

SCHEDULES

SCHEDULE 3

Section 25.

SUSPENSION FROM WORK ON MATERNITY GROUNDS

Suspension from work on maternity grounds

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- 45 (1) For the purposes of sections 46 and 47 an employee is suspended on maternity grounds where, in consequence of—
- (a) any requirement imposed by or under any relevant provision of any enactment or of any instrument made under any enactment, or
 - (b) any recommendation in any relevant provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,
- she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.
- (2) For the purposes of this section, sections 46 and 47 and section 61 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of section 46) does not perform the work she normally performed before the suspension.
- (3) For the purposes of subsection (1) a provision is a “relevant provision” if it is for the time being specified as a relevant provision in an order made by the Secretary of State under this subsection.

Right to offer of alternative work

- 46 (1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.
- (2) For alternative work to be suitable for an employee for the purposes of this section—
- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
 - (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.
- (3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of subsection (1).

- (4) An industrial tribunal shall not entertain a complaint under subsection (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.
- (6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under subsection (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

Right to remuneration on suspension

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- (1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.
 - (2) An employee shall not be entitled to remuneration under this section in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of section 46 and the employee has unreasonably refused to perform that work.
 - (3) The amount of remuneration payable by an employer to an employee under this section shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
 - (4) Subject to subsection (5), a right to remuneration under this section shall not affect any right of an employee in relation to remuneration under her contract of employment (in subsection (5) referred to as "contractual remuneration").
 - (5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this section in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this section in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.
 - (6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this section.
 - (7) An industrial tribunal shall not entertain a complaint relating to remuneration under this section in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
 - (8) Where an industrial tribunal finds a complaint under subsection (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.