shall be inserted the following subsection—

“(8A) In determining the amount of any compensation to be awarded against a trade union on an application under this section, any reduction or increase which is required to be made by virtue of subsection (7) or (8) above shall be made—

(a) before any reduction is made by virtue of subsection (5) or (6) above; and

(b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the subject matter of the application;

and, accordingly, where the case so requires, the reductions mentioned in paragraphs (a) and (b) above shall be applied to the maximum or, as the case may be, minimum award under subsection (7) or (8) above.”

#### Marginal Citations

M2 1984 c. 49.

#### *The Employment Act 1982 (c. 46)*

4 For subsections (3) and (4) of section 14 of the 1982 Act (pressure to impose union membership or recognition requirements) there shall be substituted the following subsection—

“(3) This subsection is satisfied if—

(a) the supplier of the goods or services is not the employer under the contract of employment mentioned in subsection (2) above; and

(b) the reason, or one of the reasons, for which the act is done is the fact or belief that the supplier does not, or that the supplier might not, recognise, negotiate or consult as mentioned in section 13.”

#### *The Trade Union Act 1984 (c. 49)*

5 (1) In subsection (1)(a) of section 1 of the 1984 Act (duty of trade union to hold elections for certain positions), for the word “has” there shall be substituted the words “and, in the case of an election held after the coming into force of any provision of section 13 or 15 of the Employment Act 1988, the requirements imposed by virtue of that provision have”.

(2) In section 2 of that Act—

(a) in subsection (5) (method of voting in election), at the end there shall be inserted the words “; and each voting paper—

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- (a) must clearly specify the address to which, and the date by which, the voting paper is to be returned;
- (b) must be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election; and
- (c) must be marked with its number.”;

and

- (b) in subsection (13) (exclusion of overseas members), at the end there shall be inserted the words “except, in the case of subsections (5) to (8), where the union has chosen to accord that member entitlement to vote in the ballot.”
- (3) In section 4 of that Act (register of members’ names and addresses), after subsection (2) there shall be inserted the following subsection—
- “(2A) It shall be the duty of every trade union—
- (a) free of charge and at any reasonable time, to allow a member of the union who gives the union reasonable notice of his intention to do so to ascertain from the register whether there is an entry on the register relating to that member; and
  - (b) if requested to do so by any member of the union, to supply that member, as soon as reasonably practicable after receiving the request and either free of charge or on payment of a reasonable fee, with a copy of any such entry.”
- (4) In section 5 of that Act (remedy for failure to comply with one or more of the provisions of Part I of that Act)—
- (a) in subsections (1) and (10), after the word “Part” there shall be inserted the words “or, in relation to any election which has been or is proposed to be held for the purposes of this Part, with one or more of the provisions of section 13 or 15 of the Employment Act 1988”;
  - (b) in subsection (8), for paragraphs (a) and (b) there shall be substituted the words “in accordance with section 2 of this Act and such other provisions as may be made by the order and for the requirements of sections 13 and 15 of the Employment Act 1988 to be satisfied in relation to the election.”; and
  - (c) after subsection (12) there shall be inserted the following subsection—
- “(12A) The requirements of subsection (1) or (12) above that a person making an application under this section in relation to an election or seeking to enforce obedience to an enforcement order in relation to an election must be or have been a member of the union at a particular time shall not apply where the person who makes the application or seeks to enforce obedience to the order is or was a candidate in the election.”
- (5) In section 8 of that Act (exemption for certain persons nearing retirement)—
- (a) in subsection (1), the word “voting” shall be omitted;
  - (b) in subsection (2)(a), for the word “has” there shall be substituted the words “and the requirements of sections 13 and 15 of the Employment Act 1988 have”;
  - (c) in subsection (4), at the end there shall be inserted the words “; and where that election was held before the coming into force of a provision of section 13

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or 15 of the Employment Act 1988, that paragraph shall apply as if it did not require the requirements imposed by virtue of that provision to be satisfied in relation to that election.”; and

- (d) after the said subsection (4) there shall be inserted the following subsection—

“(5) Where any person holds any such position as is mentioned in paragraph (a) of subsection (2) above by virtue of an election held at any time before the coming into force of section 14(2) of the Employment Act 1988 (requirement of postal ballot), section 3 of this Act (non-postal ballots) shall be disregarded in determining for the purposes of that paragraph whether any election is an election in relation to which section 2 of this Act has been satisfied, unless the position to which that person was elected in that election was, at the time of the election, either—

- (a) a position as a voting member of the principal executive committee of a trade union; or  
(b) a position by virtue of election to which the person elected would become such a voting member.”

- (6) In section 9(1) of that Act (interpretation of Part I), the following definitions shall be inserted after the definitions of “the Certification Officer” and “single transferable vote”, respectively, that is to say—

““member”, in relation to a trade union’s principal executive committee, shall be construed in accordance with section 1(6A) to (6C) of this Act;”

““special register body” has the same meaning as it has in the 1974 Act by virtue of section 30;”.

- (7) In section 10 of that Act (liability in tort in respect of action authorised or endorsed without the support of a ballot), for subsection (4) there shall be substituted the following subsections—

“(4) Subject to subsection (4A) below, in this section and section 11 of this Act references to the appropriate question are references to whichever of the questions set out in subsection (4) of section 11 of this Act is applicable to the strike or other industrial action in question.

(4A) Where both the questions mentioned in subsection (4) above are applicable in relation to any industrial action, an act inducing a breach or interference such as is mentioned in subsection (1) above shall be treated as an act for the purposes of which the requirement of paragraph (b) of subsection (3) above is satisfied if but only if that paragraph (or, as the case may be, that paragraph as it has effect by virtue of subsection (3A) above) is satisfied in relation to the question applicable to that part of the action in the course of which the breach or interference occurred.”

- (8) In section 11 of that Act (requirements to be satisfied in relation to the ballot)—

- (a) in paragraph (a) of subsection (1) (persons entitled to vote), for the words from “called” to the end of the paragraph there shall be substituted the words “induced to take part or, as the case may be, to continue to take part in the strike or other industrial action; and”;
- (b) in paragraph (b) of subsection (2) (persons denied entitlement to vote), for the words from “, in”, where it first occurs, to the end of the paragraph there

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shall be substituted the words “to take part or, as the case may be, to continue to take part in the strike or other industrial action;”

- (c) in subsection (3) (method of voting), at the end there shall be inserted the words “and the following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper, namely—

“If you take part in a strike or other industrial action, you may be in breach of your contract of employment.”;

- (d) in subsection (4) (appropriate questions), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

(a) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;

(b) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in action short of a strike.”;

- (e) for paragraphs (b) and (c) of subsection (8) there shall be substituted the following paragraphs—

(b) individuals answering “Yes” to the question, or as the case may be, to each question;

(c) individuals answering “No” to the question or, as the case may be, to each question; and”;

- (f) in subsection (11) (interpretation), at the end there shall be inserted the words—

“and section 1(6) of the Employment Act 1988 shall apply for construing references in this section to a person being induced to take part or to continue to take part in any strike or other industrial action as it applies for the purposes of that section.”

- (9) In section 22(6) of that Act (extent and application of Act), after the words “in Northern Ireland” there shall be inserted the words “or in relation to any unincorporated employers’ association which has its head or main office in Northern Ireland”.

*The Wages Act 1986 (c. 48)*

- 6 (1) In subsection (6) of section 1 of the Wages Act 1986 (restrictions in section 1 to be without prejudice to other enactments prohibiting deductions), at the end there shall be inserted the words “; and where a certificate has been given by a worker to his employer for the purposes of section 18 of the <sup>M3</sup>Trade Union Act 1984 (deduction of contributions to a trade union’s political fund), nothing in the worker’s contract, or in any agreement or consent signified by the worker, shall be taken for the purposes of this section as authorising the making of deductions in contravention of any obligation imposed on the employer in consequence of the giving of that certificate.”
- (2) After subsection (3) of section 5 of that Act (which relates to the time limit for the presentation of a complaint) there shall be inserted the following subsection—

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“(3A) Where a deduction has been made in contravention of an obligation imposed on an employer in consequence of the giving of any certificate for the purposes of section 18 of the Trade Union Act 1984 (deduction of contributions to a trade union’s political fund)—

- (a) no complaint under this section shall be presented in respect of that deduction unless a declaration has been made under subsection (4) of that section, either before or after the date of payment of the wages from which the deduction was made, that the employer has failed to comply with the obligation imposed in consequence of the giving of that certificate; and
- (b) subsection (2) shall be read, in relation to any complaint in respect of that deduction or of a series of deductions of which that is the last, as referring, if it is later, to the date of the declaration instead of to the date of payment of the wages from which the deduction was made.”

(3) Nothing in this paragraph shall affect the operation of the Wages Act 1986 in relation to any deduction from wages paid before the coming into force of this paragraph.

**Marginal Citations**

**M3** 1984 c. 49.

**PART II**

EMPLOYMENT AND TRAINING

7 ..... F1

**Textual Amendments**

**F1** Sch. 3, Pt. II paras. 7–10 repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. I

8 ..... F2

**Textual Amendments**

**F2** Sch. 3, Pt. II paras. 7–10 repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. I

9 ..... F3

**Textual Amendments**

**F3** Sch. 3, Pt. II paras. 7–10 repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. I

10 ..... F4

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**Textual Amendments**

**F4** Sch. 3, Pt. II paras. 7–10 repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. I

*The Sex Discrimination Act 1975 (c. 65)*

11 (1) ..... F5

(2) In subsection (1) of section 16 of that Act (under which it is unlawful for the Manpower Services Commission to discriminate in the provision of facilities or services under section 2 of the 1973 Act), for the words “Manpower Services Commission” there shall be substituted the words “Secretary of State or the Training Commission”.

**Textual Amendments**

**F5** Sch. 3, Pt. II paras. 11(1), 12(1)(3) repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. II

*The Race Relations Act 1976 (c. 74)*

12 (1) ..... F6

(2) In subsection (1) of section 15 of that Act (under which it is unlawful for the Manpower Services Commission to discriminate in the provision of facilities or services under section 2 of the 1973 Act), for the words “Manpower Services Commission” there shall be substituted the words “Secretary of State or the Training Commission”.

(3) ..... F6

**Textual Amendments**

**F6** Sch. 3, Pt. II paras. 11(1), 12(1)(3) repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. II

*The Agricultural Training Board Act 1982 (c. 9)*

13 In section 4(1)(f) of the Agricultural Training Board Act 1982 (power of Board to take part in arrangements in pursuance of the 1973 Act), for the words “section 2(1) or (2), 3(4)” there shall be substituted the words “section 2, 3”.

*The Industrial Training Act 1982 (c. 10)*

14 (1) In section 5(3)(e) of the Industrial Training Act 1982 (power of industrial training board to take part in arrangements in pursuance of the 1973 Act), for the words “section 2(1) or (2), 3(4)” there shall be substituted the words “section 2, 3”.

(2) ..... F7



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**Textual Amendments**

**F7** Sch. 3, Pt. II para. 14(2) repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), **Sch. 7 Pt. I**

*The Income and Corporation Taxes Act 1988 (c. 1)*

- 15 In section 127(1)(a) of the Income and Corporation Taxes Act 1988 (enterprise allowance), for the words “by the Manpower Services Commission” there shall be substituted the words “ (whether before or after the coming into force of section 25 of the Employment Act 1988) ”.

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