

SCHEDULES

SCHEDULE 8

CONSEQUENTIAL AMENDMENTS

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

- 10 In section 11 of the 1978 Act (enforcement of right to employment particulars)—
- (a) in subsection (1) (references to determine what statement an employer ought to have given the employee), after the words “as required by section 1 or 4(1) or 8” there shall be inserted the words “(that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements)”;
 - (b) in subsection (4)(b) (questions as to particulars which ought to have been included in a note about disciplinary procedures), for the words “a note under section 1(4)” there shall be substituted the words “the note required by section 3 to be included in the statement under section 1”; and
 - (c) in subsection (9) (time limit of three months for applications to industrial tribunals), at the end, there shall be inserted the words—
- “or—
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months”; and after the word “made” (in the second place where it occurs) there shall be inserted “(a)”.
- 11 In section 53 of the 1978 Act (written statement of reasons for dismissal), in subsection (4) (complaint on ground of unreasonable refusal to provide written statement under subsection (1))—
- (a) for the words “refused to provide a written statement under subsection (1)” there shall be substituted the words “failed to provide a written statement under this section”, and
 - (b) for the words “that subsection” there shall be substituted the words “this section”.
- 12 In section 56 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of unfair dismissal provisions), for the words “is entitled to return to work and has exercised her right to return in accordance with section 47” there shall be substituted the words “has the right to return to work under section 39 and has exercised it in accordance with section 42”.
- 13 In section 56A of the 1978 Act (exclusion of section 56)—
- (a) in subsection (1)(a), for the words “her absence began” there shall be substituted the words “the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal)”, and

- (b) in subsections (1)(b), (2)(a) and (3)(b), for the words “section 45(1)” there shall be substituted the words “section 39”.
- 14 In section 59 of the 1978 Act (dismissal on ground of redundancy)—
- (a) for the word “he”, in both places where it occurs, and the word “him” there shall be substituted the words “the employee”,
- (b) for the words “in his case” there shall be substituted the words “in the case of the employee”, and
- (c) at the end, there shall be inserted as subsection (3)—
- “(3) For the purposes of this Part “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 is also shown.”.
- 15 In section 61 of the 1978 Act (dismissal of replacement)—
- (a) in subsection (1)(a) (dismissal of employee on return to work of employee absent because of pregnancy or confinement)—
- (i) for the words “return to work of” there shall be substituted the words “resumption of work by”, and
- (ii) for the word “confinement” there shall be substituted the word “childbirth”, and
- (b) in subsection (2) (dismissal of employee on resumption of work by employee suspended as mentioned in section 19)—
- (i) after the word “19” there shall be inserted the words “or 45”, and
- (ii) for the words “other employee to resume his original work” there shall be substituted the words “resumption of work by the other employee”.
- 16 In section 65 of the 1978 Act (exclusion in respect of dismissal procedures agreement), in subsection (4) (disapplication of subsection (3) in case of right not to be dismissed for any reason mentioned in section 60(1) or (2)), for the words from “right” to the end there shall be substituted the words “right conferred by section 60 or 60A(1).”.
- 17 In section 86 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of redundancy provisions), for the words “is entitled to return to work and has exercised her right to return in accordance with section 47” there shall be substituted the words “has the right to return to work under section 39 and has exercised it in accordance with section 42”.
- 18 In section 122 of the 1978 Act (employee’s rights on insolvency of employer), in subsection (4) (amounts treated as arrears of pay), after paragraph (c) there shall be inserted—
- “(ca) remuneration on suspension on maternity grounds under section 47;”.
- 19 In section 132 of the 1978 Act (recoupment of benefits), in subsection (1)(b) (payments from which provision for recoupment may be made), after the words “or section” there shall be inserted the words “47 or”.
- 20 In section 133(1)(a) of the 1978 Act (conciliation)—
- (a) after the word “19”, there shall be inserted the word “22A,”, and
- (b) after the word “31A,” there shall be inserted the words “46, 47,”.

- 21 In section 140 of the 1978 Act (restrictions on contracting-out), in subsection (2) (exceptions), after paragraph (f) there shall be inserted—
- “(fa) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under section 131;”.
- 22 In section 141(1) of the 1978 Act (disapplication of sections 1 to 4 in case of employees engaged in work wholly or mainly outside Great Britain), for the words “unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer” there shall be substituted the words “unless—
- (a) the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer, or
- (b) the law which governs his contract of employment is the law of England and Wales or of Scotland”.
- 23 In section 144 of the 1978 Act (mariners), for subsection (1) there shall be substituted—
- “(1) Sections 1 to 4 and 49 to 51 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.”.
- 24 In section 149(2) of the 1978 Act (provisions to which power to make orders amending that Act does not apply)—
- (a) after the word “57,” there shall be inserted the word “57A,”
- (b) after the word “67,” there shall be inserted the words “73(6C) and (6D),”
- and
- (c) after the word “75,” there shall be inserted the words “75A(7) and (8).”.
- 25 In section 153 of the 1978 Act (interpretation)—
- (a) in subsection (1) (definitions)—
- (i) after the definition of “business” there shall be inserted—
- ““childbirth” means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy;”,
- (ii) for the definition of “expected week of confinement” there shall be substituted—
- ““expected week of childbirth” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;”,
- (iii) after the definition of “job” there shall be inserted—
- ““maternity leave period” shall be construed in accordance with sections 34 and 35;”,
- (iv) in the definition of “notified day of return”, for the words “has the meaning given by section 47(1) and (8)” there shall be substituted the words “shall be construed in accordance with section 43(3) and (4)”, and
- (v) after that definition there shall be inserted—

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““notified leave date” shall be construed in accordance with section 36;”, and

- (b) in subsection (5) (irrelevance of what law governs a person’s employment), for the word “For” there shall be substituted the words “Subject to section 141(1)(b), for”.

26 In Schedule 2 to the 1978 Act (maternity)—

- (a) in paragraph 2—
 - (i) in sub-paragraph (1), in the substituted subsection (3), for the words “sections 59 to 61” there shall be substituted the words “sections 57A to 61”,
 - (ii) in sub-paragraph (2), for the words “section 45(3)” there shall be substituted the words “section 41(1)”, and
 - (iii) in sub-paragraph (5), for the words “the original contract of employment” there shall be substituted the words “her contract of employment immediately before the beginning of her maternity leave period”,
- (b) in paragraph 4—
 - (i) in sub-paragraph (1), for paragraph (c) there shall be substituted—
 - “(c) the reference in section 84(3) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.”, and
 - (ii) in sub-paragraph (4), for the words “the original contract of employment” there shall be substituted the words “her contract of employment immediately before the beginning of her maternity leave period”,
- (c) in paragraph 5—
 - (i) after the words “return to work” there shall be inserted the words “in accordance with section 42”, and
 - (ii) for the words from “during her absence” to “confinement” there shall be substituted the words “on a day falling after the commencement of her maternity leave period and before the notified day of return”,
- (d) in paragraph 6—
 - (i) for sub-paragraph (1) there shall be substituted—
 - “(1) This paragraph applies where an employee has the right to return to work under section 39 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.”, and
 - (ii) in sub-paragraph (2), for the words “during the period of her absence” there shall be substituted the words “after her maternity leave period” and for the words “section 48” there shall be substituted the words “section 44”, and
- (e) in paragraph 7(1), for the words “section 48” there shall be substituted the words “section 44”.

27 In Schedule 3 to the 1978 Act (rights of employees in period of notice)—

- (a) in paragraph 2—

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- (i) in sub-paragraph (1), after paragraph (b) there shall be inserted—
 - “(ba) the employee is absent from work wholly or partly because of pregnancy or childbirth; or”,
 - (ii) in sub-paragraph (1), after the words “paragraphs (a), (b)” there shall be inserted “, (ba)”, and
 - (iii) in sub-paragraph (2), after the words “statutory sick pay,” there shall be inserted the words “maternity pay, statutory maternity pay,”, and
 - (b) in paragraph 3(3)—
 - (i) after paragraph (a) there shall be inserted—
 - “(aa) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth, or”, and
 - (ii) after the words “statutory sick pay,” there shall be inserted the words “maternity pay, statutory maternity pay,”.
- 28 In Schedule 9 to the 1978 Act (industrial tribunals)—
- (a) in paragraph 1(4)(b) (regulations as to procedure), for the word “confinement” there shall be substituted the word “childbirth”,
 - (b) in sub-paragraph (1) of paragraph 1A (power to authorise pre-hearing reviews), for paragraph (a) there shall be substituted—
 - “(a) for authorising the carrying out by an industrial tribunal of a preliminary consideration of any proceedings before it (“a pre-hearing review”); and”, and
 - (c) after that paragraph there shall be inserted—
 - “1B The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.”.
- 29 In paragraph 18(aa) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to regulate certain applications), for the words from “an application” to the end there shall be substituted the words “any application to the Appeal Tribunal may be made;”.
- 30 In paragraph 18(e) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to provide for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16), for the word “proceedings” there shall be substituted the words “matters arising on any appeal or application to the Appeal Tribunal”.
- 31 In Schedule 13 to the 1978 Act (computation of period of employment)—
- (a) in paragraph 9(1)(d), for the word “confinement” there shall be substituted the word “childbirth”, and
 - (b) in paragraph 10—
 - (i) for the words “section 45(1)” there shall be substituted the words “section 39”, and
 - (ii) for the word “confinement” there shall be substituted the word “childbirth”.

- 32 In Schedule 14 to the 1978 Act (calculation of week's pay), in paragraph 7(1) (the calculation date)—
- (a) after paragraph (e) there shall be inserted—
 - “(ea) where the calculation is for the purposes of section 47, the day before the suspension referred to in section 45(1) begins or where that day falls within an employee's maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under section 39, the day before the beginning of the maternity leave period;”, and
 - (b) after paragraph (i) there shall be inserted—
 - “(ia) where the calculation is for the purposes of section 75A and the dismissal was with notice, the date on which the employer's notice was given;
 - (ib) where the calculation is for the purposes of section 75A but sub-paragraph (ia) does not apply, the effective date of termination;”.