

SCHEDULES

SCHEDULE 7

Section 49(1).

MISCELLANEOUS AMENDMENTS

Unfair selection for dismissal in redundancy cases: exclusion of qualifying conditions

- 1 In section 154 of the 1992 Act (exclusion of requirement for qualifying period of employment, etc where reason for dismissal related to trade union membership or activities)—
- (a) for the words “was one of those specified in section 152(1)” there shall be substituted the words “or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.”, and
 - (b) there shall be inserted after those words, as subsection (2), the following—
 - “(2) For the purposes of this section—
 - “inadmissible”, in relation to a reason, means that it is one of those specified in section 152(1); and
 - “a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees required by section 153(a) is also shown.”, and the words preceding that subsection (2) shall become subsection (1).

Qualifying period for unfair dismissal protection: small businesses

- 2 Section 64A of the 1978 Act (extended qualifying period for right not to be unfairly dismissed where no more than twenty employees) shall be omitted.

Application of 1978 Act to Crown Employment and House of Commons Staff

- 3 In section 138 of the 1978 Act (application to Crown)—
- (a) in subsection (1) (which applies Part I to Crown employees only so far as it relates to itemised pay statements), the words “(so far as it relates to itemised pay statements)” shall be omitted, and
 - (b) in subsection (4) (disapplication of any provision which would otherwise apply to Crown employment where national security certificate in force), for the words “For the purposes of this section, Crown employment does not include any employment” there shall be substituted the words “Part I (so far as it relates to itemised pay statements), Part II (except sections 22A to 22C and 31A), section 53 (apart from subsection (2A)), Part V (except so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60) and Part VIII and this Part (so far as relating to any of those provisions) shall not have effect in relation to any Crown employment”.

Status: This is the original version (as it was originally enacted).

- 4 In section 139(1) of the 1978 Act (application of Part I to House of Commons staff only so far as it relates to itemised pay statements), the words “(so far as it relates to itemised pay statements)” shall be omitted.

Restrictions on disclosure of information, etc on grounds of national security

- 5 After section 146 of the 1978 Act there shall be inserted—

“146A National Security.

- (1) Where in the opinion of any Minister of the Crown the disclosure of any information would be contrary to the interests of national security—

- (a) nothing in any of the provisions to which this section applies shall require any person to disclose the information, and
- (b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

- (2) This section applies to—

- (a) Part I so far as it relates to employment particulars,
- (b) sections 22A to 22C and section 31A,
- (c) Part III,
- (d) section 53(2A),
- (e) Part V so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60, and
- (f) Part VIII and this Part so far as relating to any of the provisions in paragraphs (a) to (e).”.

- 6 In Schedule 9 of the 1978 Act (industrial tribunals)—

- (a) in paragraph 1 (regulations as to procedure), after sub-paragraph (4), there shall be inserted—

“(4A) Without prejudice to sub-paragraph (5) or paragraph 2, a Minister of the Crown may on grounds of national security direct an industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.”, and

- (b) in paragraph 2 (national security), in sub-paragraph (2), for the words “A certificate” there shall be substituted the words “Except where the complaint is that a dismissal is unfair by reason of section 57A, 59(1)(a) or 60, a certificate”.

- 7 In paragraph 18 of Schedule 11 to the 1978 Act (Employment Appeal Tribunal Rules), for sub-paragraph (c) (power for rules to enable private hearings) there shall be substituted—

- “(c) for requiring or enabling the Appeal Tribunal to sit in private in circumstances in which an industrial tribunal is required or empowered to sit in private by virtue of paragraph 1 of Schedule 9.”.

Extension of employment protection provisions and related legislation to House of Lords Staff

- 8 In section 1 of the Equal Pay Act 1970 (requirement of equal treatment for men and women), after subsection (10A) there shall be inserted—

“(10B) This section applies in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.

In this subsection “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.

9 After section 85A of the Sex Discrimination Act 1975 (application to House of Commons staff) there shall be inserted—

“85B Application to House of Lords staff.

(1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) In this section “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.

10 After section 75A of the Race Relations Act 1976 (application to House of Commons staff) there shall be inserted—

“75B Application to House of Lords staff.

(1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) In this section “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.”.

11 After section 139 of the 1978 Act there shall be inserted—

“House of Lords staff

139A Provisions as to House of Lords staff.

(1) The provisions of Parts I, II, III, V and VIII, and this Part and section 53 shall apply in relation to employment as a relevant member of the House of Lords staff as they apply to other employment.

(2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Lords staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by a person who is not such a member.

(3) For the purposes of the application of the enactments applied by subsection (1) in relation to a relevant member of the House of Lords staff—

(a) the reference in paragraph 1(5)(c) of Schedule 9 to a person’s undertaking or any undertaking in which he works shall be construed

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as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and

- (b) any other reference to an undertaking shall be construed as a reference to the House of Lords.

- (4) Where the terms of his contract of employment restrict the right of a relevant member of the House of Lords staff to take part in—

- (a) certain political activities, or
 - (b) activities which may conflict with his official functions,

nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.

- (5) In this section—

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

“the court” means the High Court or the county court.

- (6) For the purposes of the application of the enactments applied by subsection (1) and of any civil employment claim in relation to a person continuously employed in or for the purposes of the House of Lords up to the time when he became so employed under a contract of employment with the Corporate Officer of the House of Lords, his employment shall not be treated as having been terminated by reason only of a change in his employer before or at that time.”.

12 In section 277 of the 1992 Act (House of Lords staff)—

- (a) in subsection (1), for the words “Sections 137 to 143 (rights in relation to trade union membership: access to employment)” there shall be substituted the words “The provisions of this Act (except those specified below)”;
- (b) after that subsection there shall be inserted—

“(1A) The following provisions are excepted from subsection (1)—
 sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information),
 Chapter II of Part IV (procedure for handling redundancies).”.

- (c) in subsection (2), after the word “bringing” there shall be inserted the words “a civil employment claim before the court or from bringing”;
- (d) after that subsection there shall be inserted—

“(2A) For the purposes of the application of the other provisions of this Act as they apply by virtue of this section—

- (a) the reference in section 182(1)(e) (disclosure of information for collective bargaining: restrictions) to a person’s undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and

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- (b) any other reference to an undertaking shall be construed as a reference to the House of Lords.”, and
- (e) for subsections (3) to (6) there shall be substituted—

“(3) In this section—

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

“the court” means the High Court or a county court.”.

Power to extend 1978 Act in certain health and safety cases

- 13 In section 149 of the 1978 Act (general power to amend Act), after subsection (2) there shall be inserted—

“(2A) The Secretary of State may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, sections 22A to 22C (and any other provisions of this Act so far as relating to those sections) shall apply to such descriptions of persons other than employees as may be prescribed in the order as they apply to employees (but as if references to their employer were references to such person as may be so prescribed).”.

Power to provide for continuity of employment following reinstatement or re-engagement

- 14 In Schedule 13 to the 1978 Act (computation of period of employment), in paragraph 20 (re-instatement or re-engagement of dismissed employee)—

- (a) in sub-paragraph (2)(a), for the words “complaint under section 67” there shall be substituted the words “relevant complaint of dismissal”;
- (b) in sub-paragraph (2)(c), for the words “section 134(3)” there shall be substituted the words “his relevant conciliation powers or”;
- (c) after sub-paragraph (2)(c), there shall be inserted—
 - “(d) of the making of a relevant compromise contract.”; and
- (d) after sub-paragraph (2) there shall be inserted—

“(3) In sub-paragraph (2)—

“relevant complaint of dismissal” means a complaint under section 67 of this Act, a complaint under section 63 of the Sex Discrimination Act 1975 arising out of a dismissal or a complaint under section 54 of the Race Relations Act 1976 arising out of a dismissal;

“relevant conciliation powers” means section 134(3) of this Act, section 64(2) of the Sex Discrimination Act 1975 or section 55(2) of the Race Relations Act 1976; and

“relevant compromise contract” means an agreement or contract authorised by section 140(2)(fa) or (fb) of this Act, section 77(4)(aa) of the Sex Discrimination Act 1975 or section 72(4)(aa) of the Race Relations Act 1976.”.

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Codes of practice on employment : use in proceedings

- 15 In section 56A of the Sex Discrimination Act 1975 (codes of practice in the field of employment), in subsection (10) (relevance of codes in proceedings under that Act before industrial tribunals), after the words “under this Act” there shall be inserted the words “or the Equal Pay Act 1970”.

Parliamentary procedure: orders modifying application of redundancy provisions

- 16 In section 149 of the 1978 Act (general power to amend Act)—
- (a) in subsection (4) (orders to be subject to affirmative procedure), for the words “subsection (1)” there shall be inserted the words “this section, other than one to which subsection (5) applies,”, and
 - (b) after subsection (4) there shall be inserted—

“(5) This subsection applies to an order under subsection (1)(b) which specifies only provisions contained in Part VI.”.

Miscellaneous minor corrections and amendments

- 17 In section 21(6) of the 1992 Act (repudiation by trade union of certain acts) for the words “six months” there shall be substituted the words “three months”.
- 18 In section 34(5) of the 1992 Act (eligibility for appointment as auditor), the second sentence shall be omitted.
- 19 In section 35(5) of the 1992 Act (appointment and removal of auditors)—
- (a) for the words “subsections (1) to (6)” there shall be substituted the words “subsections (1) to (4)”, and
 - (b) for the words “subsection (7)” there shall be substituted the words “subsection (5)”.
- 20 In section 110(3) of the 1992 Act (consideration by Commissioner of application for assistance for certain legal proceedings) for the word “(f)” there shall be substituted the word “(e)” and for the words “or ballot” there shall be substituted the words “or political ballot”.
- 21 In section 158 of the 1992 Act (special award in cases of dismissal on grounds related to union membership or activities) after subsection (6) there shall be inserted—
- “(7) Schedule 14 to the Employment Protection (Consolidation) Act 1978 (calculation of a week’s pay) shall apply for the purposes of this section with the substitution, for paragraph 7, of the following:—
- For the purposes of this Part in its application to section 158 of the Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is—
- (a) where the dismissal was with notice, the date on which the employer’s notice was given;
 - (b) where paragraph (a) does not apply, the effective date of termination.”.
- 22 In section 166(1) of the 1992 Act (consequences of failure to comply with order of reinstatement or re-engagement), for “(5)(a)” there shall be substituted “(5)”.

- 23 In section 187(2) of the 1992 Act (meaning of refusal to deal where refusal on grounds of union exclusion), paragraph (c) shall become subparagraph (iii) of paragraph (b) and there shall be inserted as paragraph (c) the following, preceded by “or”, namely—
- “(c) he terminates a contract with that person for the supply of goods or services.”.
- 24 In section 228 of the 1992 Act (separate workplace ballots before action by trade union) after subsection (3) there shall be inserted—
- “(4) In this section “place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection.”.
- 25 In section 229(3) of the 1992 Act (voting paper for industrial action ballot) for the word “20(3)” there shall be substituted the word “20(2)”.
- 26 In section 246 of the 1992 Act (minor definitions relating to industrial action provisions) the definition of “place of work” shall be omitted.
- 27 In section 278(4)(c) of the 1992 Act (House of Commons staff), after the word “in” there shall be inserted the word “section”.