

SCHEDULE 1

Regulation 10(4)

Norwegian part of the Frigg Gas Field

1. The part of the Norwegian sector of the Continental Shelf described in this Schedule is the area defined by—

(a) the sets of lines of latitude and longitude joining the following surface co-ordinates—

Longitude	Latitude
02 degrees 05 minutes 30 seconds E	60 degrees 00 minutes 45 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N

Status: This is the original version (as it was originally made).

Longitude	Latitude
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 00 seconds N

- (b) a line from the point 02 degrees 03 minutes 00 seconds E 59 degrees 50 minutes 00 seconds N west along the parallel of latitude 59 degrees 50 minutes 00 seconds N until its intersection with the Dividing Line;
- (c) a line from the point of intersection specified in sub-paragraph (b) along the Dividing Line until its intersection with the parallel of latitude 60 degrees 00 minutes 45 seconds N;
- (d) a line from the point of intersection specified in sub-paragraph (c) east along the parallel of latitude 60 degrees 00 minutes 45 degrees N until its intersection with the meridian 02 degrees 05 minutes 30 seconds E.

2. In this Schedule, the “Dividing Line” means the dividing line as defined in an Agreement dated 10th March 1965 and made between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Kingdom of Norway as supplemented by a Protocol dated 22nd December 1978.

SCHEDULE 2

Regulation 11(3)

Pension schemes

Part 1

Pension schemes - general

Interpretation

1.—(1) In this Schedule, subject to sub-paragraphs (2) and (3), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993(1).

(2) In relation to rules, practices, actions and decisions identified at paragraph 7(a), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 under which only retirement-benefit activities within the meaning of section 255(4) of the Pensions Act 2004(2) are carried out.

(3) In relation to rules, practices, actions and decisions identified at paragraphs 12, 13 and 30, “occupational pension scheme” means an occupational pension scheme within the meaning of either section 1(1) of the Pension Schemes Act 1993 or section 150(5) of the Finance Act 2004(3).

(4) In this Schedule, “scheme” means an occupational pension scheme, construed in accordance with sub-paragraphs (1) to (3).

(5) In this Schedule, in relation to a scheme—

“active member” has the meaning given by section 124(1) of the Pensions Act 1995(4), but in paragraph 13 also includes an active member within the meaning of section 151(2) of the Finance Act 2004;

“age related benefit” means benefit provided from a scheme to a member—

- (a) on or following his retirement (including early retirement on grounds of ill health or otherwise),
- (b) on his reaching a particular age, or
- (c) on termination of his service in an employment;

“death benefit” means benefit payable from a pension scheme, in respect of a member, in consequence of his death;

“deferred member” has the meaning given by section 124(1) of the Pensions Act 1995;

“defined benefits arrangement” has the meaning given by section 152(6) of the Finance Act 2004(5), but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993(6) rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“dependant” means dependant as defined in the scheme rules;

(1) 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

(2) 2004 c. 35.

(3) 2004 c. 12.

(4) 1995 c. 26.

(5) 2004 c. 12.

(6) 1993 c. 48; relevant amendments to section 1(1) have been made by the Pensions Act 2004 (c. 35), section 239.

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

“early retirement pivot age” means an age specified in the scheme rules as the earliest age at which age related benefit becomes payable without actuarial reduction (disregarding any special provision as to early payment on grounds of ill health or otherwise);

“employer” has the meaning given by section 318(1) of the Pensions Act 2004(7);

“employer contribution” means any contribution to a scheme by an employer in respect of a member;

“employment” includes any trade, business, profession, office or vocation, whether or not a person is employed in it under a contract of employment or is self employed;

“late retirement pivot age” means an age specified in the scheme rules above which benefit becomes payable with actuarial enhancement;

“managers” has the meaning given by section 124(1) of the Pensions Act 1995(8);

“member” means any active member, deferred member or pensioner member, but in paragraph 12 includes any active, deferred or pensioner member within the meaning of section 151(2) to (4) of the Finance Act 2004;

“member contribution” means any contribution to a scheme by a member;

“money purchase arrangement” has the meaning given by section 152(2) of the Finance Act 2004, but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993 rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“non-discrimination rule” means the rule in paragraph 2(1);

“normal pension age” has the meaning given by section 180 of the Pension Schemes Act 1993;

“normal retirement age”, in relation to a member, means the age at which workers in the undertaking for which the member worked at the time of his retirement, and who held the same kind of position as the member held at his retirement, were normally required to retire;

“pensionable age” has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992(9);

“pensionable pay” means that part of a member’s pay which counts as pensionable pay under the scheme rules;

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995(10);

“pensioner member” has the meaning given by section 124(1) of the Pensions Act 1995(11); and

“prospective member” means any person who, under the terms of his employment or the scheme rules or both—

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be so admitted to it automatically unless he makes an election not to become a member, or

(7) 2004 c. 35.

(8) 1995 c. 26.

(9) 1992 c. 4; relevant amendments have been made to section 122(1) by the Pensions Act 1995 (c. 26), section 126 and Schedule 4 paragraph 13(a).

(10) 1995 c. 26; relevant amendments have been made to section 124(1) by the Pensions Act 2004 (c. 35), section 320 and Schedule 13, Part 1.

(11) 1995 c. 26; relevant amendments have been made to section 124(1) by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 56 and Schedule 5, Part 1, paragraph 8(3).

(d) may be admitted to it subject to the consent of any person.

(6) In their application to a scheme which is divided into two or more sections, the provisions of this Schedule shall apply as if each section of the scheme was a separate scheme.

(7) In this Schedule—

“personal pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993⁽¹²⁾;

“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004⁽¹³⁾; and

references to contributions under a money purchase arrangement shall be construed as including amounts credited to a member’s account whether or not they reflect payments actually made under the scheme.

(8) Any term used in regulation 11 (pension schemes) shall have the same meaning in that regulation as it has in this Schedule.

Non-discrimination rule

2.—(1) Every scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 11.

(2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.

(3) The trustees or managers of a scheme may—

(a) if they do not (apart from this sub-paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or

(b) if they have such power but the procedure for doing so—

(i) is liable to be unduly complex or protracted, or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(4) Alterations made by a resolution such as is referred to in sub-paragraph (3)—

(a) may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before the coming into force of these Regulations), and

(b) shall be subject to the consent of any employer in relation to the scheme whose consent would be required for such a modification if it were to be made under the scheme rules.

Exception for rules, practices, actions and decisions relating to occupational pension schemes

3. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, or for trustees or managers, to maintain or use, in relation to a scheme, any of the rules, practices, actions or decisions set out in Part 2 of this Schedule.

⁽¹²⁾ 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

⁽¹³⁾ 2004 c. 12.

Exception for rules, practices, actions and decisions relating to contributions by employers to personal pension schemes

4. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, in relation to the payment of contributions to any personal pension scheme in respect of a worker, to maintain or use any of the rules, practices, actions or decisions set out in Part 3 of this Schedule.

Procedure in employment tribunals

5. Where under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 11 (pension schemes) or 24 (relationships which have come to an end); or
- (b) are by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

Remedies in employment tribunals

6.—(1) This paragraph applies where—

- (a) under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme (“the complainant”) presents to an employment tribunal a complaint against the trustees or managers of the scheme or an employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the employment tribunal may, without prejudice to the generality of its power under regulation 38(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before the coming into force of these Regulations);
- (b) may make such provision as the employment tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the employment tribunal may not make an order for compensation under regulation 38(1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings;
- (b) by virtue of regulation 38(3).

Part 2

Excepted rules, practices, actions and decisions relating to occupational pension schemes

Admission to schemes

7. In relation to admission to a scheme—
- (a) a minimum or maximum age for admission, including different ages for admission for different groups or categories of worker;
 - (b) a minimum level of pensionable pay for admission, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992⁽¹⁴⁾.

The use of age criteria in actuarial calculations

8. The use of age criteria in actuarial calculations, for example in the actuarial calculation of—
- (a) any age related benefit commencing before any early retirement pivot age or enhancement of such benefit commencing after any late retirement pivot age;
 - (b) member or employer contributions to a scheme; or
 - (c) any age related benefit commuted in exchange for the payment of any lump sum.

Contributions

9. Any difference in the rate of member or employer contributions by or in respect of different members to the extent that this is attributable to any differences in the pensionable pay of those members.

Contributions under money purchase arrangements

10. Under a money purchase arrangement—
- (a) different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made where the aim in setting the different rates is—
 - (i) to equalise the amount of benefit to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement, or
 - (ii) to make the amount of benefit to which such members will become entitled under the arrangement more nearly equal;
 - (b) equal rates of member or employer contributions irrespective of the age of the members by or in respect of whom contributions are made.

Contributions under defined benefits arrangements

11. Under a defined benefits arrangement, different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made, to the extent that—

⁽¹⁴⁾ 1992 c. 4; relevant amendments have been made to section 5(1) by the Welfare Reform and Pensions Act 1999 (c. 30), section 73, Schedule 9, Part 1, paragraph 1.

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

- (a) each year of pensionable service entitles members in a comparable situation to accrue a right to defined benefits based on the same fraction of pensionable pay, and
- (b) the aim in setting the different rates is to reflect the increasing cost of providing the defined benefits in respect of members as they get older.

Age related rules, practices, actions and decisions relating to benefit

12. A minimum age for entitlement to or payment of any age related benefit to a member, provided that, in the case of any age related benefit paid under a defined benefits arrangement before any early retirement pivot age—

- (a) such benefit is subject to actuarial reduction for early receipt, and
- (b) the member is not credited with additional periods of pensionable service.

13. In relation to workers who are active or prospective members of a scheme on the date on which these Regulations come into force, a minimum age for entitlement to or payment of any age related benefit to such members under defined benefit arrangements before any early retirement pivot age, where such benefit is calculated in one or both of the following ways—

- (a) it is not made subject to actuarial reduction for early receipt;
- (b) it results from crediting the member with additional periods of pensionable service.

14. An early retirement pivot age or a late retirement pivot age, including different such ages for different groups or categories of member.

15. The enhancement of any age related benefit in the event of a member's retirement before any early retirement pivot age on ill health grounds, where that enhancement is calculated by reference to the years of pensionable service which that member would have completed if he had continued in pensionable service up to the age specified for that purpose in the scheme rules.

16. Any rule, practice, action or decision whereby a male member who reaches pensionable age is not entitled or is no longer entitled to any additional amount of pension which would have been payable to such a member before pensionable age in the circumstances prescribed for the purposes of section 64(2) of the Pensions Act 1995⁽¹⁵⁾ by regulation 13 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995⁽¹⁶⁾.

17. The reduction of any pension payable in consequence of a member's death to any dependant of the member where that dependant is more than a specified number of years younger than the member.

18. In relation to pensioner members who have retired on ill health grounds before any early retirement pivot age, discontinuation of any life assurance cover once any such members reach the normal retirement age which applied to them at the time they retired, or in relation to members to whom no such normal retirement age applied, once such members reach the age of 65.

Other rules, practices, actions and decisions relating to benefit

19. Any difference in the amount of any age related benefit or death benefit payable under a defined benefits arrangement to or in respect of members with different lengths of pensionable service to the extent that the difference in amount is attributable to their differing lengths of service, provided that, for each year of pensionable service, members in a comparable situation are entitled to accrue a right to benefit based upon the same fraction of pensionable pay.

(15) 1995 c. 26.

(16) S.I. 1995/3183.

20. Any difference in the amount of any age related benefit or death benefit payable from a scheme to or in respect of different members to the extent that the difference in amount is attributable to differences over time in the pensionable pay of those members.

21. Any limitation of the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum number of years of service by reference to which such benefit may be calculated.

22. Any rule, practice, action or decision whereby any age related benefit or death benefit is only payable to or in respect of members who have completed a minimum period of service, provided that such a minimum period is not longer than 2 years qualifying service within the meaning of section 71(7) of the Pension Schemes Act 1993**(17)**.

23. Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a minimum level of pensionable pay by reference to which any such benefit may be calculated, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992**(18)**.

24. Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum level of pensionable pay by reference to which such benefit may be calculated.

Closure of schemes

25. The closure of a scheme, from a particular date, to workers who have not already joined it.

Other rules, practices, actions and decisions

26. Increases of pensions in payment which are made to members over 55 but not to members below that age.

27. Any difference in the rate of increase of pensions in payment for members of different ages to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

28. Any difference in the rate of increase of pensions in payment for members whose pensions have been in payment for different lengths of time to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

29. The application of an age limit for transfer of the value of a member's accrued rights into or out of a scheme, provided that any such age limit is not more than one year before the member's normal pension age.

Registered pension schemes

30.—(1) Subject to sub-paragraph (2), any rules, practices, actions or decisions relating to entitlement to or payment of benefits under a registered pension scheme insofar as compliance is necessary to secure any tax relief or exemption available under Part 4 of the Finance Act 2004**(19)** or to prevent any charge to tax arising under that Part of that Act, whoever is liable in relation to such charge.

(17) 1993 c. 48.

(18) 1992 c. 4; relevant amendments have been made by the Welfare Reform and Pensions Act 1999, c. 30, section 73 and Schedule 9, Part 1, paragraph 1.

(19) 2004 c. 12.

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

(2) Sub-paragraph (1) does not apply to any rules, practices, actions or decisions setting a minimum age for entitlement to or payment of any age related benefit.

Part 3

Excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes

Contributions by employers

31. Different rates of contributions by an employer according to the age of the workers in respect of whom the contributions are made where the aim in setting the different rates is—

- (a) to equalise the amount of benefit to which workers of different ages who are otherwise in a comparable situation will become entitled under their personal pension schemes, or
- (b) to make the amount of benefit to which such workers will become entitled under their personal pension schemes more nearly equal.

32. Any difference in the rate of contributions by an employer in respect of different workers to the extent that this is attributable to any differences in remuneration payable to those workers.

SCHEDULE 3

Regulation 41(1)

Questionnaire of person aggrieved

To (name of person to be questioned)
of (address)

1.—(1) I (name of questioner)
of (address)

consider that you may have discriminated against me [subjected me to harassment] contrary to the
Employment Equality (Age) Regulations 2006.

(2) (Give date, approximate time and a factual description of the treatment received and of the
circumstances leading up to the treatment.)

(3) I consider that this treatment may have been unlawful because
..... (complete if you wish to give reasons, otherwise delete).

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what
happened? If not, in what respect do you disagree or what is your version of what happened?

- 3. Do you accept that your treatment of me was unlawful discrimination [harassment]? If not—
(a) why not,
(b) for what reason did I receive the treatment accorded to me, and
(c) how far did considerations of age affect your treatment of me?

4. (Any other questions you wish to ask.)

5. My address for any reply you may wish to give to the questions raised above is [that set out in
paragraph 1(1) above] [the following address]

..... (signature of questioner)

..... (date)

N.B.—By virtue of regulation 41 of the Employment Equality (Age) Regulations 2006 this
questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings
under the Regulations. A court or tribunal may draw any such inference as is just and equitable from
a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or
from an evasive or equivocal reply, including an inference that the person questioned has committed
an unlawful act.

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

SCHEDULE 4

Regulation 41(1)

Reply by respondent

To (name of questioner)
of (address)

1. I (name of person questioned)
of (address)

hereby acknowledge receipt of the questionnaire signed by you and dated
which was served on me on (date).

2. [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of
what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in that]

3. I accept/dispute that my treatment of you was unlawful discrimination [harassment].

[My reasons for so disputing are

The reason why you received the treatment accorded to you and the answers to the other questions in
paragraph 3 of the questionnaire are

4. (Replies to questions in paragraph 4 of the questionnaire.)

5. [I have deleted (in whole or in part) the paragraph(s) numbered above, since
I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s)
of the questionnaire for the following reasons

.....(signature of questioner)

..... (date)

SCHEDULE 5

Regulation 43

Validity of contracts, collective agreements and rules of undertakings

Part 1

Validity and revision of contracts

1.—(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which these Regulations come into force, but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.—(1) Paragraph 1(3) does not apply—

- (a) to a contract settling a complaint to which regulation 36(1) (jurisdiction of employment tribunals) applies where the contract is made with the assistance of a conciliation officer within the meaning of section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992(20);
- (b) to a contract settling a complaint to which regulation 36(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which regulation 39 (jurisdiction of county or sheriff courts) applies.

(2) The conditions regulating compromise contracts under this Schedule are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.

(3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(20) 1992 c. 52.

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

(4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—

- (a) if he is employed by, or is acting in the matter for the other party, or is a person who is connected with the other party;
- (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
- (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.

(5) In sub-paragraph (3)(a) “qualified lawyer” means—

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990⁽²¹⁾); and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(6) A person shall be treated as being a qualified lawyer within sub-paragraph (5)(a) if he is a Fellow of the Institute of Legal Executives employed by a solicitors' practice.

(7) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

(8) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control; or
- (b) if both are companies of which a third person (directly or indirectly) has control.

(9) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of sub-paragraphs (1)(a) and (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such a contract in any other case.

3.—(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—

- (a) removing or modifying any term rendered void by paragraph 1(1), or
- (b) removing or modifying any term made unenforceable by paragraph 1(2);

but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

(21) 1990 c. 41.

Part 2

Collective agreements and rules of undertakings

- 4.—(1) This Part of this Schedule applies to—
- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
 - (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
 - (c) any rule made by a trade organisation (within the meaning of regulation 18) or a qualifications body (within the meaning of regulation 19) for application to—
 - (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 19) or who are seeking the professional or trade qualifications which it has power to confer.
- (2) Any term or rule to which this Part of this Schedule applies is void where—
- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
 - (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
 - (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.
- (3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after the date on which these Regulations come into force; but in the case of an agreement entered into, or a rule made, before the date on which these Regulations come into force, that sub-paragraph does not apply in relation to any period before that date.
5. A person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—
- (a) that the term or rule may at some future time have effect in relation to him; and
 - (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
 - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
 - (ii) the act would be unlawful by virtue of these Regulations if done in relation to him in present circumstances.
6. In the case of a complaint about—
- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer,
 - (ii) an organisation of employers of which an employer is a member, or
 - (iii) an association of such organisations of one of which an employer is a member, or
 - (b) a rule made by an employer within the meaning of paragraph 4(1)(b),
- paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.
7. In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person—

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- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 19) which the organisation or body has power to confer; or
- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

8.—(1) When an employment tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

9. The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

10. In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (collective agreements and collective bargaining), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

SCHEDULE 6

Regulation 47

Duty to consider working beyond retirement

Interpretation

1.—(1) In this Schedule—

“dismissal” means a dismissal within the meaning of section 95 of the 1996 Act⁽²²⁾;

“employee” means a person to whom regulation 30 (exception for retirement) applies and references to “employer” shall be construed accordingly;

“intended date of retirement” has the meaning given by sub-paragraph (2);

“operative date of termination” means (subject to paragraph 10(3))—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect;

⁽²²⁾ Employment Rights Act 1996 (c. 18); section 95 has been amended by section 57 of, and by Schedule 1, paragraph 29, and Schedule 2 to, the Employment Relations Act 2004 (c. 24), and by regulation 11 of, and paragraph 3(1) and (7) of Part 1 of Schedule 2 to, S.I. 2002/2034.

“request” means a request made under paragraph 5; and

“worker” has the same meaning as in section 230(3) of the 1996 Act.

(2) In this Schedule “intended date of retirement” means—

- (a) where the employer notifies a date in accordance with paragraph 2, that date;
- (b) where the employer notifies a date in accordance with paragraph 4 and either no request is made or a request is made after the notification, that date;
- (c) where,
 - (i) the employer has not notified a date in accordance with paragraph 2,
 - (ii) a request is made before the employer has notified a date in accordance with paragraph 4 (including where no notification in accordance with that paragraph is given),
 - (iii) the request is made by an employee who has reasonable grounds for believing that the employer intends to retire him on a certain date, and,
 - (iv) the request identifies that date,the date so identified;
- (d) in a case to which paragraph 3 has applied, any earlier or later date that has superseded the date mentioned in paragraph (a), (b) or (c) as the intended date of retirement by virtue of paragraph 3(3);
- (e) in a case to which paragraph 10 has applied, the later date that has superseded the date mentioned in paragraph (a), (b) or (c) as the intended date of retirement by virtue of paragraph 10(3)(b).

Duty of employer to inform employee

2.—(1) An employer who intends to retire an employee has a duty to notify the employee in writing of—

- (a) the employee’s right to make a request; and
- (b) the date on which he intends the employee to retire,

not more than one year and not less than six months before that date.

(2) The duty to notify applies regardless of—

- (a) whether there is any term in the employee’s contract of employment indicating when his retirement is expected to take place,
- (b) any other notification of, or information about, the employee’s date of retirement given to him by the employer at any time, and
- (c) any other information about the employee’s right to make a request given to him by the employer at any time.

3.—(1) This paragraph applies if the employer has notified the employee in accordance with paragraph 2 or 4 or the employee has made a request before being notified in accordance with paragraph 4 (including where no notification in accordance with that paragraph is given), and—

- (a) the employer and employee agree, in accordance with paragraph 7(3)(b) or 8(5)(b), that the dismissal is to take effect on a date later than the relevant date;
- (b) the employer gives notice to the employee, in accordance with paragraph 7(7)(a)(ii) or, where the employee appeals, paragraph 8(9)(a)(ii), that the dismissal is to take effect on a date later than the relevant date; or

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- (c) the employer and employee agree that the dismissal is to take effect on a date earlier than the relevant date.
- (2) This Schedule does not require the employer to give the employee a further notification in respect of dismissal taking effect on a date—
 - (a) agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in sub-paragraph (1)(b) that is later than the relevant date and falls six months or less after the relevant date; or
 - (b) agreed as mentioned in sub-paragraph (1)(c) that is earlier than the relevant date.
- (3) If—
 - (a) a date later than the relevant date is agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in sub-paragraph (1)(b) and falls six months or less after the relevant date, or
 - (b) a date earlier than the relevant date is agreed as mentioned in sub-paragraph (1)(c),the earlier or later date shall supersede the relevant date as the intended date of retirement.
- (4) In this paragraph, “the relevant date” means the date that is defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2).

Continuing duty to inform employee

4. Where the employer has failed to comply with paragraph 2, he has a continuing duty to notify the employee in writing as described in paragraph 2(1) until the fourteenth day before the operative date of termination.

Statutory right to request not to retire

5.—(1) An employee may make a request to his employer not to retire on the intended date of retirement.

- (2) In his request the employee must propose that his employment should continue, following the intended date of retirement—
 - (a) indefinitely,
 - (b) for a stated period, or
 - (c) until a stated date;

and, if the request is made at a time when it is no longer possible for the employer to notify in accordance with paragraph 2 and the employer has not yet notified in accordance with paragraph 4, must identify the date on which he believes that the employer intends to retire him.

- (3) A request must be in writing and state that it is made under this paragraph.
- (4) An employee may only make one request under this paragraph in relation to any one intended date of retirement and may not make a request in relation to a date that supersedes a different date as the intended date of retirement by virtue of paragraph 3(3) or 10(3)(b).
- (5) A request is only a request made under this paragraph if it is made—
 - (a) in a case where the employer has complied with paragraph 2, more than three months but not more than six months before the intended date of retirement, or
 - (b) in a case where the employer has not complied with paragraph 2, before, but not more than six months before, the intended date of retirement.

An employer’s duty to consider a request

6. An employer to whom a request is made is under a duty to consider the request in accordance with paragraphs 7 to 9.

Meeting to consider request

7.—(1) An employer having a duty under paragraph 6 to consider a request shall hold a meeting to discuss the request with the employee within a reasonable period after receiving it.

(2) The employer and employee must take all reasonable steps to attend the meeting.

(3) The duty to hold a meeting does not apply if, before the end of the period that is reasonable—

(a) the employer and employee agree that the employee's employment will continue indefinitely and the employer gives notice to the employee to that effect; or

(b) the employer and employee agree that the employee's employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end.

(4) The duty to hold a meeting does not apply if—

(a) it is not practicable to hold a meeting within the period that is reasonable, and

(b) the employer complies with sub-paragraph (5).

(5) Where sub-paragraph (4)(a) applies, the employer may consider the request without holding a meeting provided he considers any representations made by the employee.

(6) The employer shall give the employee notice of his decision on the request as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (4) and (5) apply, his consideration of the request.

(7) A notice given under sub-paragraph (6) shall—

(a) where the decision is to accept the request, state that it is accepted and—

(i) where the decision is that the employee's employment will continue indefinitely, state that fact, or

(ii) where the decision is that the employee's employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end,

(b) where the decision is to refuse the request, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect,

and, in the case of a notice falling within paragraph (b), and of a notice referred to in paragraph (a) that specifies a period shorter than the period proposed by the employee in the request, shall inform the employee of his right to appeal.

(8) All notices given under this paragraph shall be in writing and be dated.

Appeals

8.—(1) An employee is entitled to appeal against—

(a) a decision of his employer to refuse the request, or

(b) a decision of his employer to accept the request where the notice given under paragraph 7(6) states as mentioned in paragraph 7(7)(a)(ii) and specifies a period shorter than the period proposed by the employee in the request,

by giving notice in accordance with sub-paragraph (2) as soon as is reasonably practicable after the date of the notice given under paragraph 7(6).

(2) A notice of appeal under sub-paragraph (1) shall set out the grounds of appeal.

(3) The employer shall hold a meeting with the employee to discuss an appeal within a reasonable period after the date of the notice of appeal.

(4) The employer and employee must take all reasonable steps to attend the meeting.

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- (5) The duty to hold a meeting does not apply if, before the end of the period that is reasonable—
 - (a) the employer and employee agree that the employee’s employment will continue indefinitely and the employer gives notice to the employee to that effect; or
 - (b) the employer and employee agree that the employee’s employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end.
- (6) The duty to hold a meeting does not apply if—
 - (a) it is not practicable to hold a meeting within the period that is reasonable, and
 - (b) the employer complies with sub-paragraph (7).
- (7) Where sub-paragraph (6)(a) applies, the employer may consider the appeal without holding a meeting provided he considers any representations made by the employee.
- (8) The employer shall give the employee notice of his decision on the appeal as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (6) and (7) apply, his consideration of the appeal.
- (9) A notice under sub-paragraph (8) shall—
 - (a) where the decision is to accept the appeal, state that it is accepted and—
 - (i) where the decision is that the employee’s employment will continue indefinitely, state that fact, or
 - (ii) where the decision is that the employee’s employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end,
 - (b) where the decision is to refuse the appeal, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect.
- (10) All notices given under this paragraph shall be in writing and be dated.

Right to be accompanied

- 9.—(1) This paragraph applies where—
 - (a) a meeting is held under paragraph 7 or 8, and
 - (b) the employee reasonably requests to be accompanied at the meeting.
- (2) Where this paragraph applies the employer must permit the employee to be accompanied at the meeting by one companion who—
 - (a) is chosen by the employee;
 - (b) is a worker employed by the same employer as the employee;
 - (c) is to be permitted to address the meeting (but not to answer questions on behalf of the employee); and
 - (d) is to be permitted to confer with the employee during the meeting.
- (3) If—
 - (a) an employee has a right under this paragraph to be accompanied at a meeting,
 - (b) his chosen companion will not be available at the time proposed for the meeting by the employer, and
 - (c) the employee proposes an alternative time which satisfies sub-paragraph (4),the employer must postpone the meeting to the time proposed by the employee.
- (4) An alternative time must—

- (a) be convenient for employer, employee and companion, and
- (b) fall before the end of the period of seven days beginning with the first day after the day proposed by the employer.

(5) An employer shall permit a worker to take time off during working hours for the purpose of accompanying an employee in accordance with a request under sub-paragraph (1)(b).

(6) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992(23) (time off for carrying out trade union duties) shall apply in relation to sub-paragraph (5) above as they apply in relation to section 168(1) of that Act.

Dismissal before request considered

10.—(1) This paragraph applies where—

- (a) by virtue of paragraph 6 an employer is under a duty to consider a request;
- (b) the employer dismisses the employee;
- (c) that dismissal is the contemplated dismissal to which the request relates; and
- (d) the operative date of termination would, but for sub-paragraph (3), fall on or before the day on which the employer gives notice in accordance with paragraph 7(6).

(2) Subject to sub-paragraph (4), the contract of employment shall continue in force for all purposes, including the purpose of determining for any purpose the period for which the employee has been continuously employed, until the day following that on which the notice under paragraph 7(6) is given.

(3) The day following the day on which that notice is given shall supersede—

- (a) the date mentioned in sub-paragraph (1)(d) as the operative date of termination; and
- (b) the date defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2) as the intended date of retirement.

(4) Any continuation of the contract of employment under sub-paragraph (2) shall be disregarded when determining the operative date of termination for the purposes of sections 98ZA to 98ZH of the 1996 Act.

Complaint to employment tribunal: failure to comply with paragraph 2

11.—(1) An employee may present a complaint to an employment tribunal that his employer has failed to comply with the duty to notify him in paragraph 2.

(2) A tribunal shall not consider a complaint under this paragraph unless the complaint is presented—

- (a) before the end of the period of three months beginning with—
 - (i) the last day permitted to the employer by paragraph 2 for complying with the duty to notify, or
 - (ii) if the employee did not then know the date that would be the intended date of retirement, the first day on which he knew or should have known that date; 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 complaint to be presented before the end of that period of three months.

(23) 1992 c. 52; sections 171 and 173 have been amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8). There are other amendments to these provisions which are not relevant for the purposes of these Regulations.

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(3) Where a tribunal finds that a complaint under this paragraph is well-founded it shall order the employer to pay compensation to the employee of such amount, not exceeding 8 weeks' pay, as the tribunal considers just and equitable in all the circumstances.

(4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of sub-paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the complaint was presented or, if earlier, the operative date of termination.

(5) The limit in section 227(1) of the 1996 Act⁽²⁴⁾ (maximum amount of a week's pay) shall apply for the purposes of sub-paragraph (3).

Complaint to employment tribunal: denial of right to be accompanied

12.—(1) An employee may present a complaint to an employment tribunal that his employer has failed, or threatened to fail, to comply with paragraph 9(2) or (3).

(2) A tribunal shall not consider a complaint under this paragraph in relation to a failure or threat unless the complaint is presented—

(a) before the end of the period of three months beginning with the date of the failure or threat; 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 complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds that a complaint under this paragraph is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.

(4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of sub-paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the relevant meeting took place (or was to have taken place).

(5) The limit in section 227(1) of the 1996 Act (maximum amount of a week's pay) shall apply for the purposes of sub-paragraph (3).

Detriment and dismissal

13.—(1) An employee has the right not to be subjected to any detriment by any act by his employer done on the ground that he exercised or sought to exercise his right to be accompanied in accordance with paragraph 9.

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he accompanied or sought to accompany an employee pursuant to a request under paragraph 9.

(3) Section 48 of the 1996 Act shall apply in relation to contraventions of sub-paragraph (1) or (2) above as it applies in relation to contraventions of certain sections of that Act.

(4) Sub-paragraph (2) does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of Part 10 of the 1996 Act).

(5) An employee who is dismissed shall be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—

(a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9, or

⁽²⁴⁾ 1996 c. 18; the amount laid down in section 227 may be increased or decreased by Order made by the Secretary of State under section 34 of the Employment Relations Act 1999. The amount laid down in section 227 is currently £290: see S.I. 2005/3352.

(b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.

(6) Sections 128 to 132 of the 1996 Act (interim relief) shall apply in relation to dismissal for the reason specified in sub-paragraph (5)(a) or (b) above as they apply in relation to dismissal for a reason specified in section 128(1)(b) of that Act.

SCHEDULE 7

Regulation 48

Duty to consider working beyond retirement - transitional provisions

1. In paragraphs 2 to 6—

- (a) “the expiry date” means the date on which notice of dismissal given by an employer expires; and
- (b) words and expressions shall have the same meanings as they do in Schedule 6.

2.—(1) This paragraph applies in a case where—

- (a) an employer has given notice of dismissal to the employee before the commencement date of—
 - (i) at least the period required by the contract of employment; or
 - (ii) where the period required by the contract exceeds four weeks, at least four weeks;
- (b) the expiry date falls before 1st April 2007; and
- (c) the employer has made the employee aware, before the commencement date, that the employer considers that the employee is being retired on the expiry date.

(2) Where this paragraph applies and the employer on or as soon as is practicable after the commencement date notifies the employee in writing of the employee’s right to make a request under paragraph 5 of Schedule 6—

- (a) the employer shall be treated as complying with the duty in paragraph 2 of Schedule 6;
- (b) a request shall be treated as being a request made under paragraph 5 of Schedule 6 provided it—
 - (i) is made after the employer notified the employee of his right to make a request;
 - (ii) satisfies the requirements of sub-paragraphs (2) and (3) of paragraph 5 of Schedule 6; and
 - (iii) is made—
 - (aa) where practicable, at least four weeks before the expiry date; or
 - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

(3) Where this paragraph applies and the employer does not, on or as soon as is practicable after the commencement date, notify the employee in writing of the employee’s right to make a request under paragraph 5 of Schedule 6—

- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
- (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
 - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule; and

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- (ii) the duty was one to notify at any time before the expiry date;
 - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
 - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
 - (ii) after such notification and—
 - (aa) where practicable, at least four weeks before the expiry date; or
 - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.
- 3.—**(1) This paragraph applies in a case where the employer has given notice of dismissal to the employee before the commencement date and—
- (a) the expiry date falls before 1st April 2007, but
 - (b) the period of notice given is shorter than the minimum period of notice required by paragraph 2(1)(a) or the employer has not complied with paragraph 2(1)(c).
- (2) Where this paragraph applies—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
 - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
 - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule; and
 - (ii) the duty was one to notify at any time before the expiry date;
 - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
 - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
 - (ii) after such notification and—
 - (aa) where practicable, at least four weeks before the expiry date; or
 - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.
- 4.—**(1) This paragraph applies in a case where—
- (a) notice of dismissal is given on or after the commencement date of at least—
 - (i) the period required by the contract of employment; or
 - (ii) if longer, the period required by section 86 of the 1996 Act; and
 - (b) the expiry date falls before 1st April 2007.
- (2) Where this paragraph applies and the employer notifies the employee in writing of the employee's right to make a request under paragraph 5 of Schedule 6 before, or on the same day as, the day on which notice of dismissal is given—
- (a) the employer shall be treated as complying with the duty in paragraph 2 of Schedule 6;
 - (b) a request shall be treated as being a request made under paragraph 5 of Schedule 6 provided it—
 - (i) is made after the employer notified the employee of his right to make a request;

- (ii) satisfies the requirements of sub-paragraphs (2) and (3) of paragraph 5 of Schedule 6;
and
 - (iii) is made—
 - (aa) where practicable, at least four weeks before the expiry date; or
 - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.
- (3) Where this paragraph applies but the employer does not notify the employee in writing of the employee's right to make a request under paragraph 5 of Schedule 6 before, or on the same day as, the day on which notice of dismissal is given—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
 - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
 - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule;
and
 - (ii) the duty was one to notify at any time before the expiry date;
 - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
 - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
 - (ii) after such notification and—
 - (aa) where practicable, at least four weeks before the expiry date; or
 - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

5.—(1) This paragraph applies in a case where—

- (a) notice of dismissal is given on or after the commencement date and is for a period shorter than—
 - (i) the period required by the contract of employment; or
 - (ii) if longer, the period required by section 86 of the 1996 Act; and
 - (b) the period of notice expires on a date falling before 1st April 2007.
- (2) Where this paragraph applies—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
 - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
 - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule;
and
 - (ii) the duty was one to notify at any time before the expiry date;
 - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
 - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
 - (ii) after such notification and—
 - (aa) where practicable, at least four weeks before the expiry date; or

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(bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

6. In every case to which paragraph 2, 3, 4 or 5 applies—
- (a) paragraph 10 of Schedule 6 does not apply; and
 - (b) the employer is under a duty to consider any request which complies with the requirements of paragraph 2(2)(b), 2(3)(c), 3(2)(c), 4(2)(b), 4(3)(c) or 5(2)(c) in accordance with paragraphs 7 to 9 of Schedule 6.

SCHEDULE 8

Regulation 49(1)

Amendments to legislation and related transitional provisions

Part 1

Primary legislation

The Mines and Quarries Act 1954

1. The Mines and Quarries Act 1954(25) is amended as follows.
- 2.—(1) In section 42(1) (charge of winding and rope haulage apparatus when persons are carried) omit the words “who has attained the age of twenty-two years”.
- (2) In section 43(2) (charge of winding and rope haulage apparatus when persons are not carried) omit the words “who has attained the age of eighteen years”.
- (3) In section 44 (charge of conveyors at working faces) omit the words “who has attained the age of eighteen years”.

The Parliamentary Commissioner Act 1967

3. The Parliamentary Commissioner Act 1967(26) is amended as follows—
- 4.—(1) Section 1 (appointment and tenure of office) is amended in accordance with this paragraph.
 - (2) In subsection (2) omit the words from “, and any person” to “during good behaviour”.
 - (3) After subsection (2) insert—
 - “(2A) A person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.
 - (2B) That period must be not more than seven years.
 - (2C) Subsection (2A) is subject to subsections (3) and (3A).”.
 - (4) For subsection (3) substitute—

(25) 1954 c. 70; relevant amendments to sections 42, 43 and 44 are made by the Employment Act 1989 (c. 38), sections 9 and 29(4) and by Schedule 7.

(26) 1967 c. 13; section 1(3A) was inserted by the Parliamentary and Health Services Commissioners Act 1987 (c. 13), section 2(1).

- “(3) A person appointed to be the Commissioner may be—
 - (a) relieved of office by Her Majesty at his own request, or
 - (b) removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.”.

(5) After subsection (3A) insert—

- “(3B) A person appointed to be the Commissioner is not eligible for re-appointment.”.

5.—(1) Section 3A(27) (appointment of acting Commissioner) is amended in accordance with this paragraph.

(2) After subsection (1) insert—

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”.

(3) In subsection (2) for the words “under this section” substitute “as an acting Commissioner”.

(4) For subsection (3) substitute—

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of section 1 and 2, and this section of this Act, as the Commissioner.”.

6. The amendments made to the Parliamentary Commissioner Act 1967 apply in relation to appointments made on or after the commencement date.

The Pilotage Act 1987

7.—(1) The Pilotage Act 1987(28) is amended in accordance with this paragraph.

(2) In section 3(2) (authorisation of pilots) omit the word “age.”.

The Social Security Contributions and Benefits Act 1992

8. The Social Security Contributions and Benefits Act 1992(29) is amended as follows.

9.—(1) Section 163(1) (interpretation of Part 11 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employer”, in relation to an employee and a contract of service of his, means a person who—

- (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract, or
- (b) would be liable to pay such contributions but for—
 - (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16:”.

(27) Section 3A was inserted by the Parliamentary and Health Service Commissioners Act 1987 (c. 13), section 6(1).

(28) 1987 c. 21.

(29) 1992 c. 4; the definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the Social Security Act 1998, (c. 14), section 86(1), and Schedule 7, paragraph 74.

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

10.—(1) Section 171(1)(**30**) (interpretation of Part 12 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employer”, in relation to a woman who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(4) This paragraph applies in relation to any case where the expected week of confinement begins on or after 14th January 2007.

11.—(1) Section 171ZJ(**31**) (Part 12ZA: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employer”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(3) In subsection (2) omit paragraph (b) and the word “and” preceding it.

(4) This paragraph applies in relation to an entitlement to—

(a) statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 14th January 2007;

(b) statutory paternity pay (adoption) in respect of children—

(i) matched with a person who is notified of having been matched on or after the commencement date; or

(ii) placed for adoption on or after the commencement date.

12.—(1) Section 171ZS(**32**) (Part 12ZB: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employer”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(30) The definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the Social Security Act 1998, section 86(1), and Schedule 7, paragraph 75.

(31) Section 171ZJ was inserted by the Employment Act 2002 (c. 22), section 2.

(32) Section 171ZS was inserted by the Employment Act 2002, section 4.

- (3) In subsection (2) omit paragraph (b) and the word “and” preceding it.
- (4) This paragraph applies in relation to an entitlement to statutory adoption pay in respect of children—
 - (a) matched with a person who is notified of having been matched on or after the commencement date; or
 - (b) placed for adoption on or after that commencement.

13.—(1) In Schedule 11 omit paragraph 2(a) (period of entitlement not to arise if at the relevant date the employee is over 65).

(2) Sub-paragraph (1) applies in relation to a period of incapacity for work which—

- (a) begins on or after the commencement date, or
- (b) begins before and continues on or after the commencement date.

(3) But in a case falling within sub-paragraph (2)(b), sub-paragraph (1) does not affect the application of paragraph 1 of Schedule 11 to the 1992 Act in relation to the part of the period of incapacity for work that falls before the commencement date.

The Health Service Commissioners Act 1993

14. The Health Service Commissioners Act 1993(**33**) is amended as follows.

15.—(1) Schedule 1 (the English Commissioner)(**34**) is amended in accordance with this paragraph.

(2) For paragraph 1 (appointment of Commissioners) substitute the following new paragraphs—

“**1.** Her Majesty may by Letters Patent appoint a person to be the Commissioner.

1A. Subject to paragraphs 1C and 1D a person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

1B. That period must be not more than seven years.

1C. A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request.

1D. A person appointed to be the Commissioner may be removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.

1E. A person appointed to be the Commissioner is not eligible for re-appointment.”.

(3) In paragraph 2 (appointment of acting Commissioners)—

(a) after sub-paragraph (1) insert—

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”;

(b) in sub-paragraph (2) for the words “under this paragraph” substitute “as acting Commissioner.”; and

(c) for sub-paragraph (3), substitute—

(33) 1993 c. 46.

(34) The schedule heading was amended by the Government of Wales Act 1998 (c. 38), section 112, and Schedule 10, paragraph 16(2).

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

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of paragraphs 1, 4 to 10 and this paragraph, as the Commissioner.”.

16. The amendments made to the Health Service Commissioners Act 1993 apply in relation to appointments made on or after the commencement date.

The Statutory Sick Pay Act 1994

17.—(1) The Statutory Sick Pay Act 1994⁽³⁵⁾ is amended in accordance with this paragraph.

(2) In section 1(2) omit the words after paragraph (b).

The Employment Tribunals Act 1996

18. The Employment Tribunals Act 1996⁽³⁶⁾ is amended as follows.

19.—(1) Section 18(1)⁽³⁷⁾ (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (p), omit “or”.

(3) After paragraph (q), insert “or

(r) under regulation 36 of the Employment Equality (Age) Regulations 2006.”.

20.—(1) Section 21(1)⁽³⁸⁾ (jurisdiction of Appeal Tribunal) is amended in accordance with this paragraph.

(2) At the end of paragraph (q), omit “or”.

(3) After paragraph (r) insert—

“or

(s) the Employment Equality (Age) Regulations 2006.”.

The Employment Rights Act 1996

21. The 1996 Act is amended as follows.

22.—(1) Section 98 (fairness of dismissal: general) is amended as follows.

(2) In subsection (2), after paragraph (b) insert—

“(ba) is retirement of the employee,”.

(3) After subsection (2) insert—

“(2A) Subsections (1) and (2) are subject to sections 98ZA to 98ZF.”.

(4) After subsection (3) insert—

“(3A) In any case where the employer has fulfilled the requirements of subsection (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with section 98ZG.”.

⁽³⁵⁾ 1994 c. 2.

⁽³⁶⁾ 1996 c. 17.

⁽³⁷⁾ Section 18(1)(p) was amended by S.I. 2004/3426, regulation 34(c). Section 18(1)(q) was inserted by S.I. 2006/349, Schedule 1, paragraph 9.

⁽³⁸⁾ Section 21(1)(q) was amended by S.I. 2004/3426, regulation 37(c). Section 21(r) was inserted by S.I. 2006/349, Schedule 1, paragraph 10.

(5) In subsection (4) for “Where” substitute “In any other case where”.

23. After section 98 insert—

“Retirement

No normal retirement age: dismissal before 65

98ZA.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the age of 65.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

No normal retirement age: dismissal at or after 65

98ZB.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

Normal retirement age: dismissal before retirement age

98ZC.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age, and

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

(b) the operative date of termination falls before the date when the employee reaches the normal retirement age.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Normal retirement age 65 or higher: dismissal at or after retirement age

98ZD.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is 65 or higher, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

Normal retirement age below 65: dismissal at or after retirement age

98ZE.—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is below 65, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(3) Subsections (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.

(4) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(5) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(6) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal

Reason for dismissal: particular matters

98ZF.—(1) These are the matters to which particular regard is to be had in accordance with section 98ZB(5), 98ZD(5) or 98ZE(7)—

- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations;
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given;
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 6 to the 2006 Regulations.

(2) In subsection (1)(b) “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations as the date on which the employer intends to retire the employee.

Retirement dismissals: fairness

98ZG.—(1) This section applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 6 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee’s request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

Interpretation

98ZH. In sections 98ZA to 98ZG—

“2006 Regulations” means the Employment Equality (Age) Regulations 2006;

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 6 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer’s undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

Other dismissals”.

24. In section 108(**39**) (qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)—

- (a) at the end of paragraph (l) omit “or”; and
- (b) after paragraph (m) insert—

“or

(n) paragraph (a) or (b) of paragraph 13(5) of Schedule 6 to the Employment Equality (Age) Regulations 2006 applies.”.

25. Omit section 109(**40**) (upper age limit on unfair dismissal right).

26.—(1) Section 112(**41**) (remedies for unfair dismissal: orders and compensation) is amended as follows.

(2) In subsection (5)(a) after “section” insert “98ZG or”.

27.—(1) Section 119 (basic award) is amended as follows.

(2) Omit subsections (4) and (5).

28.—(1) Section 120(**42**) (basic award: minimum in certain cases) is amended as follows.

(2) In subsection (1A) after “section” insert “98ZG or”.

29. In section 126(1)(**43**) (acts which are both unfair dismissal and discrimination), for paragraph (b) substitute—

- “(b) any one or more of the following—
 - (i) the Sex Discrimination Act 1975;

(39) Section 108(1) was amended by S.I. [2004/3426](#), regulation 31(2)(b). Section 108(1)(m) was inserted by S.I. [2006/349](#), Schedule 1, paragraph 6.

(40) Section 109 has been amended but the amendments are not relevant for the purposes of these Regulations.

(41) Subsection (5) was inserted by the Employment Act 2002 (c. 22), section 34(3).

(42) Subsection (1A) inserted by the Employment Act 2002, sections 34(1) and (6).

(43) Section 126(1)(b) was substituted by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 14(3), and has been amended since, but the amendments are not relevant for the purposes of these Regulations.

- (ii) the Race Relations Act 1976;
- (iii) the Disability Discrimination Act 1995;
- (iv) the Employment Equality (Sexual Orientation) Regulations 2003;
- (v) the Employment Equality (Religion or Belief) Regulations 2003;
- (vi) the Employment Equality (Age) Regulations 2006.”.

30. Section 156 (upper age limit) is repealed.

31. Section 158 (pension rights) is repealed.

32.—(1) Section 162 (amount of a redundancy payment) is amended in accordance with this paragraph.

(2) Subsections (4), (5) and (8) are repealed.

(3) In subsection (6), for the words “Subsections (1) to (5)” substitute “Subsections (1) to (3)”.

33. In relation to any case where the date that is the relevant date by virtue of section 153 of the 1996 Act falls before the commencement date, paragraphs 30 to 32 do not apply.

34.—(1) Section 209 (powers to amend Act) is amended as follows.

(2) In subsection (5)(**44**) omit “109(1),”.

35.—(1) Section 211 (period of continuous employment) is amended in accordance with this paragraph.

(2) In paragraph (a) of subsection (1) for the words “subsections (2) and” substitute “subsection”.

(3) Subsection (2) is repealed.

The Employment Act 2002

36.—(1) The Employment Act 2002 is amended in accordance with this paragraph.

(2) At the end of each of the following Schedules—

- (a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);
- (b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and
- (c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

insert—

“Regulation 36 of the Employment Equality (Age) Regulations 2006 (discrimination in the employment field)”.

The Equality Act 2006

37. The Equality Act 2006(**45**) is amended as follows.

38.—(1) Section 14(1) (codes of practice) is amended in accordance with this paragraph.

(2) At the end of paragraph (g) omit “and”.

(44) Section 209(5) was amended by the Employment Relations Act 1999 (c. 26), section 44 and Schedule 9.

(45) 2006 c. 3.

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

(3) After paragraph (h) insert—

“and

(i) Parts 2 and 3 of the Employment Equality (Age) Regulations 2006.”.

39.—(1) Section 27(1) (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (f) omit “or”.

(3) After paragraph (g) insert—

“or

(h) regulation 39 of the Employment Equality (Age) Regulations 2006 (Jurisdiction of County and Sheriff Courts).”.

40.—(1) Section 33(1) (equality and human rights enactments) is amended in accordance with this paragraph.

(2) At the end of paragraph (g) omit “and”.

(3) After paragraph (h) insert—

“and

(i) the Employment Equality (Age) Regulations 2006.”.

Part 2

Other legislation

41.—(1) The Coal and Other Mines (Locomotives) Regulations 1956(**46**), Schedule 1 to the Coal and Other Mines (Locomotives) Order 1956 is amended in accordance with this paragraph.

(2) In regulation 17(1) (drivers of locomotives) omit the words “and no appointed driver shall operate a locomotive hauling persons in vehicles unless he has attained the age of—

(a) in the case of a mine of shale, eighteen years;

(b) in the case of any other mine, twenty-one years“.

42.—(1) The Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956(**47**) are amended in accordance with this paragraph.

(2) In regulation 3 (qualification of shot firers) omit the words “he has attained the age of twenty-one years; and”.

43.—(1) The Miscellaneous Mines (Explosives) Regulations 1959(**48**) are amended in accordance with this paragraph.

(2) Omit regulation 6(2).

(3) In regulation 8(2) (control of issue of detonators) omit the words “has attained the age of eighteen years and”.

(46) S.I. 1956/1771.

(47) S.I. 1956/1943.

(48) S.I. 1959/2258.

44.—(1) The Lynemouth Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1961(**49**) are amended in accordance with this paragraph.

(2) In regulation 15 after the words “Regulations 17” insert “as amended by the Employment Equality (Age) Regulations 2006”.

45.—(1) The South Crofty Mine (Locomotive) Special Regulations 1965(**50**) are amended in accordance with this paragraph.

(2) In regulation 11(2) omit the words “has attained the age of twenty-one years and”.

46.—(1) The Glebe Mine (Locomotives and Diesel Vehicles) Special Regulations 1967(**51**) are amended in accordance with this paragraph.

(2) In regulation 15(2) omit the words “has attained the age of eighteen years and”.

47.—(1) The Winsford Rock Salt Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1971(**52**) are amended in accordance with this paragraph.

(2) In regulation 14(2) omit the words “is under the age of twenty-one years and”.

48.—(1) The Thoresby Mine (Cable Reel Load-Haul-Dump Vehicles) Special Regulations 1978(**53**) are amended in accordance with this paragraph.

(2) In regulation 17 after the words “Regulations 17” insert “as amended by the Employment Equality (Age) Regulations 2006”.

49. The Statutory Sick Pay (General) Regulations 1982(**54**) are amended as follows.

50.—(1) Regulation 16 (meaning of “employee”) is amended in accordance with this paragraph.

(2) In paragraph (1)—

(a) at the beginning insert the words “Subject to paragraph (1ZA),”, and

(b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1ZA) Any person under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been aged 16 or over, shall be treated as if he is aged 16 or over for the purposes of paragraph (1).”.

51.—(1) Regulation 17(2) (meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had he not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence he would not have been entitled to statutory sick pay had he not been under the age of 16)”.

52. The Statutory Maternity Pay (General) Regulations 1986(**55**) are amended as follows.

(49) [S.I.1961/2445](#).

(50) [S.I. 1965/759](#).

(51) [S.I. 1967/1335](#).

(52) [S.I. 1971/50](#).

(53) [S.I. 1978/119](#).

(54) [S.I. 1982/894](#); regulation 17(2) was amended by [S.I. 1999/567](#), regulation 13.

(55) [S.I. 1986/1960](#).

53.—(1) Regulation 17 (meaning of “employee”) is amended in accordance with this paragraph.

(2) In paragraph (1)—

- (a) at the beginning insert the words “Subject to paragraph (1A),” and
- (b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1A) Any woman under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had she been aged 16 or over, shall be treated as if she is aged 16 or over for the purposes of paragraph (1).”.

54.—(1) Regulation 20(2)(**56**) (Meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had she not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence she would not have been entitled to statutory maternity pay had she not been under the age of 16)”.

(4) This paragraph applies in relation to any case where the expected week of confinement begins on or after 14th January 2007.

55.—(1) The Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993(**57**) are amended in accordance with this paragraph.

(2) In regulation 4(4) (appointment of shotfirers and trainee shotfirers) omit the words “he is at least 21 years of age and”.

56.—(1) The Employment Tribunals (Interest on Awards In Discrimination Cases) Regulations 1996(**58**) are amended in accordance with this paragraph.

(2) In sub-paragraph (b) of the definition of “an award under the relevant legislation” in regulation 1(2) (interpretation)—

- (a) after “regulation 30(1)(b) of the Employment Equality (Sexual Orientation) Regulations 2003” omit “or”; and
- (b) after “regulation 30(1)(b) of the Employment Equality (Religion or Belief) Regulations 2003” insert—

“or regulation 38(1)(b) of the Employment Equality (Age) Regulations 2006”.

57.—(1) The Employment Protection (Continuity of Employment) Regulations 1996(**59**) are amended in accordance with this paragraph.

(2) In regulation 2 (application)—

- (a) omit the word “or” at the end of paragraph (e); and
- (b) after paragraph (f) insert—

(56) Regulation 20(2) was amended by S.I. [1999/567](#), regulation 12.

(57) S.I. [1993/208](#).

(58) S.I. [1996/2803](#); regulation 1(2) was amended by S.I. [2003/1661](#), regulation 1(1), and S.I. [2003/1660](#), regulation 1(1).

(59) S.I. [1996/3147](#); regulation 2(c) was inserted by S.I. [2001/1188](#), regulation 1(1), and regulation 2(f) was amended by S.I. [2004/752](#), regulation 17(e).

“, or

- (g) a decision taken arising out of the use of the statutory duty to consider procedure contained in Schedule 6 to the Employment Equality (Age) Regulations 2006.”.

58.—(1) The National Minimum Wage Regulations 1999(**60**) are amended in accordance with this paragraph.

(2) Omit regulation 12(2)(a).

(3) Omit paragraphs (2) to (6) of regulation 13.

(4) In regulation 13(7) for the words “Paragraphs (1) and (2) do” substitute “Paragraph (1) does”.

(5) In relation to any case where, before the commencement date, a worker within the meaning of regulation 12(2) has attained the age of 26, sub-paragraph (2) does not apply.

59. The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**61**) are amended as follows.

60.—(1) Regulation 32 (Treatment of persons as employees) is amended in accordance with this paragraph.

(2) In paragraph (1)—

(a) at the beginning insert the words “Subject to paragraph (1A),” and

(b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1A) Any person under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been aged 16 or over, shall be treated as if he is aged 16 or over for the purposes of paragraph (1).”.

61.—(1) Regulation 39(2) (Meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had he not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence he would not have been entitled to statutory paternity pay or, as the case may be, statutory adoption pay had he not been under the age of 16)”.

62.—(1) Schedule 1A (occupational pension schemes) to the Employment Equality (Religion or Belief) Regulations 2003(**62**) is amended in accordance with this paragraph.

(2) In paragraph 1(1)—

(a) in the definition of “active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, omit the words “as at the date of the coming into force of these Regulations”, and

(b) in the definition of “occupational pension scheme” omit the words “as at the date of the coming into force of these Regulations”.

(3) In paragraph 1(2) omit the words “as at the date of the coming into force of these Regulations”.

(60) S.I. 1999/584; regulation 13 has been amended, but the amendments are not relevant for the purposes of these Regulations.

(61) S.I. 2002/2822.

(62) S.I. 2003/1660; Schedule 1A was inserted by S.I. 2003/2828, regulation 3.

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

63.—(1) Schedule 1A (occupational pension schemes) to the Employment Equality (Sexual Orientation) Regulations 2003(**63**) is amended in accordance with this paragraph.

(2) In paragraph 1(1)—

- (a) in the definition of “active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, omit the words “as at the date of the coming into force of these Regulations”, and
- (b) in the definition of “occupational pension scheme” omit the words “as at the date of the coming into force of these Regulations”.

(3) In paragraph 1(2) omit the words “as at the date of the coming into force of these Regulations”.

64.—(1) The Employment Act 2002 (Dispute Resolution) Regulations 2004(**64**) are amended in accordance with this paragraph.

(2) In regulation 4(1) (dismissals to which the dismissal and disciplinary procedures do not apply)

- (a) omit the word “or” at the end of sub-paragraph (f); and
- (b) after sub-paragraph (g) insert —

“, or

- (h) the reason (or, if more than one, the principal reason) for the dismissal is retirement of the employee (to be determined in accordance with section 98ZA to 98ZF of the 1996 Act(**65**))”.

SCHEDULE 9

Regulation 49(2)

Repeals and revocations

(1) Repeals	
Short title and chapter	Extent of repeal
Marriage (Scotland) Act 1977 (c. 15)	In section 9(1) the proviso, In section 12 the proviso, and In section 17 the proviso
Education (Scotland) Act 1980 (c. 44)	Section 89
Solicitors (Scotland) Act 1980 (c. 46)	Section 6(1)(a)
Weights and Measures Act 1985 (c. 72)	Section 73(3)
Electricity Act 1989 (c. 29)	In Schedule 10, paragraph 9(3)
Judicial Pensions and Retirement Act 1993 (c. 8)	In Schedule 6, paragraph 66
Scottish Public Services Ombudsman Act 2002 (asp11)	In Schedule 1, paragraph 4(1)(c)

(63) S.I. 2003/1661; Schedule 1A was inserted by S.I. 2003/2827, regulation 3.

(64) S.I. 2004/752.

(65) Sections 98ZA to 98ZF are inserted by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.

(1) Repeals	
Short title and chapter	Extent of repeal
	In Schedule 1, in paragraph 4(3), the words in brackets
Freedom of Information (Scotland) Act 2002 (asp13)	Section 42(4)(b) In section 42(5), the words in brackets
(2) Revocations	
Title and reference	Extent of revocation
Coal and Other Mines (Sidings) Regulations 1956, Schedule to the Coal and Other Mines (Sidings) Order 1956 (S.I. 1956/1773)	Regulation 21 In regulation 22, the definition of locomotive
The Management and Administration of Safety and Health in Mines Regulations 1993 (S.I. 1993/1897)	Regulation 17(2)