



Employment Protection Act 1975

1975 CHAPTER 71

PART I

MACHINERY FOR PROMOTING THE IMPROVEMENT OF INDUSTRIAL RELATIONS

Advisory, Conciliation and Arbitration Service, etc.

1 Advisory, Conciliation and Arbitration Service

- (1) There shall be a body to be known as the Advisory, Conciliation and Arbitration Service, in this Act referred to as " the Service ".
- (2) The Service shall be charged with the general duty of promoting the improvement of industrial relations, and in particular of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Service.

2 Conciliation

- (1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement.
- (2) The assistance offered by the Service may be by way of conciliation or by other means, and may include the appointment of a person other than an officer or servant of the Service to offer assistance to the parties to the dispute with a view to bringing about a settlement.
- (3) In exercising its functions under subsection (1) above, the Service shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.

- (4) The Service shall designate officers of the Service to perform the functions of conciliation officers under any enactment (including any provision of this Act or any Act passed after this Act) in respect of matters which are or could be the subject of proceedings before an industrial tribunal, and accordingly any reference in any such enactment to a conciliation officer is a reference to an officer designated under this subsection.

3 Arbitration

- (1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—
- (a) one or more persons appointed by the Service for that purpose (not being an officer or servant of the Service); or
 - (b) the Central Arbitration Committee constituted under section 10 below.
- (2) In exercising its functions under subsection (1) above, the Service shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that subsection unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Service, there is a special reason which justifies arbitration under that subsection as an alternative to those procedures.
- (3) Where in any case more than one arbitrator is appointed under subsection (1)(a) above the Service shall appoint one of the arbitrators to act as chairman.
- (4) An award by an arbitrator appointed under subsection (1)(a) above may be published if the Service so decides and all the parties consent.
- (5) Part I of the Arbitration Act 1950 shall not apply to an arbitration under this section.
- (6) In the application of this section to Scotland, references to an arbitrator shall be construed as references to an arbiter.

4 Advice

- (1) The Service shall, if it thinks fit, on request or otherwise, provide, without charge, to employers, employers' associations, workers and trade unions such advice as it thinks appropriate on any matter concerned with industrial relations or employment policies, including the following—
- (a) the organisation of workers or employers for the purpose of collective bargaining;
 - (b) the recognition of trade unions by employers ;
 - (c) machinery for the negotiation of terms and conditions of employment, and for joint consultation ;
 - (d) procedures for avoiding and settling disputes and workers' grievances ;
 - (e) questions relating to communication between employers and workers;
 - (f) facilities for officials of trade unions ;
 - (g) procedures relating to the termination of employment;
 - (h) disciplinary matters;
 - (i) manpower planning, labour turnover and absenteeism ;

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- (j) recruitment, retention, promotion and vocational training of workers;
 - (k) payment systems, including job evaluation and equal pay.
- (2) The Service may publish general advice on any matter concerned with industrial relations or employment policies, including any of the matters referred to in paragraphs (a) to (k) of subsection (1) above.

5 Inquiry

- (1) The Service may, if it thinks fit, inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.
- (2) The findings of any inquiry under this section, together with any advice given by the Service in connection with those findings, may be published by the Service if—
- (a) it appears to the Service that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question inquired into; and,
 - (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Service to be concerned, the Service thinks fit.

6 Codes of Practice

- (1) The Service may issue Codes of Practice containing such practical guidance as the Service thinks fit for the purpose of promoting the improvement of industrial relations.
- (2) Without prejudice to the generality of subsection (1) above, the Service shall, in one or more Codes of Practice, provide practical guidance on the following matters in relation to the application of the following provisions of this Act, that is to say—
- (a) the disclosure of information, in accordance with sections 17 and 18 below, by employers to trade union representatives for the purpose of collective bargaining;
 - (b) the time off to be permitted by an employer—
 - (i) to a trade union official in accordance with section 57 below; and
 - (ii) to a trade union member in accordance with section 58 below.
- (3) When the Service proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (4) If the Service determines to proceed with the draft, it shall transmit the draft to the Secretary of State who shall—
- (a) if he approves of it, lay it before both Houses of Parliament; and
 - (b) if he does not approve of it, publish details of his reasons for withholding approval.
- (5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (a) or (b) of subsection (2) above, if the draft is approved by resolution of each House of Parliament the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.

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- (6) In the case of a draft Code of Practice not containing such practical guidance, if, within the period of forty days beginning with the day on which a copy of the draft is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.
- (7) In reckoning the period of forty days referred to in subsection (6) above, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If no such resolution is passed as is referred to in subsection (6) above, the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.
- (9) Without prejudice to section 123(3) below, an order under subsection (5) or subsection (8) above may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the Code of Practice thereby brought into operation.
- (10) The Service may from time to time revise the whole or any part of a Code of Practice issued under this section and issue that revised Code, and subsections (3) to (9) above shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.
- (11) A failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him liable to any proceedings ; but in any proceedings before an industrial tribunal or the Central Arbitration Committee any Code of Practice issued under this section shall be admissible in evidence, and if any provision of such a Code appears to the tribunal or Committee to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

7 Certification Officer

- (1) The Secretary of State shall, after consultation with the Service, appoint an officer to be known as the Certification Officer.
- (2) The functions under the following Acts which before the commencement of this section were performed by the Chief Registrar of Friendly Societies or any assistant registrar shall become functions of the Certification Officer, that is to say.—
 - (a) the Trade Union Act 1913;
 - (b) the Trade Union (Amalgamations, etc.) Act 1964;
 - (c) the 1974 Act.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Certification Officer.
- (4) The Certification Officer may appoint one or more assistant certification officers and shall appoint an assistant certification officer for Scotland.
- (5) The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate and in particular may delegate to the assistant certification officer for Scotland such functions as he thinks appropriate in relation to organisations whose principal office is in Scotland.

- (6) References in any enactment (except in subsections (4) and (5) above, this subsection, Part I and paragraph 28 of Schedule 1 to this Act and the House of Commons Disqualification Act 1975) to the Certification Officer shall be construed as including, in relation to such functions as have been delegated in accordance with subsection (5) above, references to an assistant certification officer.

8 Certification as independent trade union

- (1) A trade union whose name is entered on the list of trade unions maintained under section 8 of the 1974 Act may apply to the Certification Officer for a certificate that it is independent.
- (2) An application under subsection (1) above shall be made in such form and manner as the Certification Officer may require and shall be accompanied by a fee of £21 or such other fee as may be prescribed by regulations made by the Secretary of State.
- (3) The Certification Officer shall maintain a record showing details of all applications made under subsection (1) above and shall keep it available for public inspection (free of charge) at all reasonable hours.
- (4) If an application is made, or by virtue of subsection (12) below is treated as being made, by a trade union whose name is not entered on the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record maintained in accordance with subsection (3) above.
- (5) In the case of an application not falling within subsection (4) above, the Certification Officer shall—
- (a) determine whether the applicant trade union is independent ;
 - (b) enter his decision and the date of his decision on the record maintained in accordance with subsection (3) above; and
 - (c) if he determines that the trade union is independent, issue a certificate accordingly, or, if he determines that it is not, give reasons for his decision.
- (6) The Certification Officer shall not make any determination under subsection (5) above whether a trade union is independent until one month after the application has been entered on the record in accordance with subsection (3) above, and before making such a determination he shall make such inquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.
- (7) The Certification Officer may at any time withdraw a certificate, in accordance with subsection (8) below, if he is of the opinion that the trade union in question is no longer independent.
- (8) Where the Certification Officer proposes to withdraw a certificate under subsection (7) above—
- (a) he shall notify the trade union concerned of the proposal;
 - (b) subsections (3), (5) and (6) above shall apply (with appropriate modifications) to such a proposal as they apply to an application under subsection (1) above ; and
 - (c) the Certification Officer shall confirm or withdraw the certificate accordingly.
- (9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate or by a decision of his to withdraw its certificate may appeal, in accordance

with section 88(3) below, to the Employment Appeal Tribunal; and on any such appeal the Tribunal, if satisfied that the certificate should be issued or as the case may be should not be withdrawn, shall declare that fact and give directions to the Certification Officer accordingly.

- (10) Where the name of an organisation is removed from the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from the said list and that the certificate is accordingly cancelled.
- (11) A certificate of independence which is in force, or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record, shall for all purposes be conclusive evidence that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on the record, and to be signed by the Certification Officer or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.
- (12) If in any proceedings before any court, the Employment Appeal Tribunal, the Central Arbitration Committee, the Service, or an industrial tribunal a question arises as to whether a trade union is independent and there is no certificate of independence in force and no refusal, withdrawal or cancellation of a certificate recorded in relation to that trade union—
 - (a) the question shall not be decided in those proceedings, and those proceedings shall be stayed or, in Scotland, sisted until a certificate has been issued or refused by the Certification Officer; and
 - (b) the body before whom the proceedings are stayed, or sisted, may refer the question as to the independence of the trade union to the Certification Officer who shall proceed in accordance with subsections (3) to (6) above as if the reference were an application by that trade union.

9 Custody of documents

- (1) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts 1871 to 1964 or the Industrial Relations Act 1971 or the 1974 Act to the Chief Registrar of Friendly Societies or any assistant registrar, or to the Registrar of Trade Unions and Employers' Associations or any assistant registrar, and which are, on the commencement of this section, in the custody of the Chief Registrar of Friendly Societies or any assistant registrar.
- (2) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in subsection (1) above as are, or were, available for public inspection in pursuance of any of the Acts referred to in that subsection.

10 Central Arbitration Committee

- (1) There shall be a body to be known as the Central Arbitration Committee, in this Act referred to as the " Committee ".

- (2) Any reference in any enactment, statutory instrument or other document to the Industrial Arbitration Board (whether by that or any other name) shall be construed as a reference to the Committee.
- (3) The provisions of Part II and (so far as applicable) Parts I and III of Schedule 1 to this Act shall have effect with respect to the Committee.

Trade union recognition

11 Reference of recognition issue to Service

- (1) A recognition issue may be referred by an independent trade union to the Service by written application in such form as the Service may require.
- (2) In this Act " recognition ", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining.
- (3) In this section and sections 12 to 14 below, "recognition issue " means an issue arising from a request by a trade union for recognition by an employer, or two or more associated employers, including, where recognition is already accorded to some extent, a request for further recognition.

12 Inquiry and report on recognition issue

- (1) Subject to subsection (2) below, when a recognition issue is referred to the Service under section 11 above the Service shall examine the issue, shall consult all parties who it considers will be affected by the outcome of the reference and shall make such inquiries as it thinks fit.
- (2) The Service may decline to proceed on a reference under section 11 above if it is of the opinion that the issue referred is substantially the same as an issue which has previously been the subject of a reference under that section, or of an application under section 13 below, unless the trade union shows that the circumstances have changed to such an extent as to justify a new reference.
- (3) At all times after a recognition issue has been referred to the Service and before the Service has reported on it—
 - (a) the Service shall have regard to the desirability of encouraging the settlement of the issue by agreement and shall, where appropriate, seek to assist such a settlement by conciliation; and
 - (b) the trade union or unions which made the reference may, by notice in writing, withdraw the reference, and one or more such unions may, by notice in writing, withdraw from the reference, and in the latter case only such unions as remain parties to the reference may be recommended for recognition.
- (4) If the issue has not been settled and the reference not withdrawn the Service shall prepare a written report setting out its findings, any advice in connection with those findings and any recommendation for recognition and the reasons for it, or, where no such recommendation is made, the reasons for not making any recommendation.
- (5) A recommendation for recognition shall specify—
 - (a) the employer or employers and the trade union or unions to which it relates;

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- (b) the description or descriptions of workers in respect of which recognition is recommended ;
 - (c) whether the recommendation is for recognition generally or in respect of one or more specified matters;
 - (d) the level or levels at which recognition is recommended.
- (6) A recommendation for recognition may be subject to such conditions, to be complied with on the part of the trade union, as the Service thinks fit, and any conditions shall be set out in the report.
- (7) The Service shall send a copy of the report to every trade union and employer concerned in the recognition issue and to such other persons as it thinks fit.

13 Application for variation or revocation of recommendation

- (1) At any time when a recommendation of the Service has been made and has not been—
- (a) superseded by agreement, whether express or implied, between the employer and the union ;
 - (b) superseded by another recommendation under section 12 above; or
 - (c) revoked on an application under this section,
- an application may be made under this section for the variation or revocation of that recommendation.
- (2) Such an application may be made—
- (a) jointly by all the trade unions and employers to whom the recommendation relates; or
 - (b) by any trade union or employer to whom the recommendation relates,
- and in each case the application shall be in writing and in such form as the Service may require.
- (3) Where the Service is of the opinion that the issue raised by an application which is not a joint application such as is referred to in subsection (2)(a) above is substantially the same as an issue which has previously been the subject of a reference under section 11 above or of an application under this section, it may decline to proceed with that application unless the applicant shows—
- (a) that the, reconsideration of the recommendation is justified because circumstances have changed or further information has become available ; or
 - (b) that a condition to which the recommendation is subject is no longer being sufficiently complied with.
- (4) Subject to subsection (3) above, on receipt of an application under this section the Service shall examine the issue raised by the application, shall consult such persons and make such inquiries as it thinks fit and, if the application is not settled or withdrawn, shall report on it stating its conclusions and the reasons for them.
- (5) A variation or revocation may be subject to such conditions, to be complied with on the part of the trade union or the employer, as the Service thinks fit, and any conditions shall be set out in the report.
- (6) A variation or revocation shall take effect—
- (a) in the case of an unconditional variation or revocation, on the date when the Service transmits its report to the parties to whom the recommendation relates; and

- (b) in the case of a conditional variation or revocation, on the date on which the Service, on the application of the party by whom the condition or conditions were to be complied with, transmits to the other party its opinion that the condition or all the conditions have been sufficiently complied with.

14 Inquiries under ss. 12 and 13

- (1) In the course of its inquiries into a recognition issue under section 12 or 13 above the Service shall ascertain the opinions of workers to whom the issue relates by any means it thinks fit, but if in any case it determines to take a formal ballot of those workers or any description of such workers, the following provisions of this section shall apply.
- (2) In making arrangements for any such ballot the Service shall have regard to the need for securing that every worker invited to take part in the ballot has an equal right and a fair opportunity of voting, and that the vote cast by any individual in the ballot will be kept secret.
- (3) Before taking any such ballot the Service shall give notice to every employer and union concerned in the reference or application, including every union known to the Service to have members among the workers proposed to be invited to take part in the ballot, of—
 - (a) the description or descriptions of workers proposed to be invited to take part in the ballot;
 - (b) the question or questions on which the ballot is proposed to be taken ; and
 - (c) the manner in which the ballot is proposed to be taken ;and the Service shall consider any representations made by any such employer or union with respect to the proposals.
- (4) Subject to subsections (2) and (3) above, any such ballot may be conducted in such manner as the Service thinks fit.
- (5) Where a formal ballot has been taken in accordance with this section the Service shall arrange for—
 - (a) the question or questions on which the ballot was taken ; and
 - (b) the results of the ballot on that question or on each such question,to be notified to every employer and union concerned in the reference or application, including every union known to the Service to have members among the workers invited to take part in the ballot.
- (6) An employer who is notified in accordance with subsection (5) above of the results of the ballot and who has workers among those invited to take part in the ballot shall arrange for those results to be notified to them.

15 Complaint of failure to comply with recommendation

- (1) A recommendation for recognition made by the Service under section 12 above, so far as it relates to employees, but not so far as it relates to workers who are not employees, shall become operative for the purpose of the following provisions of this Act—
 - (a) in the case of an unconditional recommendation, at the end of the period of 14 days beginning with the date on which the Service's report under section 12 above is received by the employer ; and

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- (b) in the case of a conditional recommendation, at the end of the period of 14 days beginning with the date on which the Service, on the application of the union, notifies the employer of its opinion that the condition or all the conditions have been sufficiently complied with,
and shall remain operative except in so far as it is—
 - (i) superseded by agreement, whether express or implied, between the employer and the union ;
 - (ii) superseded by another recommendation under section 12 above; or
 - (iii) revoked on an application under section 13 above.
- (2) Where a recommendation is operative, then at any time after the end of the period of two months beginning with the date on which it became operative, the trade union may refer in writing to the Service a complaint that the employer is at the time of the complaint, wholly or in part, not complying with the recommendation, that is to say, that he is not then taking such action by way of or with a view to carrying on negotiations as might reasonably be expected to be taken by an employer ready and willing to carry on such negotiations as are envisaged by the recommendation.
- (3) When a complaint is referred to the Service under this section the Service shall attempt to settle the matter by conciliation.

16 Application arising from failure to comply with recommendation

- (1) If conciliation under section 15(3) above does not result in a settlement, the trade union which referred the complaint under that section may apply to the Central Arbitration Committee in accordance with the following provisions of this section.
- (2) The application shall be in writing and in such form as the Committee may require and shall consist of—
 - (a) a complaint that the employer is not complying (within the meaning of section 15(2) above) with a recommendation of the Service; and
 - (b) a claim that in respect of one or more descriptions of employees covered by that recommendation their contracts should include the terms and conditions specified in the claim.
- (3) An application under this section comprising a complaint on substantially the same grounds as those of a complaint in a previous application under this section, shall not be entertained by the Committee before the end of the period of 12 months beginning with the date on which the Committee made its award under subsection (6) below, or determined not to make such an award, on that previous application.
- (4) Subject to subsection (3) above, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well founded, wholly or in part, and stating the reasons for its finding.
- (5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—
 - (a) the description or descriptions of employees in relation to whom the employer has failed to comply with the recommendation; and
 - (b) the matters in relation to which the employer has failed to comply with the recommendation.

- (6) If the Committee finds the complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the declaration under subsection (5)(a) above the employer shall observe either—
- (a) the terms and conditions specified in the claim by the trade union in accordance with subsection (2)(b) above; or
 - (b) other terms and conditions which the Committee considers appropriate, being in either case terms and conditions falling within the scope of the matters specified in the declaration under subsection (5)(b) above.
- (7) Any terms and conditions which by an award under subsection (6) above the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—
- (a) by a subsequent award under this section;
 - (b) by a collective agreement between the employer and the union for the time being representing that employee; or
 - (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.
- (8) Where—
- (a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and
 - (b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,
- that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.
- (9) No award shall be made under this section in respect of any terms and conditions of employment which are fixed by virtue of any enactment.

Disclosure of information

17 General duty of employers to disclose information

- (1) For the purposes of all the stages of such collective bargaining between an employer and representatives of an independent trade union as is referred to in subsection (2) below, it shall be the duty of the employer, subject to section 18 below, to disclose to those representatives on request all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both—
- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining, and
 - (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

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- (2) The collective bargaining for the purposes of which an employer must disclose information under subsection (1) above is collective bargaining about matters, and in relation to descriptions of workers.—
- (a) in respect of which the trade union is recognised by that employer; or
 - (b) falling within the scope of an operative recommendation for recognition (within the meaning of section 15 above) relating to the union,
- and in this section and sections 19 to 21 below "representative", in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining.
- (3) Where a request for information is made by trade union representatives under this section, the request shall, if the employer so requests, be in writing or be confirmed in writing.
- (4) In determining, for the purposes of subsection (1)(b) above, what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Service under section 6 above, but not so as to exclude any other evidence of what that practice is.
- (5) Where an employer is required by virtue of this section to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

18 Restrictions on general duty under s. 17

- (1) No employer shall, by virtue of section 17 above, be required to disclose—
- (a) any information the disclosure of which would be against the interests of national security, or
 - (b) any information which he could not disclose without contravening a prohibition imposed by or under an enactment, or
 - (c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person, or
 - (d) any information relating specifically to an individual, unless he has consented to its being disclosed, or
 - (e) any information the disclosure of which would cause substantial injury to the employer's undertaking for reasons other than its effect on collective bargaining, or
 - (f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;
- and in formulating the provisions of any Code of Practice relating to the disclosure of information, the Service shall have regard to the provisions of this subsection.
- (2) In the performance of his duty under section 17 above an employer shall not be required—
- (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or
 - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

19 Complaint of failure to disclose information

- (1) An independent trade union may present to the Central Arbitration Committee, in writing in such form as the Committee may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by section 17 above, or to confirm any such information in writing in accordance with subsection (5) of that section.
- (2) If on receipt of such a complaint the Committee is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall refer the complaint to the Service and shall notify the trade union and employer accordingly, whereupon the Service shall seek to promote a settlement of the matter.
- (3) If the complaint is not settled or withdrawn and the Service is of the opinion that further attempts at conciliation are unlikely to result in a settlement it shall inform the Committee of its opinion.
- (4) If the complaint is not referred to the Service under subsection (2) above, or, if it is so referred, on the Service informing the Committee of its opinion in accordance with subsection (3) above, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.
- (5) On the hearing of a complaint under this section any person who the Committee considers has a proper interest in the complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.
- (6) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—
 - (a) the information in respect of which the Committee finds that the complaint is well founded;
 - (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under paragraph (a) above; and
 - (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under paragraph (a) above.
- (7) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

20 Further complaint arising from failure to disclose information

- (1) At any time after the expiration of the period specified in a declaration under section 19(6)(c) above the trade union may present to the Committee, in writing in such form as the Committee may require, a complaint (hereafter in this section and section 21 below referred to as a "further complaint") that the employer has failed to

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disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under section 19(6)(a) above.

- (2) On receipt of a further complaint the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.
- (3) On the hearing of a further complaint under this section any person who the Committee considers has a proper interest in the complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.
- (4) If the Committee finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Committee finds that the complaint is well-founded.

21 Determination of claim and award

- (1) On or after presenting a further complaint under section 20 above, the trade union may present to the Committee, in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim.
- (2) The right to present a claim under subsection (1) above shall expire, or, as the case may be, a claim so presented shall be treated as withdrawn, if at any time before the Committee makes an award under this section the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under section 19(6)(a) or, as the case may be, section 20(4) above.
- (3) If the Committee finds, or has found, the further complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—
 - (a) the terms and conditions specified in the claim; or
 - (b) other terms and conditions which the Committee considers appropriate.
- (4) The date specified in an award under subsection (3) above may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with section 19(6)(b) above in the declaration made by the Committee on the original complaint.
- (5) An award under subsection (3) above shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters.—
 - (a) in respect of which the trade union making the claim is recognised by the employer; or
 - (b) which fall within the scope of an operative recommendation for recognition (within the meaning of section 15 above) relating to the trade union making the claim.
- (6) Any terms and conditions which by an award under this section the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this section ;
 - (b) by a collective agreement between the employer and the union for the time being representing that employee; or
 - (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.
- (7) Where—
- (a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment; and
 - (b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,
- that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.
- (8) No award shall be made under this section in respect of any terms and conditions of employment which are fixed by virtue of any enactment.

PART II

RIGHTS OF EMPLOYEES

Guarantee payments

22 Right to guarantee payment

- (1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of—
- (a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
 - (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,
- he shall, subject to the following provisions of this Act, be entitled to be paid by his employer a payment, referred to in this Act as a guarantee payment, in respect of that day and hereafter in this section and sections 23 to 26 below—
- (i) such a day is referred to as a " workless day ", and
 - (ii) " workless period " has a corresponding meaning.
- (2) In this section and sections 23 to 27 below " day " means the period of 24 hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—
- (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
 - (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

- (3) An employee shall not be entitled to a guarantee payment under subsection (1) above in respect of a workless day unless he has been continuously employed for a period of four weeks ending with the last complete week before that day.

23 General exclusions from right under s. 22

- (1) An employee shall not be entitled to a guarantee payment in respect of a workless day if the failure to provide him with work occurs in consequence of a trade dispute involving any employee of his employer or of an associated employer.
- (2) An employee shall not be entitled to a guarantee payment in respect of a workless day if—
- (a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances, whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
 - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

24 Calculation of guarantee payment

- (1) Subject to the limits set by section 25 below, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and accordingly no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.
- (2) Subject to subsection (4) below, the guaranteed hourly rate in relation to an employee shall be the amount of one week's pay divided by—
- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable ; or
 - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day in respect of which the guarantee payment is payable; or
 - (c) in a case falling within paragraph (b) above but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
 - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract;
 - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (3) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is, subject to subsection (4) below, the day in respect of which the guarantee payment is payable.

- (4) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsections (2) and (3) above shall have effect as if for the references in those subsections to the day in respect of which the guarantee payment is payable there were substituted references to the last day on which the original contract was in force.
- (5) In this section and section 25 below "week ", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to other employees, means a week ending with Saturday.

25 Limits on amount of and entitlement to guarantee payment

- (1) The amount of guarantee payment payable to an employee in respect of any day shall not exceed £6.
- (2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in any one of the relevant periods, that is to say, the periods of three months commencing on 1st February, 1st May, 1st August and 1st November in each year.
- (3) The specified number of days for the purposes of subsection (2) above shall be, subject to subsection (4) below.—
 - (a) the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed ; or
 - (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by 12 the total number of such days during the period of 12 weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number; or
 - (c) in a case falling within paragraph (b) above but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the following considerations as are appropriate in the circumstances, that is to say.—
 - (i) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract;
 - (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.
- (4) If in any case an employee's contract has been varied, or a new contract has been entered, into, in connection with a period of short-time working, subsection (3) above shall have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.
- (5) The Secretary of State may vary any of the limits referred to in this section, and may in particular vary the relevant periods referred to in subsection (2) above, after a review under section 86 below, by order made in accordance with that section.

26 Supplementary

- (1) Subject to subsection (2) below, a right to a guarantee payment shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (2) Any contractual remuneration paid to an employee in respect of a workless day shall go towards discharging any liability of the employer to pay a guarantee payment in respect of that day, and conversely any guarantee payment paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (3) For the purposes of subsection (2) above, contractual remuneration shall be treated as paid in respect of a workless day—
 - (a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed ; and
 - (b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.
- (4) The Secretary of State may by order provide that in relation to any description of employees the provisions of sections 22(2), 24 and 25(3) above, as originally enacted or as varied under section 25(5) above, and of subsections (1) to (3) above, and, so far as they apply for the purposes of those provisions, the provisions of Schedule 4 to this Act, shall have effect subject to such modifications and adaptations as may be prescribed by the order.

27 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.
- (2) An industrial tribunal shall not entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well-founded the tribunal shall order the employer to pay the complainant the amount of guarantee payment which it finds is due to him.

28 Exemption orders

- (1) If at any time there is in force a collective agreement, or a wages order, whereby employees to whom the agreement or order relates have a right to guaranteed remuneration and on the application of all the parties to the agreement, or as the case may be, of the council or Board making the order, the appropriate Minister, having regard to the provisions of the agreement or order is satisfied that section 22 above should not apply to those employees, he may make an order under this section excluding those employees from the operation of that section.

- (2) In subsection (1) above a wages order means an order made under any of the following provisions, that is to say—
- (a) section 11 of the Wages Councils Act 1959 ;
 - (b) section 3 of the Agricultural Wages Act 1948 ;
 - (c) section 3 of the Agricultural Wages (Scotland) Act 1949.
- (3) In subsection (1) above the appropriate Minister means—
- (a) as respects a collective agreement or such an order as is referred to in subsection (2)(a) or (c) above, the Secretary of State;
 - (b) as respects such an order as is referred to in subsection (2)(b) above, the Minister of Agriculture, Fisheries and Food.
- (4) The Secretary of State shall not make an order under this section in respect of an agreement unless—
- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or
 - (b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement ;
- and where an order under this section is in force in respect of such an agreement as is described in paragraph (b) above an industrial tribunal shall have jurisdiction over such a complaint as if it were a complaint falling within section 27 above.
- (5) Without prejudice to section 123(4) below, an order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question, or, as the case may be, by the council or Board which made the order in question, or without any such application:

Suspension from work on medical grounds

29 Right to remuneration on suspension on medical grounds

- (1) An employee who is suspended from work by his employer on medical grounds in consequence of—
- (a) any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, or
 - (b) any recommendation in any provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,
- which is a provision for the time being specified in Schedule 2 to this Act, shall, subject to the following provisions of this Act, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding 26 weeks.
- (2) For the purposes of this section and sections 30 to 33 below an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed

by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.

- (3) The Secretary of State may by order add provisions to or remove provisions from the list of specified provisions in Schedule 2 to this Act.
- (4) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in subsection (1) above, paragraph 10(a) of Schedule 1 to the 1974 Act (qualifying period for right not to be unfairly dismissed) shall have effect in relation to that dismissal as if for the words " 26 weeks" there were substituted the words " 4 weeks ".

30 General exclusions from right under s. 29

- (1) An employee shall not be entitled to remuneration under section 29 above unless he has been continuously employed for a period of four weeks ending with the last complete week before the day on which the suspension begins.
- (2) An employee shall not be entitled to remuneration under section 29 above in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.
- (3) An employee shall not be entitled to remuneration under section 29 above in respect of any period during which—
 - (a) his employer has offered to provide him with suitable alternative work, whether or not work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform, and the employee has unreasonably refused to perform that work ; or
 - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

31 Calculation of remuneration

- (1) The amount of remuneration payable by an employer to an employee under section 29 above shall be a week's pay in respect of each week of the period of suspension referred to in subsection (1) of that section, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
- (2) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section the calculation date is the day before that on which the suspension begins.
- (3) Subject to subsection (4) below, a right to remuneration under section 29 above shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under section 29 above in respect of that period, and conversely any payment of remuneration in discharge of an employer's liability under section 29 above in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

- (5) In this section " week ", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday means a week ending with that other day, and in relation to any other employee means a week ending on Saturday.

32 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 29 above.
- (2) An industrial tribunal shall not entertain a complaint relating to remuneration under section 29 above in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

33 Dismissal of replacement

Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 29(1) above of another employee; and
- (b) dismisses the first mentioned employee in order to make it possible to allow the other employee to resume his original work;

then, for the purposes of paragraph 6(1)(b) of Schedule 1 to the 1974 Act (employer to show substantial reason for dismissal), but without prejudice to the application of paragraph 6(8) of that Schedule (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

Maternity

34 Dismissal on grounds of pregnancy

- (1) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
- (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
- (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.

- (2) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(d) or (b) above, but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3) below.
- (3) The new contract of employment must—
- (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
 - (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
 - (c) be such that the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.
- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2) above, it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) above or, as the case may be, that there was no suitable available vacancy for her.
- (5) Paragraph 5(3) of Schedule 1 to the 1974 Act (employee treated as dismissed where he gives notice to the employer within the period of the employer's notice) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b) above.
- (6) In paragraph 12 of Schedule 1 to the 1974 Act (exclusion of certain fixed term contracts) as it applies to an employee treated as unfairly dismissed by virtue of subsection (1) or (2) above, for the reference to 28th February 1972 there shall be substituted a reference to the commencement of this section.
- (7) Paragraph 13(3) of Schedule 1 to the 1974 Act (exclusion of right not to be unfairly dismissed and remedy for breach of that right where a dismissal procedures agreement is in force) shall not apply to the right not to be unfairly dismissed for any reason mentioned in subsection (1) or (2) above.

35 Rights of employee in connection with pregnancy and confinement

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act, be entitled—
- (a) in accordance with sections 36 to 38 below, to be paid by her employer a sum to be known as maternity pay ; and
 - (b) in accordance with sections 48 to 50 below and Schedule 3 to this Act, to return to work.
- (2) An employee shall be entitled to the rights referred to in subsection (1) above whether or not a contract of employment subsists during the period of her absence but, subject to subsection (3) below, she shall not be so entitled unless—

- (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the 11th week before the expected week of confinement;
 - (b) she has at the beginning of that 11th week been continuously employed for a period of not less than two years; and
 - (c) she informs her employer (in writing if he so requests) at least three weeks before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable.—
 - (i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement, and
 - (ii) in the case of the right to return, that she intends to return to work with her employer.
- (3) An employee who has been dismissed by her employer for a reason falling within section 34(1)(a) or (b) above and has not been re-engaged in accordance with that section, shall be entitled to the rights referred to in subsection (1) above notwithstanding that she has thereby ceased to be employed before the beginning of the 11th week before the expected week of confinement if, but for that dismissal, she would at the beginning of that 11th week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right to return unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.
- (4) An employee shall not be entitled to either of the rights referred to in subsection (1) above unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a certified midwife stating the expected week of her confinement.
- (5) The Secretary of State may by order vary the periods of two years referred to in subsections (2) and (3) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

36 Maternity pay

- (1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (hereafter in this section and sections 37 and 38 below referred to as the payment period or payment periods).
- (2) An employee shall not be entitled to maternity pay for any absence before the beginning of the 11th week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that 11th week.
- (3) The Secretary of State may by order vary the periods of six weeks referred to in subsections (1) and (2) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Where an employee gives her employer the information required by section 35(2)(c) above or produces any certificate requested under section 35(4) above after the beginning of the payment period or the first of the payment periods, she shall not be

entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or as the case may be producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

37 Calculation of maternity pay

- (1) The amount of maternity pay to which an employee is entitled as respects any week shall be $\frac{9}{10}$ ths of a week's pay reduced by the amount of maternity allowance payable for that week under Part I of Schedule 4 to the Social Security Act 1975, whether or not the employee in question is entitled to the whole or any part of that allowance.
- (2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day—
 - (a) there shall be disregarded Sunday or such other day in each week as may be prescribed in relation to that employee under section 22(10) of the Social Security Act 1975 for the purpose of calculating the daily rate of maternity allowance under that Act; and
 - (b) the amount payable for any other day shall be taken as $\frac{1}{6}$ th of the amount of the maternity pay for the week in which the day falls.
- (3) Subject to subsection (4) below, a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (hereafter in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (5) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence.

38 Complaint to industrial tribunal of failure to pay maternity pay

- (1) A complaint may be presented to an industrial tribunal by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well founded the tribunal shall order the employer to pay the complainant the amount of maternity pay which it finds is due to her.

39 Maternity Pay Fund

- (1) There shall be established under the control and management of the Secretary of State a fund to be called the Maternity Pay Fund out of which payments shall be made in accordance with the following provisions of this Act.
- (2) The Secretary of State shall prepare accounts of the Maternity Pay Fund in such form as the Treasury may direct and shall send them to the Comptroller and Auditor General not later than the end of the month of November following the end of the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament.
- (3) Any money in the Maternity Pay Fund may from time to time be paid over to the National Debt Commissioners and invested by them, in accordance with such directions as may be given by the Treasury, in any such manner as may be specified by an order of the Treasury for the time being in force under section 22(1) of the National Savings Bank Act 1971.

40 Financing of Maternity Pay Fund

- (1) In the Social Security Act 1975 for the words "appropriate allocation to the Redundancy Fund", wherever they occur, substitute the words " appropriate employment protection allocation ".
- (2) In section 1(1) of that Act (outline of contributory system), after the words " Redundancy Fund " insert the words " and the Maternity Pay Fund ".
- (3) In section 4(6)(b) of that Act (amount of secondary Class 1 contribution), for the words " 8-5 per cent." substitute the words " 8-55 per cent. ".
- (4) In section 122(4) of that Act (power to alter contributions), after the words " the Redundancy Fund " insert the words " or the Maternity Pay Fund ", and for the words " that Fund" substitute the words " either or both those Funds ".
- (5) In section 134 of that Act (destination of contributions etc.)—
 - (a) in subsection (4), for the words " 0.2 per cent." substitute the words " 0.25 per cent. "; and
 - (b) in subsection (5)(b), for the words " that Fund " substitute the words " the Redundancy Fund and the Maternity Pay Fund in such shares as the Secretary of State may, with the consent of the Treasury, determine. "
- (6) In Schedule 20 to that Act (glossary of expressions), at the appropriate place in alphabetical order insert in the first column the entry " Appropriate employment protection allocation " and against it in the second column insert the entry " See section 134(4). ".

41 Advances out of National Loans Fund

- (1) Subject to the provisions of subsections (2) to (4) below, the Treasury may from time to time advance out of the National Loans Fund to the Secretary of State for the purposes of the Maternity Pay Fund such sums as the Secretary of State may request; and any sums advanced to the Secretary of State under this section shall be paid into that Fund.

- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Secretary of State under subsection (1) above shall not at any time exceed £4 million, or such larger sum, not exceeding £10 million, as the Secretary of State may by order made with the consent of the Treasury determine.
- (3) No order under subsection (2) above shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Any sums advanced to the Secretary of State under subsection (1) above shall be repaid by the Secretary of State out of the Maternity Pay Fund into the National Loans Fund in such manner and at such times, and with interest thereon at such rate, as the Treasury may direct.

42 Maternity pay rebate

- (1) Subject to any regulations made under this section, the Secretary of State shall pay out of the Maternity Pay Fund to every employer who makes a claim under this section and who, being liable to pay, has paid maternity pay to an employee, an amount equal to the full amount of maternity pay so paid (in this section and sections 45 and 46 below referred to as a "rebate").
- (2) The Secretary of State may if he thinks fit, and if he is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances, pay such a rebate to an employer who makes a claim under this section and who has paid maternity pay to an employee in circumstances in which, by reason of the time limit provided for in section 38(2) above, a complaint by the employee has been dismissed, or would not be entertained, by an industrial tribunal.
- (3) For the purposes of subsections (1) and (2) above, a payment of contractual remuneration by an employer shall be treated as a payment of maternity pay to the extent that, by virtue of section 37(4) above.—
 - (a) it extinguishes the employer's liability to pay maternity pay; or
 - (b) in a case falling within subsection (2) above, it would extinguish that liability if a complaint by the employee were not time-barred as described in that subsection.
- (4) The Secretary of State shall make provision by regulations as to the making of claims for rebates under this section and such regulations may in particular—
 - (a) require a claim to be made within such time limit as may be prescribed; and
 - (b) require a claim to be supported by such evidence as may be prescribed.

43 Payments to employees out of Maternity Pay Fund

- (1) Where an employee claims that her employer is liable to pay her maternity pay and—
 - (a) that she has taken all reasonable steps (other than: proceedings to enforce a tribunal award) to recover payment from the employer; or
 - (b) that her employer is insolvent (as defined in section 69 below for the purposes of sections 64 to 68 below);

and that the whole or part of the maternity pay remains unpaid, the employee may apply to the Secretary of State under this section.

- (2) If the Secretary of State is satisfied that the claim is well founded the Secretary of State shall pay the employee out of the Maternity Pay Fund the amount of the maternity pay which appears to the Secretary of State to be unpaid.
- (3) A payment made by the Secretary of State to an employee under this section shall be treated for the purpose of discharging any liability of the employer to the employee as if it had been made by the employer.

44 Unreasonable default by employer

- (1) Where the Secretary of State makes a payment to an employee in respect of unpaid maternity pay in a case falling within section 43(1)(a) above and it appears to the Secretary of State that the employer's default in payment was without reasonable excuse, the Secretary of State may recover from the employer such amount as the Secretary of State considers appropriate, not exceeding the amount of maternity pay which the employer failed to pay.
- (2) Where a sum is recovered by the Secretary of State by virtue of this section that sum shall be paid into the Maternity Pay Fund.

45 Supplementary provisions in relation to employer's insolvency

- (1) Where the Secretary of State makes a payment to an employee under section 64 below (which provides for payments out of the Redundancy Fund in respect of certain debts where an employer is insolvent) and that payment, in whole or in part, represents arrears of pay, then, in ascertaining for the purpose of section 43 above the amount of any unpaid maternity pay, section 37(4) above shall apply as if the arrears of pay in question had been duly paid by the employer to the employee in accordance with the contract of employment.
- (2) Where the Secretary of State makes a payment to an employee out of the Redundancy Fund under section 64 below which, if it had been made by the employer to the employee, would have attracted a rebate from the Maternity Pay Fund in accordance with section 42 above, then, the Secretary of State shall make a payment out of the Maternity Pay Fund into the Redundancy Fund of an amount corresponding to the amount of rebate which would have been so payable.

46 Complaint and appeals to industrial tribunal

- (1) A person who has—
 - (a) made a claim for a rebate under section 42 above, in a case to which subsection (1) of that section applies; or
 - (b) applied for a payment under section 43 above,may, subject to subsection (5) below, present a complaint to an industrial tribunal that—
 - (i) the Secretary of State has failed to make any such payment; or
 - (ii) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Where an industrial tribunal finds that the Secretary of State ought to make any such payment or further payment, it shall make a declaration to that effect and shall also

declare the amount of any such payment which it finds the Secretary of State ought to make.

(3) An employer who has made a claim for a rebate under section 42 above, in a case to which subsection (2) of that section applies, may, subject to subsection (5) below, appeal to an industrial tribunal on the ground that—

- (a) the Secretary of State has refused to pay a rebate ; or
- (b) any rebate paid by the Secretary of State is less than the amount which should have been paid,

and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a rebate should be paid or, as the case may be, finds that a further payment by way of rebate should be made, the tribunal shall determine accordingly, and the Secretary of State shall comply with the determination.

(4) Where the Secretary of State determines that an amount is recoverable from an employer under section 44 above, the employer may, subject to subsection (5) below, appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that no amount should be recovered from the employer, or that a lesser or greater amount should be recovered (but in any case not exceeding the amount of maternity pay which the employer failed to pay) the tribunal shall determine accordingly and the amount, if any, so determined shall be the amount recoverable from the employer by the Secretary of State.

(5) An industrial tribunal shall not entertain a complaint or appeal under this section unless it is presented to the tribunal within the period of three months beginning with the date on which the relevant decision of the Secretary of State was communicated to the complainant or appellant or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint or appeal to be presented within the period of three months.

47 Provisions as to information

(1) Where an application is made to the Secretary of State by an employee under section 43 above, the Secretary of State may require—

- (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the employee's application is well founded; and
- (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.

(2) Any such requirement shall be made by a notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.

(3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.

(4) If any person in making a claim under section 42 above or an application under section 43 above or in purporting to comply with a requirement of a notice under this section knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

48 Right to return to work

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of 29 weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) above—
 - (a) " job ", in relation to an employee, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed ; and
 - (b) " terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent" means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence.
- (3) In sections 35 and 49 to 51 of, and Schedule 3 to, this Act, except where the context otherwise requires, " to return to work " means to return to work in accordance with subsection (1) above, and cognate expressions shall be construed accordingly.
- (4) If an employee is entitled to return to work in accordance with subsection (1) above, but it is not practicable by reason of redundancy for the employer to permit her so to return to work, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (5) below.
- (5) The new contract of employment must be such that—
 - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances : and
 - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1) above.
- (6) The remedies of an employee for infringement of either of the rights mentioned in this section are those conferred by or by virtue of the provisions of sections 49 and 50 below and Schedule 3 to this Act.

49 Exercise of right to return

- (1) An employee shall exercise her right to return to work by notifying the employer (who may be her original employer or a successor of that employer) at least one week before the day on which she proposes to return of her proposal to return on that day (hereafter in this section and section 50 below and Schedule 3 to this Act referred to as the " notified day of return ").
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for

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specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

- (3) Subject to subsection (4) below, an employee may—
- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of 29 weeks mentioned in section 48(1) above ; and
 - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1) above, so that she returns to work not later than four weeks from the expiration of the said period of 29 weeks;

if before the notified day of return or, as the case may be, the expiration of the period of 29 weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.

- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b) above, she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the expiration of the period of 29 weeks referred to in section 48(1) above, or which appears likely to have that effect, and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) above so that she returns to work at any time before the end of the period of 14 days from the end of the interruption notwithstanding that she returns to work outside the said period of 29 weeks.
- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) above to extend the period during which she may exercise her right to return; or
 - (b) refrained from notifying the day of return in the circumstances described in subsection (6) above,

the other of those subsections shall apply as if for the reference to the expiration of the period of 29 weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of 14 days from the end of the interruption of work.

- (8) Where—
- (a) an employee's return is postponed under subsection (2) or (3) above, or
 - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) above,

then, subject to subsection (4) above, references in those subsections and in section 50 below and Schedule 3 to this Act to the notified day of return shall be construed as

references to the day to which the return is postponed or, as the case may be, that later day.

50 Failure to permit to return treated as dismissal

- (1) Where an employee is entitled to return to work and has exercised her right to return in accordance with section 49 above but is not permitted to return to work, then, she shall be treated for the purposes of—
- (a) the provisions of this Act and the 1974 Act relating to unfair dismissal; and
 - (b) the Redundancy Payments Act 1965 ;
- as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.
- (2) The provisions of Schedule 3 to this Act shall have effect for the purpose of supplementing the foregoing provisions of this Act relating to an employee's right to return to work.

51 Dismissal of replacement

Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of paragraph 6(1)(b) of Schedule 1 to the 1974 Act (employer to show substantial reason for dismissal), but without prejudice to the application of paragraph 6(8) of that Schedule (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

52 Interpretation of ss. 35 to 51

In sections 35 to 51 above, this section and Schedule 3 to this Act, except so far as the context otherwise requires.—

" certified midwife " means a midwife certified under the Mid wives Act 1951 or the Mid wives (Scotland) Act 1951;

" confinement " means the birth of a living child or the birth of a child whether living or dead after 28 weeks of pregnancy;

" expected week of confinement " means the week in which it is expected that confinement will take place ;

" original contract of employment ", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 34(2) above or otherwise by reason of her pregnancy, the contract under

which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

" week "—

- (a) in sections 35(2)(c) and 49(1) above, means a period of seven days;
- (b) in the expression " expected week of confinement ", means a period of seven days beginning with midnight between Saturday and Sunday; and
- (c) in any other case, means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

Trade union membership and activities

53 Trade union membership and activities

- (1) Subject to the following provisions of this section, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—
 - (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
 - (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so ; or
 - (c) compelling him to be or become a member of a trade union which is not independent.
- (2) In this section " appropriate time", in relation to an employee taking part in any activities of a trade union, means time which either—
 - (a) is outside his working hours, or
 - (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities ;

and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) The provisions of subsection (4) below shall have effect in relation to an employee—
 - (a) of the same class as employees for whom it is the practice in accordance with a union membership agreement to belong to a specified independent trade union or to one of a number of specified independent trade unions; or
 - (b) not of the same class as described in paragraph (a) above but of the same grade or category as such employees as are referred to in that paragraph.
- (4) In relation to such an employee the right conferred by subsection (1)(b) above in relation to the activities of an independent trade union shall extend to activities on the employer's premises only if that union is a specified union.
- (5) For the purposes of this section a trade union—
 - (a) shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified; and
 - (b) shall also be treated as so specified if—

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- (i) the Service has made a recommendation for recognition of that union covering the employee in question which is operative within the meaning of section 15 above ; or
 - (ii) the union has referred a recognition issue covering that employee to the Service under section 11 above and the Service has not declined to proceed on the reference under section 12 above, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.
- (6) An employee who genuinely objects on grounds of religious belief to being a member of any trade union whatsoever shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to belong to a trade union.
- (7) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

54 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of section 53 above.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where the tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 56 below, to be paid by the employer to the employee in respect of the action complained of.

55 Supplementary

- (1) On a complaint under section 54 above it shall be for the employer to show—
 - (a) the purpose for which action was taken against the complainant; and
 - (b) that the purpose was not such a purpose as is referred to in section 53(1)(a) to (c) or (6) above.
- (2) In determining, on a complaint under section 54 above, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.
- (3) If on a complaint under section 54 above it is shown that the action complained of was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.

- (4) A certificate signed by or on behalf of a Minister of the Crown, and certifying that the action specified in the certificate was taken for the purpose of safeguarding national security, shall for the purposes of this section be conclusive evidence of that fact; and a document purporting to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

56 Assessment of compensation on complaint under s. 54

- (1) The amount of the compensation awarded by a tribunal on a complaint under section 54 above shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 53 above by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.
- (2) The said loss shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (3) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (4) In determining the amount of compensation to be awarded under subsection (1) above no account shall be taken of any pressure as is referred to in section 55(2) above, and that question shall be determined as if no such pressure had been exercised.
- (5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Time off work

57 Time off for carrying out trade union duties

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with subsection (2) below, during the employee's working hours for the purpose of enabling him—
- (a) to carry out those duties of his as such an official which are concerned with industrial relations between his employer and any associated employer, and their employees; or
 - (b) to undergo training in aspects of industrial relations which is—
 - (i) relevant to the carrying out of those duties; and
 - (ii) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (2) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances

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having regard to any relevant provisions of a Code of Practice issued by the Service under section 6 above.

- (3) In the Code of Practice referred to in section 6(2)(b)(i) above the Service shall in particular provide practical guidance on the circumstances in which a trade union official is to be permitted to take time off under this section in respect of duties connected with industrial action.
- (4) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him for the time taken off for that purpose in accordance with the permission—
 - (a) where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
 - (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (5) The average hourly earnings referred to in subsection (4)(b) above shall be the average hourly earnings of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- (6) Subject to subsection (7) below, a right to be paid any amount under subsection (4) above shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (7) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) above applies shall go towards discharging any liability of the employer under subsection (4) above in respect of that period, and conversely any payment of any amount under subsection (4) above in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (8) An employee who is an official of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section or to pay him the whole or part of any amount so required to be paid.

58 Time off for trade union activities

- (1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3) below, during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.
- (2) In this section "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this section applies are—
 - (a) any activities of an appropriate trade union of which the employee is a member ; and

- (b) any activities, whether or not falling within paragraph (a) above, in relation to which the employee is acting as a representative of such a union, excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Service under section 6 above.
- (4) In the Code of Practice referred to in section 6(2)(b)(ii) above the Service shall in particular provide practical guidance on the following matters, that is to say, the question whether, and the circumstances in which a trade union member is to be permitted to take time off under this section for trade union activities connected with industrial action.
- (5) An employee who is a member of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

59 Time off for public duties

- (1) An employer shall permit an employee of his who is—
- (a) a justice of the peace ;
 - (b) a member of a local authority;
 - (c) a member of any statutory tribunal;
 - (d) a member of, in England and Wales, a Regional Health Authority or Area Health Authority or, in Scotland, a Health Board;
 - (e) a member of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority, or, in Scotland, a school or college council or the governing body of a central institution or a college of education; or
 - (f) a member of, in England and Wales, a water authority or, in Scotland, river purification board,
- to take time off, subject to and in accordance with subsection (4) below, during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.
- (2) In subsection (1) above—
- (a) " local authority " in relation to England and Wales includes the Common Council of the City of London but otherwise has the same meaning as in the Local Government Act 1972, and in relation to Scotland has the same meaning as in the Local Government (Scotland) Act 1973 ;
 - (b) "Regional Health Authority" and "Area Health Authority" have the same meaning as in the National Health Service Reorganisation Act 1973, and " Health Board" has the same meaning as in the National Health Service (Scotland) Act 1972 ;
 - (c) " local education authority " means the authority designated by section 192(1) of the Local Government Act 1972, " school or college council" means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, and "central institution" and " college of education " have the meanings

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- assigned to them by section 145(10) and (14) respectively of the Education (Scotland) Act 1962 ; and
- (d) " river purification board " means a board established under section 135 of the Local Government (Scotland) Act 1973.
- (3) For the purposes of subsection (1) above the duties of a member of a body referred to in paragraphs (b) to (f) of that subsection are:—
- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.
- (4) The amount of time off which an employee is to be permitted to take under this section and the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to the following:—
- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty ;
- (b) how much time off the employee has already been permitted under this section or sections 57 and 58 above;
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (5) The Secretary of State may by order—
- (a) modify the provisions of subsection (1) above by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and
- (b) modify the provisions of subsection (3) above.
- (6) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

60 Provisions as to industrial tribunals

- (1) An industrial tribunal shall not consider—
- (a) a complaint under section 57, 58 or 59 above that an employer has failed to permit an employee to take time off; or
- (b) a complaint under section 57 above that an employer has failed to pay an employee the whole or part of any amount required to be paid under that section;
- unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (2) Where an industrial tribunal finds any complaint mentioned in subsection (1)(a) above well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by

the employee and to any loss sustained by the employee which is attributable to the matters complained of.

- (3) Where on a complaint under section 57 above an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

61 Time off to look for work or make arrangements for training

- (1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this section, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee shall not be entitled to time off under this section unless, on whichever is the later of the following dates, that is to say—
 - (a) the date on which the notice is due to expire ; or
 - (b) the date on which it would expire were it the notice required to be given by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice),he will have been or, as the case may be, would have been continuously employed for a period of two years or more.
- (3) An employee who is allowed time off during his working hours under subsection (1) above shall, subject to the following provisions of this section, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
 - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when notice was given; or
 - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day on which notice was given.
- (5) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is the day on which the employer's notice was given.
- (6) In this section, " week " in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to any other employee means a week ending with Saturday.
- (7) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee shall, subject to subsection (11) below, be entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (3) above if he had been allowed the time off.

- (8) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this section or has failed to pay the whole or any part of any amount to which the employee is entitled under subsection (3) or (7) above.
- (9) An industrial tribunal shall not entertain a complaint under subsection (8) above unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (10) If on a complaint under subsection (8) above the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.
- (11) The amount—
- (a) of an employer's liability to pay remuneration under subsection (3) above; or
 - (b) which may be ordered by a tribunal to be paid by an employer under subsection (7) above,
- or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of a week's pay of that employee.
- (12) Subject to subsection (13) below, a right to any amount under subsection (3) or (7) above shall not affect any right of an employee in relation to remuneration under the contract of employment (hereafter in this section referred to as "contractual remuneration").
- (13) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in subsection (1) above shall go towards discharging any liability of the employer to pay remuneration under subsection (3) above in respect of that period, and conversely any payment of remuneration under subsection (3) above in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

62 Provisions supplementary to ss. 57 to 61

For the purposes of sections 57 to 61 above—

- (a) a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Service has made a recommendation for recognition which is operative within the meaning of section 15 above;
- (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work; and
- (c) "normal working hours" shall be construed in accordance with Part I of Schedule 4 to this Act.

Insolvency

63 Priority of certain debts on insolvency

- (1) An amount to which this section applies shall be treated for the purposes of—
 - (a) section 33 of the Bankruptcy Act 1914 ;
 - (b) section 118 of the Bankruptcy (Scotland) Act 1913 ; and
 - (c) section 319 of the Companies Act 1948 ;as if it were wages payable by the employer to the employee in respect of the period for which it is payable.
- (2) This section applies to any amount owed by an employer to an employee in respect of—
 - (a) a guarantee payment;
 - (b) remuneration on suspension on medical grounds under section 29 above;
 - (c) any payment for time off under section 57(4) or 61(3) above;
 - (d) remuneration under a protective award made under section 101 below.

64 Employee's rights on insolvency of employer

- (1) If on an application made to him in writing by an employee the Secretary of State is satisfied—
 - (a) that the employer of that employee has become insolvent ; and
 - (b) that on the relevant date the employee was entitled to be paid the whole or part of any debt to which this section applies,the Secretary of State shall, subject to the provisions of this section, pay the employee out of the Redundancy Fund the amount to which in the opinion of the Secretary of State the employee is entitled in respect of that debt.
- (2) In this section the " relevant date " in relation to a debt means the date on which the employer became insolvent or the date of the termination of the employee's employment, whichever is the later.
- (3) This section applies to the following debts:—
 - (a) any arrears of pay in respect of a period or periods not exceeding in the aggregate eight weeks ;
 - (b) any amount which the employer is liable to pay the employee for the period of notice required by section 1(1) or (2) of the Contracts of Employment Act 1972 (minimum period of notice) or for any failure of the employer to give the period of notice required by section 1(1) of that Act;
 - (c) any holiday pay in respect of a period or periods of holiday, not exceeding six weeks in all, to which the employee became entitled during the 12 months immediately preceding the relevant date ;
 - (d) any basic award of compensation for unfair dismissal;
 - (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articed clerk.
- (4) For the purposes of subsection (3) (a) above any such amount as is referred to in section 63(2) above shall be treated as if it were arrears of pay.

- (5) The total amount payable to an employee in respect of any debt mentioned in subsection (3) above, where the amount of that debt is referable to a period of time, shall not exceed £80 in respect of any one week or, in respect of a shorter period, an amount bearing the same proportion to £80 as that shorter period bears to a week.
- (6) The Secretary of State may vary the limit referred to in subsection (5) above after a review under section 86 below, by order made in accordance with that section.
- (7) A sum shall be taken to be reasonable for the purposes of subsection (3)(e) above in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under section 34 of the Bankruptcy Act 1914 (preferential claims of apprentices and articed clerks), whether as originally enacted or as applied to the winding up of a company by section 317 of the Companies Act 1948.
- (8) Subsection (7) above shall not apply to Scotland, but in Scotland a sum shall be taken to be reasonable for the purposes of subsection (3)(e) above in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted by the trustee in bankruptcy or the liquidator for the purposes of the bankruptcy or winding up.
- (9) The provisions of subsections (10) and (11) below shall apply in a case where one of the following officers (hereafter in this section referred to as the "relevant officer") has been or is required to be appointed in connection with the employer's insolvency, that is to say, a trustee in bankruptcy, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection "liquidator" and "receiver" include the Official Receiver in his capacity as a provisional liquidator or interim receiver.
- (10) Subject to subsection (11) below, the Secretary of State shall not in such a case make any payment under this section in respect of any debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Secretary of State, provide him, as soon as reasonably practicable, with such a statement.
- (11) Where—
 - (a) a period of six months has elapsed since the application for a payment under this section was received by the Secretary of State, but no such payment has been made;
 - (b) the Secretary of State is satisfied that a payment under this section should be made; and
 - (c) it appears to the Secretary of State that there is likely to be further delay before he receives a statement about the debt in question,then, the Secretary of State may, if the applicant so requests or, if the Secretary of State thinks fit, without such a request, make a payment under this section, notwithstanding that no such statement has been received.

65 Payment of unpaid contributions to occupational pension scheme

- (1) If, on an application made to him in writing by the persons competent to act in respect of an occupational pension scheme, the Secretary of State is satisfied that an employer

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has become insolvent and that at the time that he did so there remained unpaid relevant contributions falling to be paid by him to the scheme, the Secretary of State shall, subject to the provisions of this section, pay into the resources of the scheme out of the Redundancy Fund the sum which in his opinion is payable in respect of the unpaid relevant contributions.

- (2) In this section " relevant contributions " means contributions falling to be paid by an employer in accordance with an occupational pension scheme, either on his own account or on behalf of an employee; and for the purposes of this section a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.
- (3) The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme shall be the least of the following amounts—
 - (a) the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the 12 months immediately preceding that date;
 - (b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer;
 - (c) an amount equal to 10 per cent, of the total amount of remuneration paid or payable to those employees in respect of the 12 months immediately preceding the date on which the employer became insolvent.
- (4) For the purposes of subsection (3)(c) above, "remuneration " includes holiday pay, maternity pay and any such payment as is referred to in section 63(2) above.
- (5) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee's contributions to the occupational pension scheme during the 12 months immediately preceding the date on which the employer became insolvent.
- (6) The provisions of subsections (7) to (9) below shall apply in a case where one of the following officers (hereafter in this section referred to as the " relevant officer") has been or is required to be appointed in connection with the employers' insolvency, that is to say, a trustee in bankruptcy, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection " liquidator " and " receiver " include the Official Receiver in his capacity as a provisional liquidator or interim receiver.
- (7) Subject to subsection (9) below, the Secretary of State shall not in such a case make any payment under this section in respect of unpaid relevant contributions until he has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall, on request by the Secretary of State provide him, as soon as reasonably practicable, with such a statement.
- (8) Subject to subsection (9) below, an amount shall be taken to be payable, paid or deducted as mentioned in subsection (3)(a) or (c) or subsection (5) above, only if it is so certified by the relevant officer.
- (9) Where—

- (a) a period of six months has elapsed since the application for a payment under this section was received by the Secretary of State, but no such payment has been made;
 - (b) the Secretary of State is satisfied that a payment under this section should be made; and
 - (c) it appears to the Secretary of State that there is likely to be further delay before he receives a statement or certificate about the contributions in question,
- then, the Secretary of State may, if the applicants so request or, if the Secretary of State thinks fit, without such a request, make a payment under this section, notwithstanding that no such statement or certificate has been received.

66 Complaint to industrial tribunal

- (1) A person who has applied for a payment under section 64 above may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to him or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
 - (a) the Secretary of State has failed to make any such payment; or
 - (b) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Any persons who are competent to act in respect of an occupational pension scheme and who have applied for a payment to be made under section 65 above into the resources of the scheme may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to them, or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
 - (a) the Secretary of State has failed to make any such payment; or
 - (b) any such payment made by him is less than the amount which should have been paid.
- (3) Where an industrial tribunal finds that the Secretary of State ought to make a payment under section 64 or 65 above, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Secretary of State ought to make.

67 Transfer to the Secretary of State of rights and remedies

- (1) Where in pursuance of section 64 above the Secretary of State makes any payment to an employee in respect of any debt to which that section applies—
 - (a) any rights and remedies of the employee in respect of that debt (or, if the Secretary of State has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Secretary of State; and
 - (b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee shall have the effect that the debt or, as the case may be, that part of it which the Secretary of State has paid, is to be paid to the Secretary of State.

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- (2) There shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with subsection (1)(a) above any right to be paid in priority to other creditors of the employer in accordance with—
- (a) section 33 of the Bankruptcy Act 1914 ;
 - (b) section 118 of the Bankruptcy (Scotland) Act 1913; and
 - (c) section 319 of the Companies Act 1948,
- and the Secretary of State shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of any of those provisions any limit on the amount of sums to be so paid any sums paid to the Secretary of State shall be treated as if they had been paid to the employee.
- (3) Where in pursuance of section 65 above the Secretary of State makes any payment into the resources of an occupational pension scheme in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Secretary of State.
- (4) Any sum recovered by the Secretary of State in exercising any right or pursuing any remedy which is his by virtue of this section shall be paid into the Redundancy Fund.

68 Power of Secretary of State to obtain information in connection with applications

- (1) Where an application is made to the Secretary of State under section 64 or 65 above in respect of a debt owed, or contributions to an occupational pension scheme falling to be made, by an employer, the Secretary of State may require—
- (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded ; and
 - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.
- (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

69 Interpretation of ss. 64 to 68

- (1) For the purposes of sections 64 to 68 above an employer shall be taken to be insolvent if, but only if, in England and Wales.—
- (a) he becomes bankrupt or makes a composition or arrangement with his creditors or a receiving order is made against him;

- (b) he has died and an order is made under section 130 of the Bankruptcy Act 1914 for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925; or
 - (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.
- (2) For the purposes of sections 64 to 68 above an employer shall be taken to be insolvent if, but only if, in Scotland.—
- (a) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
 - (b) he has died and a judicial factor appointed under section 163 of the Bankruptcy (Scotland) Act 1913 is required by that section to divide his insolvent estate among his creditors ; or
 - (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it or a receiver of its undertaking is duly appointed.
- (3) In sections 64 to 68 above—
- " holiday pay " means—
- (a) pay in respect of a holiday actually taken; or
 - (b) any accrued holiday pay which under the employee's contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday ;
- " occupational pension scheme " means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits (in the form of pensions or otherwise) payable to or in respect of any such employees on the termination of their employment or on their death or retirement;

and any reference in those sections to the resources of such a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

Written statement of reasons for dismissal

70 Written statement of reasons for dismissal

- (1) An employee shall be entitled—
- (a) if he is given by his employer notice of termination of his contract of employment;
 - (b) if his contract of employment is terminated by his employer without notice ; or
 - (c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,
- to be provided by his employer, on request, within 14 days of that request, with a written statement giving particulars of the reasons for his dismissal.

- (2) An employee shall not be entitled to a written statement under subsection (1) above unless on the effective date of termination he has been, or will have been, continuously employed for a period of 26 weeks ending with the last complete week before that date.
- (3) A written statement provided under this section shall be admissible in evidence in any proceedings.
- (4) A complaint may be presented to an industrial tribunal by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under subsection (1) above or that the particulars of reasons given in purported compliance with that subsection are inadequate or untrue, and if the tribunal finds the complaint well-founded—
 - (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and
 - (b) it shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.
- (5) An industrial tribunal shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with paragraph 21(4) or (4A) of Schedule 1 to the 1974 Act, entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.
- (6) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date where the dismissal was with notice is the date on which the employer's notice was given and in any other case is the effective date of termination.

Remedies for unfair dismissal

71 Order for reinstatement or re-engagement

- (1) Where on a complaint under paragraph 17 of Schedule 1 to the 1974 Act (unfair dismissal) an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under this section and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under this section.
- (2) An order under this section may be an order for reinstatement (in accordance with subsections (3) and (4) below) or an order for re-engagement (in accordance with subsection (5) below), as the tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (3) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—
 - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
 - (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and

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- (c) the date by which the order must be complied with.
- (4) Without prejudice to the generality of subsection (3) above, if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.
- (5) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal shall specify the terms on which re-engagement is to take place including—
- (a) the identity of the employer;
 - (b) the nature of the employment;
 - (c) the remuneration for the employment;
 - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
 - (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee ; and
 - (f) the date by which the order must be complied with.
- (6) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
 - (b) whether it is practicable for the employer to comply with an order for reinstatement;
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (7) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (a) any wish expressed by the complainant as to the nature of the order to be made;
 - (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;
- and except in a case where the tribunal takes into account contributory fault under paragraph (c) above it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (8) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (6)(b) or (7)(b) above whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—
- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or

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- (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from "the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.
- (9) In calculating for the purpose of subsection (3)(a) or (5)(d) above any amount payable by the employer the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer;
 - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

72 Enforcement of s. 71 order and compensation

- (1) If an order under section 71 above is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (2) Subject to subsection (1) above, if an order under section 71 above is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
- (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee; and
 - (b) unless the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
 - (i) where the dismissal is of a description referred to in subsection (3) below, not less than 26 or more than 52 weeks' pay, or
 - (ii) in any other case, not less than 13 or more than 26 weeks' pay.
- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(6)(i) above are the following, that is to say.—
- (a) a dismissal which is unfair by virtue of paragraph 6(4) or (5) of Schedule 1 to the 1974 Act (dismissal for membership or non-membership of a trade union, or for taking part in the activities of an independent trade union);
 - (b) a dismissal which is an unlawful act of discrimination by virtue of section 3(1) of the Race Relations Act 1968 ;
 - (c) a dismissal which is an act of discrimination (within the meaning of the Sex Discrimination Act 1975) which is unlawful by virtue of that Act.
- (4) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (2)(b) above whether it was practicable to comply with the

order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

- (5) If on a complaint under paragraph 17 of Schedule 1 to the 1974 Act the tribunal finds that the grounds of the complaint are well-founded, and no order is made under section 71 above the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee.
- (6) Where in any case the tribunal makes an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, and the tribunal finds that the complainant has unreasonably prevented an order under section 71 above from being complied with, it shall, without prejudice to the generality of section 76(4) below, take that conduct into account as a failure on the part of the complainant to mitigate his loss.
- (7) For the purposes of Part II of Schedule 4 as it applies for the calculation of a week's pay for the purpose of subsection (2) (b) above, the calculation date where the dismissal was with notice is the date on which the notice was given and in any other case the effective date of termination.
- (8) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating an additional award under subsection (2) (b) above shall not exceed £80,

73 Compensation for unfair dismissal

Where a tribunal makes an award of compensation for unfair dismissal under section 72(2)(a) or (5) above, the award shall consist of a basic award (calculated in accordance with sections 74 and 75 below) and a compensatory award (calculated in accordance with section 76 below).

74 Calculation of basic award

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (7) and sections 75(1) to (6) below, subject to the following provisions of this Act, namely—
 - (a) subsection (2) below (which provides for an award of two weeks' pay in certain cases);
 - (b) section 75(7) below (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
 - (c) section 75(8) below (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
 - (d) section 77 below (which prohibits double compensation where compensation in respect of the same matter is also awarded under the Sex Discrimination Act 1975).
- (2) In the following cases the amount of the basic award shall be two weeks' pay:—
 - (a) where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
 - (i) by virtue of section 2(5) or (6) of the Redundancy Payments Act 1965 (unreasonable refusal or relinquishment of suitable alternative

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- employment) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
- (ii) by virtue of the operation of section 3(3) of that Act (renewal of employment or re-engagement) is not treated as dismissed for the purposes of Part I of that Act;
- (b) where the amount calculated in accordance with subsections (3) to (7) and section 75(1) to (7) below is less than the amount of two weeks' pay.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
- (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks in which the employee was not below the age of 41 ;
- (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 41 and was not below the age of 22 ; and
- (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 22 and was not below the age of 18.
- (4) In ascertaining for the purpose of subsection (3) above the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with paragraph 5(6) of Schedule 1 to the 1974 Act, a period falling within such an interval as is referred to in paragraph 30(1 A) of that Schedule (period of continuous employment) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment).
- (5) Where in reckoning the number of years of employment in accordance with subsection (3) above 20 years of employment have been reckoned no account shall be taken of any year of employment earlier than those 20 years.
- (6) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) to (5) above shall be reduced by the appropriate fraction.
- (7) In subsection (6) above " the specified anniversary " in relation to a man means the 64th anniversary of the day of his birth, and in relation to a woman means the 59th anniversary of the day of her birth, and " the appropriate fraction " means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
- (b) the denominator is 12.

75 Provisions supplementary to s. 74

- (1) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of section 74 above, the calculation date is, subject to subsection (3) below, the date on which notice would have been given by the employer had the conditions referred to in subsection (2) below been fulfilled (whether those conditions were in fact fulfilled or not).

- (2) Those conditions are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice), and that the notice expired on the effective date of termination.
- (3) Where by virtue of paragraph 5(6) of Schedule 1 to the 1974 Act a date is to be treated as the effective date of termination for the purposes of section 74(3) above which is later than the effective date of termination as defined by paragraph 5(5) of that Schedule, then, for the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purpose of section 74 above, the calculation date is the effective date of termination as defined by the said paragraph 5(5).
- (4) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating a basic award shall not exceed £80.
- (5) The Secretary of State may, after a review under section 86 below, vary the limit referred to in subsection (4) above by order made in accordance with that section.
- (6) Without prejudice to the generality of the power to make transitional provision in an order under subsection (5) above, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this subsection (as defined by paragraph 5(6) of Schedule 1 to the 1974 Act) falls after the order comes into operation, notwithstanding that the effective date of termination for the purposes of other provisions of this Act or the 1974 Act (as defined by paragraph 5(5) of Schedule 1 to the 1974 Act) falls before the order comes into operation.
- (7) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under the Redundancy Payments Act 1965 in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the said Act of 1965 or otherwise.

76 Calculation of compensatory award

- (1) Subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation) and to section 77 below, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
 - (b) subject to subsection (3) below, loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in

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pursuance of the Redundancy Payments Act 1965 or otherwise, shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 75(7) or (8) above) in respect of the same dismissal.

- (4) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (5) In determining for the purposes of subsection (1) above how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the Redundancy Payments Act 1965 or otherwise, exceeds the amount of the basic award which would be payable but for section 75(8) above that excess shall go to reduce the amount of the compensatory award.

77 Compensation for act which is both sex discrimination and unfair dismissal

- (1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination Act 1975 and under the provisions of this Act relating to unfair dismissal, an industrial tribunal shall not award compensation under that Act or this Act in respect of any loss or other matter which is or has been taken into account under the other Act by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), whether as set out in Part III of Schedule 16 to this Act or as applied by section 65 of the Sex Discrimination Act 1975, in a case to which subsection (1) above applies the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
 - (a) any compensation awarded under the said Act of 1975 ; and
 - (b) any compensation awarded under section 72(1) above or, as the case may be, which is calculated in accordance with section 76 above,
 shall not exceed the limit for the time being imposed by the said paragraph 20.

78 Interim relief pending determination of complaint of unfair dismissal

- (1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason for the dismissal (or, if more than one, the principal reason) was that the employee—
 - (a) was, or proposed to become, a member of a particular independent trade union,
 - or

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- (b) had taken, or proposed to take, part at any appropriate time in the activities of a particular independent trade union of which he was or proposed to become a member;

may, subject to the following provisions of this section, apply to the tribunal for an order under the following provisions of this section.

- (2) An industrial tribunal shall not entertain an application under this section unless—
 - (a) it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
 - (b) before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (3) An industrial tribunal shall determine an application under this section as soon as practicable after receiving the application and the relevant certificate, but shall, at least seven days before the date of the hearing, give the employer a copy of the application and certificate, together with notice of the date, time and place of the hearing.
- (4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the tribunal is satisfied that special circumstances exist which justify it in doing so.
- (5) If on hearing an application under this section it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant was unfairly dismissed and that the reason for the dismissal or (if more than one, the principal reason) was a reason mentioned in subsection (1) above, the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this section and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
 - (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed ; or
 - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (6) In subsection (5) above "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed " means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (8) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions, and—

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- (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and
 - (b) if the employee is unwilling to accept the job on those terms and conditions, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order under this section.
- (9) If on the hearing of an application under this section the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (5) above, the tribunal shall make an order for the continuation of the employee's contract of employment.
- (10) In this section—
- " appropriate time " has the same meaning as in section 53 above;
 - " authorised official ", in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this section ;
- and any reference to the date of dismissal is a reference—
- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer's notice was given; and
 - (b) in any other case, to the effective date of termination.
- (11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

79 Orders for continuation of contract of employment

- (1) An order for the continuation of a contract of employment under section 78 above shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not shall on its termination continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.
- (2) Where the tribunal makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to subsection (5) below, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.
- (3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.
- (4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period

or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2) above, and conversely any payment under subsection (2) above in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

- (5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (6) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

80 Supplementary provisions as to interim relief

- (1) At any time between the making of an order by an industrial tribunal under section 78 above and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that—
 - (a) no certificate need be presented to the tribunal under subsection (2) (b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
 - (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.
- (2) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 78(7) or (8) above.—
 - (a) the tribunal shall make an order for the continuation of the employee's contract of employment and section 79 above shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 78 above; and
 - (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 78(7) or (8) above and to any loss suffered by the employee in consequence of the non-compliance.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then—
 - (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee ; and

- (b) in any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.
- (4) An industrial tribunal hearing an application under section 78 above or this section may consist of a President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by a President to hear such applications.

Itemised pay statement

81 Right to itemised pay statement

Every employee shall have the right to be given by his employer at or before the time at which any payment of wages or salary is made to him an itemised pay statement, in writing, containing the following particulars, that is to say.—

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 82 below, any fixed deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

82 Standing statement of fixed deductions

- (1) A pay statement given in accordance with section 81 above need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say.—
- (a) the amount of the deduction ;
 - (b) the intervals at which the deduction is to be made ; and
 - (c) the purpose for which it is made,
- and which, in accordance with subsection (4) below, is effective at the date on which the pay statement is given.
- (2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.
- (3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of 12 months beginning with the date on which the first standing statement was given and at intervals of not more than 12 months thereafter, re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (2) above.
- (4) A standing statement of fixed deductions shall become effective, for the purposes of subsection (1) above, on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of 12 months beginning with that date,

or, where it is re-issued in accordance with subsection (3) above, the expiration of the period of 12 months beginning with the date on which it was last re-issued.

83 Supplementary

The Secretary of State may by order—

- (a) vary the provisions of sections 81 and 82 above as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to or removing items from the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 82(3) and (4) above so as to shorten or extend the periods of 12 months referred to in those subsections, or those periods as varied from time to time under this section.

84 Reference to industrial tribunal

- (1) Where an employer is required by section 81 above to give any employee a pay statement and he does not do so, the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included in a statement so as to comply with the requirements of that section.
- (2) Where a pay statement, or a standing statement of fixed deductions, purporting to comply with section 81 or 82(1) above, has been given to an employee and a question arises as to the particulars which ought to have been included in that statement so as to comply with the requirements of section 81, or, as the case may be, section 82(1), either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.
- (3) In this section a question as to the particulars which ought to have been included in a statement does not include a question solely as to the accuracy of an amount stated in any such particulars.
- (4) An industrial tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made is made before the end of the period of three months beginning with the date on which the employment ceased.
- (5) Where on a reference under this section an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with section 81 above or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 82(1) above—
 - (a) the tribunal shall make a declaration to that effect; and
 - (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this subsection " unnotified deduction " means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by section 81 or 82(1) above.

Normal working hours and a week's pay

85 Calculation of normal working hours and a week's pay

- (1) Schedule 4 to this Act shall have effect for calculating for the purposes of this Act, the Redundancy Payments Act 1965, the Contracts of Employment Act 1972, and the 1974 Act the normal working hours and the amount of a week's pay of any employee and, in the case of the said Acts of 1965 and 1972, shall have effect instead of the relevant provisions of paragraph 5 of Schedule 1 and of Schedule 2 to the said Act of 1965 and of Schedule 2 to the said Act of 1972.
- (2) In consequence of subsection (1) above, Schedule 2 to the said Act of 1972 shall have effect (as respects the liability of an employer to an employee for the period of notice required by section 1(1) or (2) of that Act), as set out in Schedule 5 to this Act.

86 Review of limits

- (1) The Secretary of State shall in each calendar year, beginning with the first year after that in which this section first comes into force, review—
 - (a) the limits referred to in section 25 above;
 - (b) the limit referred to in section 64(5) above ; and
 - (c) the limits imposed by paragraph 5(4) of Schedule 1 to the Redundancy Payments Act 1965 and by section 72(8) or 75(4) above on the amount of a week's pay for the purposes of those provisions ;and shall determine whether any of those limits should be varied.
- (2) In making a review under this section the Secretary of State shall consider—
 - (a) the general level of earnings obtaining in Great Britain at the time of the review ;
 - (b) the national economic situation as a whole; and
 - (c) such other matters as he thinks relevant.
- (3) If on a review under this section the Secretary of State determines that, having regard to the considerations mentioned in subsection (2) above, any of those limits should be varied, he shall prepare and lay before each House of Parliament the draft of an order giving effect to his decision.
- (4) Where a draft of an order under this section is approved by resolution of each House of Parliament the Secretary of State shall make an order in the form of the draft.
- (5) If, following the completion of an annual review under this section, the Secretary of State determines that any of the limits referred to in subsection (1) above should not be varied, he shall lay before each House of Parliament a report containing a statement of his reasons for that determination.
- (6) The Secretary of State may at any time, in addition to the annual review provided for in subsection (1) above, conduct a further review of the limits mentioned in subsection (1) above, so as to determine whether any of those limits should be varied, and subsections (2) to (4) above shall apply to such a review as if it were a review under subsection (1) above.

Employment Appeal Tribunal

87 Establishment and membership of Employment Appeal Tribunal

- (1) For the purpose of hearing appeals under section 88 below there shall be a tribunal to be known as the Employment Appeal Tribunal (hereafter in this Act referred to as "the Appeal Tribunal").
- (2) The Appeal Tribunal shall consist of—
 - (a) such number of judges as may be nominated from time to time by the Lord Chancellor from among the judges (other than the Lord Chancellor) of the High Court and the Court of Appeal;
 - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of that Court; and
 - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State.
- (3) The members of the Appeal Tribunal appointed under subsection (2)(c) above shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations, either as representatives of employers or as representatives of workers.
- (4) The Lord Chancellor shall, after consultation with the Lord President of the Court of Session, appoint one of the judges nominated under subsection (2) above to be President of the Appeal Tribunal.
- (5) No judge shall be nominated a member of the Appeal Tribunal except with his consent.
- (6) The provisions of Schedule 6 to this Act shall have effect with respect to the Appeal Tribunal and proceedings before the Tribunal.

88 Appeals from industrial tribunals and Certification Officer

- (1) An appeal shall lie to the Appeal Tribunal on a question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under, or by virtue of, the following Acts—
 - (a) the Redundancy Payments Act 1965;
 - (b) the Equal Pay Act 1970;
 - (c) the Contracts of Employment Act 1972 ;
 - (d) the 1974 Act;
 - (e) the Sex Discrimination Act 1975 ;
 - (f) this Act.
- (2) The Appeal Tribunal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments —
 - (a) sections 3, 4 and 5 of the Trade Union Act 1913 ;
 - (b) section 4 of the Trade Union (Amalgamations, etc.) Act 1964.
- (3) The Appeal Tribunal shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—

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- (a) section 8 of the 1974 Act;
 - (b) section 8 above.
- (4) Without prejudice to section 13 of the Administration of Justice Act 1960 (appeal in case of contempt of court), an appeal shall lie on any question of law from any decision or order of the Appeal Tribunal with the leave of the Tribunal or of the Court of Appeal, or as the case may be, the Court of Session.—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
 - (b) in the case of proceedings in Scotland, to the Court of Session.
- (5) No appeal shall lie except to the Appeal Tribunal from any decision of an industrial tribunal under the Acts listed in subsection (1) above or from any decision of the Certification Officer under the enactments listed in subsections (2) and (3) above.

PART III

REGULATION OF TERMS AND CONDITIONS OF EMPLOYMENT

Wages councils and statutory joint industrial councils

89 Amendments of Wages Councils Act 1959

- (1) The Service shall perform those functions under the Wages Councils Act 1959 which immediately before the commencement of this section were performed by a commission of inquiry, and accordingly for any reference in that Act to a commission of inquiry there shall be substituted a reference to the Service.
- (2) For the following provisions of that Act, that is to say—
- (a) section 11 (power to fix remuneration and holidays);
 - (b) section 12 (effect and enforcement of wages regulation orders);
 - (c) Schedule 2 (constitution, etc., of wages councils and central co-ordinating committees);
- there shall be respectively substituted the sections and Schedule set out in Parts I, II and III of Schedule 7 to this Act (which reproduce those provisions with the amendments broadly described in the note at the beginning of each Part).
- (3) The other provisions of that Act shall have effect subject to the amendments set out in Part IV of that Schedule, being minor amendments and amendments consequential on subsections (1) and (2) above.

90 Conversion of wages councils to statutory joint industrial councils

- (1) The Secretary of State may by order made in accordance with the following provisions of this section provide that a wages council shall become a statutory joint industrial council having the functions conferred by section 91 below.
- (2) The Secretary of State may make an order under this section with respect to a wages council—
- (a) on an application made to him by the employers' association or trade union nominated in relation to the council or by that association and union jointly; or

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- (b) without an application under paragraph (a) above, but after consultation with the employers' association and trade union so nominated.
- (3) An order under this section shall not be made on an application by an employers' association or trade union alone unless the Secretary of State has consulted every employer's association and trade union nominated in relation to the wages council in question and (whether so nominated or not) all organisations of employers and workers which in his opinion represent a substantial proportion of employers and workers respectively in relation to whom that council operates.
- (4) The Secretary of State shall before making an order under this section refer the question whether he should do so to the Service, and the Service shall inquire into it and report on that question.
- (5) Part I of Schedule 8 to this Act shall have effect with respect to the constitution, officers and proceedings of statutory joint industrial councils and Part II of that Schedule shall have effect with respect to the transition of a wages council to a statutory joint industrial council.

91 Functions of statutory joint industrial councils

A statutory joint industrial council shall have in relation to the workers and employers within its field of operation the functions which a wages council has under Part II of the Wages Councils Act 1959 in relation to the workers and employers within its field of operation, and that Part shall apply to a statutory joint industrial council and the workers and employers within its field of operation as it applies to a wages council and the workers and employers within its field of operation.

92 Disputes between employers' and workers' representatives

- (1) If in the opinion of either the persons appointed to represent employers or the persons appointed to represent workers on a statutory joint industrial council, a dispute has arisen on any question and cannot be settled by the members of the council, those persons may request the Service to attempt to bring about a settlement of the dispute and the Service shall attempt to do so accordingly.
- (2) If the Service are unable to bring about a settlement of any such dispute, the Service shall refer the dispute for settlement to the arbitration of—
 - (a) one or more persons appointed by the Service for that purpose (not being an officer or servant of the Service); or
 - (b) the Committee.
- (3) Where more than one arbitrator is appointed under subsection (2)(a) above, the Service shall appoint one of the arbitrators to act as chairman.
- (4) Any determination of the arbitrator, arbitrators or Committee on a dispute referred to him, them or it under this section shall be final and binding on the statutory joint industrial council and its members, and the council shall make an order under section 11 of the Wages Councils Act 1959 or take any other steps which may be necessary to give effect to the determination.
- (5) Part I of the Arbitration Act 1950 shall not apply to an arbitration under this section.
- (6) In the application of this section to Scotland, references to an arbitrator shall be construed as references to an arbiter.

93 Abolition of statutory joint industrial councils

- (1) If the Secretary of State is of the opinion that, in the event of the abolition of a statutory joint industrial council, adequate machinery would be established for the effective regulation of the remuneration and other terms and conditions of employment of the workers within the council's field of operation and is likely thereafter to be maintained, he may by order abolish the council.
- (2) An order under this section may be made on the application of the statutory joint industrial council concerned or without such an application, but shall not be made without such an application unless the Secretary of State has consulted the council.
- (3) The Secretary of State shall before making an order under this section refer the question whether he should do so to the Service, and the Service shall inquire into it and report on that question.
- (4) Where an order under this section abolishes a statutory joint industrial council, then, save as is otherwise provided by the order, anything done by the council shall, except as respects things previously done or omitted to be done, cease to have effect.

94 Supplementary

- (1) In sections 90 to 93 above "nominated", in relation to an employers' association or trade union, means, an association or union for the time being nominated under paragraph 1(2) of Schedule 2 to the Wages Councils Act 1959 to appoint persons to represent employers or workers on the wages council in question.
- (2) Schedule 1 to the Wages Councils Act 1959 (as amended by this Act) shall apply in relation to an order under section 90 above providing that a wages council shall become a statutory joint industrial council and in relation to an order under section 93 above abolishing a statutory joint industrial council as it applies in relation to an order establishing or abolishing a wages council.

95 Power to obtain information

- (1) The Secretary of State may, for the purpose of, or in connection with the enforcement of, an order under section 11 of the Wages Councils Act 1959, by notice in writing require an employer within the field of operation of a council making such an order to furnish such information as may be specified or described in the notice.
- (2) A notice under this section may specify the way in which, and the time within which, it is to be complied with.
- (3) A notice given under this section may be varied or revoked by a subsequent notice so given.
- (4) If a person refuses or wilfully neglects to furnish any information which he has been required to furnish by a notice under subsection (1) above, he shall be liable on summary conviction to a fine not exceeding £100.
- (5) If a person, in purporting to comply with a requirement of a notice under subsection (1) above, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

96 Duty of the Service to report on machinery for regulating remuneration and terms and conditions of employment

The Service shall, if requested to do so by the Secretary of State—

- (a) inquire into and report on the development by agreement of machinery for the regulation of the remuneration and terms and conditions of employment of workers within the field of operation of a wages council or statutory joint industrial council and the question whether, in order to maintain a reasonable standard of remuneration and terms and conditions of employment of those workers, it is necessary to regulate their remuneration and other terms and conditions of employment by means of orders under section 11 of the Wages Councils Act 1959 ;
- (b) inquire into and report on the operation generally of that Act and the provisions of this Act relating to wages councils and statutory joint industrial councils;
- (c) publish a report made under paragraph (a) or (b) above.

Powers of Agricultural Wages Boards

97 Amendments of Agricultural Wages Acts

- (1) For section 3 of the Agricultural Wages Act 1948 (power to fix remuneration and holidays) there shall be substituted the section set out in Part I of Schedule 9 to this Act (which reproduces section 3 with amendments enabling the Agricultural Wages Board to fix other terms and conditions of employment as well as remuneration and holidays and to specify the date from which remuneration fixed by them is to be payable).
- (2) The other provisions of that Act shall have effect subject to the amendments set out in Part II of Schedule 9 to this Act, being minor and consequential amendments.
- (3) For section 3 of the Agricultural Wages (Scotland) Act 1949 (power to fix remuneration and holidays) there shall be substituted the section set out in Part I of Schedule 10 to this Act (which reproduces section 3 with amendments enabling the Scottish Agricultural Wages Board to fix other terms and conditions of employment as well as remuneration and holidays and to specify the date from which remuneration fixed by them is to be payable).
- (4) The other provisions of the said Act of 1949 shall have effect subject to the amendments set out in Part II of Schedule 10 to this Act, being minor and consequential amendments.

Extension of terms and conditions

98 Extension of terms and conditions

The provisions of Schedule 11 to this Act shall have effect in place of section 8 of the Terms and Conditions of Employment Act 1959 and that Act is hereby repealed.

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

PART IV

PROCEDURE FOR HANDLING REDUNDANCIES

99 Duty of employer to consult trade union representatives on redundancy

- (1) An employer proposing to dismiss as redundant an employee of a description in respect of which an independent trade union is recognised by him shall consult representatives of that trade union about the dismissal in accordance with the following provisions of this section.
- (2) In this section and sections 100 and 101 below, "trade union representative" in relation to a trade union means an official or other person authorised to carry on collective bargaining with the employer in question by that trade union.
- (3) The consultation required by this section shall begin at the earliest opportunity, and shall in any event begin—
 - (a) where the employer is proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less, at least 90 days before the first of those dismissals takes effect; or
 - (b) where the employer is proposing to dismiss as redundant 10 or more employees at one establishment within a period of 30 days or less, at least 60 days before the first of those dismissals takes effect.
- (4) In determining for the purpose of subsection (3) above whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that subsection, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals consultation has already begun.
- (5) For the purposes of the consultation required by this section the employer shall disclose in writing to trade union representatives—
 - (a) the reasons for his proposals;
 - (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant;
 - (c) the total number of employees of any such description employed by the employer at the establishment in question;
 - (d) the proposed method of selecting the employees who may be dismissed; and
 - (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect.
- (6) The information which is to be given to trade union representatives under this section shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.
- (7) In the course of the consultation required by this section the employer shall—
 - (a) consider any representations made by the trade union representatives; and
 - (b) reply to those representations and, if he rejects any of those representations, state his reasons.
- (8) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of subsections

(3), (5) or (7) above, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

- (9) This section shall not be construed as conferring any rights on a trade union or an employee except as provided by sections 101 to 103 below.

100 Duty of employer to notify Secretary of State of certain redundancies

- (1) An employer proposing to dismiss as redundant—
- (a) 100 or more employees at one establishment within a period of 90 days or less; or
 - (b) 10 or more employees at one establishment within a period of 30 days or less, shall notify the Secretary of State, in writing, of his proposal—
 - (i) in a case falling within paragraph (a) above, at least 90 days before the first of those dismissals takes effect; and
 - (ii) in a case falling within paragraph (b) above, at least 60 days before the first of those dismissals takes effect,and where the notice relates to employees of any description in respect of which an independent trade union is recognised by him, he shall give a copy of the notice to representatives of that union.
- (2) In determining for the purpose of subsection (1) above whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that subsection, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals notice has already been given to the Secretary of State.
- (3) A notice under this section shall—
- (a) be given to the Secretary of State by delivery to him or by sending it by post to him, at such address as the Secretary of State may direct in relation to the establishment where the employees proposed to be dismissed are employed;
 - (b) in a case where consultation with trade union representatives is required by section 99 above, identify the trade union concerned and state the date when consultation began; and
 - (c) be in such form and contain such particulars, in addition to those required by paragraph (b) above, as the Secretary of State may direct.
- (4) The copy of the notice under this section which is to be given to trade union representatives shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.
- (5) At any time after receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give him such further information as may be specified in the requirement
- (6) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (5) above, he shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

101 Complaint by trade union and protective award

- (1) An appropriate trade union may present a complaint to an industrial tribunal on the ground that an employer has dismissed as redundant or is proposing to dismiss as redundant one or more employees and has not complied with any of the requirements of section 99 above.
- (2) If on a complaint under this section a question arises as to the matters referred to in section 99(8) above, it shall be for the employer to show—
 - (a) that there were special circumstances which rendered it not reasonably practicable for him to comply with any requirement of section 99 above; and
 - (b) that he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances.
- (3) Where the tribunal finds a complaint under subsection (1) above well-founded it shall make a declaration to that effect and may also make a protective award in accordance with subsection (4) below.
- (4) A protective award is an award that in respect of such descriptions of employees as may be specified in the award, being employees who have been dismissed, or whom it is proposed to dismiss, as redundant, and in respect of whose dismissal or proposed dismissal the employer has failed to comply with any requirement of section 99 above, the employer shall pay remuneration for a protected period.
- (5) The protected period under an award under subsection (4) above shall be a period beginning with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, of such length as the tribunal shall determine to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 99 above, not exceeding—
 - (a) in a case falling within section 99(3)(a) above, 90 days;
 - (b) in a case falling within section 99(3)(b) above, 60 days; or
 - (c) in any other case, 28 days.
- (6) An industrial tribunal shall not consider a complaint under subsection (1) above in respect of an employer's default in relation to a dismissal or proposed dismissal unless it is presented to the tribunal before the proposed dismissal takes effect or before the end of the period of three months beginning with the date on which the dismissal takes effect or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (7) " Appropriate trade union ", in relation to an employee of any description, means an independent trade union recognised by his employer in respect of that description of employee.

102 Entitlement under protective award

- (1) Where an industrial tribunal has made a protective award under section 101 above, every employee of a description to which the award relates shall be entitled, subject to the following provisions of this section, to be paid remuneration by his employer for the protected period specified in the award.

- (2) The rate of remuneration payable under a protective award shall be a week's pay for each week of the protected period, and if remuneration falls to be calculated for a period less than one week the amount of a week's pay shall be reduced proportionately.
- (3) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a period falling within a protected period, shall go towards discharging the employer's liability to pay remuneration under the protective award in respect of that first mentioned period, and conversely any payment of remuneration under a protective award in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (4) In respect of a period during which he is employed by the employer an employee shall not be entitled to remuneration under a protective award unless he would be entitled to be paid by the employer in respect of that period, either by virtue of his contract of employment or by virtue of Schedule 2 to the Contracts of Employment Act 1972 (rights of employee in period of notice), if that period fell within the period of notice required to be given by section 1(1) of that Act.
- (5) Where the employee is employed by the employer during the protected period and—
 - (a) he is fairly dismissed by his employer for a reason other than redundancy; or
 - (b) he unreasonably terminates the contract of employment,then, subject to the following provisions of this section, he shall not be entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.
- (6) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period and either—
 - (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
 - (b) the first mentioned provisions would differ from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;the provisions of subsections (7) to (11) below shall effect.
- (7) If, in a case to which subsection (6) above applies, the employee unreasonably refuses that offer, then, he shall not be entitled to any remuneration under a protective award in respect of any period during which but for that refusal he would have been employed.
- (8) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (6) (b) above, there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).
- (9) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with

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subsection (10) below for the purpose of retraining the employee for employment under that contract.

- (10) Any such agreement shall—
- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
 - (b) be in writing ;
 - (c) specify the date of the end of the trial period; and
 - (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (11) If during the trial period—
- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
 - (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,
- then, the employee shall remain entitled under the protective award unless, in a case falling within paragraph (a) above, he acted unreasonably in terminating or giving notice to terminate the contract.

103 Complaint by employee to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under that award.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where the tribunal finds a complaint under subsection. (1) above well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

104 Reduction of rebate on failure to notify redundancies

- (1) Where an employer—
 - (a) is under section 30(1) of the Redundancy Payments Act 1965 (rebates in respect of redundancy, etc., payments) entitled to any rebate in respect of a payment made to an employee dismissed by reason of redundancy; and
 - (b) fails to give notice to the Secretary of State in accordance with section 100 above of his proposal to dismiss that employee,
 the Secretary of State may, subject to subsection (2) below, reduce the amount of that rebate by such proportion (not exceeding one-tenth) as appears to the Secretary of State to be appropriate in the circumstances.

- (2) No reduction of a rebate shall be made in respect of a failure to comply with section 100 above if proceedings have been instituted for an offence under section 105 below arising out of the same failure by the employer.
- (3) Where the Secretary of State reduces a rebate in pursuance of this section, the employer may appeal to an industrial tribunal within the period of three months beginning with the date on which the decision of the Secretary of State is communicated to him or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the appeal to be presented within the period of three months.
- (4) Where on an appeal under this section an industrial tribunal is satisfied that a rebate which was reduced to any extent should not have been reduced, or should have been reduced by a greater or lesser proportion, the tribunal shall determine accordingly, and the Secretary of State shall comply with the determination.

105 Offence and proceedings

- (1) If an employer fails to give notice to the Secretary of State in accordance with section 100 above, he shall be liable on summary conviction to a fine not exceeding £400.
- (2) Proceedings in England or Wales for an offence under subsection (1) above shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State.
- (3) An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct before a magistrates' court any proceedings for such an offence.
- (4) No proceedings for an offence under subsection (1) above shall be instituted in respect of a failure to comply with section 100 above if the Secretary of State has, by reason of the same failure by the employer, reduced to any extent, in accordance with section 104 above, the amount payable to the employer of any rebate.
- (5) For the purposes of subsection (4) above, a certificate signed by or on behalf of the Secretary of State stating that no such reduction of a rebate has been made shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

106 Supplementary

- (1) For the purposes of this Part of this Act a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Service has made a recommendation for recognition which is operative within the meaning of section 15 above.
- (2) For the purposes of any proceedings under this Part of this Act, the dismissal or proposed dismissal of an employee shall be presumed, unless the contrary is proved, to be by reason of redundancy.
- (3) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of section 102 above, the calculation date is—
 - (a) in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph 5 of

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Schedule 1 to the Redundancy Payments Act 1965 is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment); and

- (b) in any other case, the date on which the protective award was made.
- (4) The Secretary of State may by order vary the provisions of sections 99(3) and 100(1) above and the periods referred to in section 101(5)(a) to (c) above and may vary those provisions or periods either generally or in their application to any description of employees, but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in sections 99(3) and 100(1) as the periods which must elapse before the first of the dismissals takes effect.
- (5) No order shall be made under subsection (4) above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

107 Power to adapt foregoing provisions in case of collective agreements on redundancies

- (1) If at any time there is in force a collective agreement which establishes—
- (a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates; or
 - (b) arrangements for the handling of redundancies;
- and on the application of all the parties to the agreement the Secretary of State, having regard to the provisions of the agreement, is satisfied that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Part of this Act, he may make an order under this section adapting, modifying or excluding any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.
- (2) The Secretary of State shall not make an order under this section in respect of an agreement unless—
- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached ; or
 - (b) the agreement indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.
- (3) An order under this section may confer on an industrial tribunal to whom a complaint is presented as mentioned in subsection (2) (b) above such powers and duties as the Secretary of State considers appropriate.
- (4) Without prejudice to section 123 below, an order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

PART V

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

108 General provisions as to industrial tribunals and conciliation officers

- (1) The remedy of an employee for infringement of any of the rights conferred on him by any provision of this Act shall, if provision is made for a complaint or for the reference of a question to an industrial tribunal, be by way of such complaint or reference in accordance with the relevant provisions of this Act and with tribunal regulations made under paragraph 21 of Schedule 1 to the 1974 Act, and not otherwise.
- (2) The provisions of subsections (3) to (7) below shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings.—
 - (a) arising out of a contravention, or alleged contravention, of the following provisions of this Act, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 70, 81, 99 and 102 ; or
 - (b) arising out of a contravention, or alleged contravention, of a provision of any other Act specified by an order under subsection (8) below; or
 - (c) which are proceedings or claims in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 109 below.
- (3) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
 - (a) if he is requested to do so by the complainant and by the person against whom the complaint is presented, or
 - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this subsection with a reasonable prospect of success,to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (4) Where at any time—
 - (a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but
 - (b) before any complaint relating to that action has been presented by him,a request is made to a conciliation officer (whether by that person or by the person against whom the complaint could be made) to make his services available to them, the conciliation officer shall act in accordance with subsection (3) above as if a complaint has been presented to an industrial tribunal.
- (5) Subsections (3) and (4) above shall apply, with appropriate modifications, to the presentation of a claim and the reference of a question to an industrial tribunal as they apply to the presentation of a complaint.
- (6) In proceeding under subsection (3) or (4) above a conciliation officer shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (7) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.

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- (8) The Secretary of State may by order—
- (a) direct that further provisions of this Act be added to the list in subsection (2) (a) above ;
 - (b) specify a provision of any other Act as one to which subsection (2)(b) above applies.

109 Power to confer jurisdiction on industrial tribunals in respect of damages, etc., for breach of contract of employment

- (1) The appropriate Minister may by order provide that on any claim to which this section applies or any such claim of a description specified in the order, being in either case a claim satisfying the relevant condition or conditions mentioned in subsection (3) below, proceedings for the recovery of damages or any other sum, except damages or a sum due in respect of personal injuries, may be brought before an industrial tribunal.
- (2) Subject to subsection (3) below, this section applies to any of the following claims, that is to say—
- (a) a claim for damages for breach of a contract of employment or any other contract connected with employment ;
 - (b) a claim for a sum due under such a contract;
 - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract;
- being in each case a claim such that a court in England and Wales or Scotland, as the case may be, would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.
- (3) An order under this section may make provision with respect to any such claim only if it satisfies either of the following conditions, that is to say—
- (a) it arises or is outstanding on the termination of the employee's employment; or
 - (b) it arises in circumstances which also give rise to proceedings already or simultaneously brought before an industrial tribunal otherwise than by virtue of this section;
- or, if the order so provides, it satisfies both those conditions.
- (4) Where on proceedings under this section an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.
- (5) Without prejudice to the generality of the power to make supplementary, incidental or transitional provision in an order under this section, such an order may include provisions—
- (a) as to the manner in which and time within which proceedings are to be brought by virtue of this section ; and
 - (b) modifying any other enactment.
- (6) Regulations under paragraph 21 of Schedule 1 to the 1974 Act may include provision for enabling an industrial tribunal to hear and determine proceedings brought by virtue of this section concurrently with proceedings brought before the tribunal otherwise than by virtue of this section.
- (7) Any jurisdiction conferred on an industrial tribunal by virtue of this section in respect of any claim shall be exercisable concurrently with any court in England and Wales

or in Scotland, as the case may be, which has jurisdiction to hear and determine an action in respect of the claim.

(8) In this section—

" appropriate Minister ", as respects a claim in respect of which an action could be heard and determined in England and Wales, means the Lord Chancellor and, as respects a claim in respect of which an action could be heard and determined by a court in Scotland, means the Secretary of State ;

" personal injuries " includes any disease and any impairment of a person's physical or mental condition ;

and any reference to breach of a contract includes a reference to breach of—

- (a) a term implied in a contract by or under any enactment or otherwise;
- (b) a term of a contract as modified by or under any enactment or otherwise; and
- (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.

(9) No order shall be made under this section unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

110 Death of employee or employer

The provisions of Schedule 12 to this Act shall have effect in relation to the death of an employee or employer.

111 Disentitlement to unemployment benefit and supplementary benefit during trade dispute

(1) In section 19(1) of the Social Security Act 1975 (disqualification for unemployment benefit where stoppage of work due to trade dispute)—

- (a) in paragraph (a) the words "or financing" and the word " and ", and
- (b) paragraph (b),

are hereby repealed.

(2) In section 10(2) of the Supplementary Benefit Act 1966 (persons affected by trade disputes)—

- (a) in paragraph (a) the words " or financing " and the word " and ", and
- (b) paragraph (b)

are hereby repealed.

112 Entitlement to unemployment benefit and recoupment of that benefit and supplementary benefit

(1) Section 139(1) of the Social Security Act 1975 (submission of regulations in draft to the National Insurance Advisory Committee) shall not apply to regulations made under that Act and contained in a statutory instrument which states that the regulations provide only that a day in respect of which there is payable a particular description of any payment to which this section applies shall not be treated as a day of unemployment for the purposes of entitlement to unemployment benefit.

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- (2) The Secretary of State may by regulations make provision for all or any of the purposes mentioned in this subsection with respect to payments to which this section applies and which are the subject of proceedings before an industrial tribunal, that is to say—
- (a) enabling the Secretary of State to recover from an employer, by way of total or partial recoupment of unemployment benefit or supplementary benefit, a sum not exceeding the amount of the prescribed element of the monetary award ;
 - (b) requiring or authorising the tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Secretary of State instead of to the employee ;
 - (c) requiring the tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any unemployment benefit or supplementary benefit shown to the tribunal to have been paid to the employee, and enabling the Secretary of State to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (3) Without prejudice to subsection (2) above, regulations under that subsection may—
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments and so as to apply both to unemployment benefit and supplementary benefit or only to one of those benefits;
 - (b) confer powers and impose duties on industrial tribunals, on the Supplementary Benefits Commission and on insurance officers and other persons;
 - (c) confer on an employee who is aggrieved by any decision of the Commission as to the total or partial recoupment of supplementary benefit in pursuance of the regulations (including any decision as to the amount of benefit) a right to appeal against the decision to an Appeal Tribunal constituted under the Supplementary Benefit Act 1966 and for that purpose apply section 18(2) and (3) of that Act (appeals) with or without modifications;
 - (d) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of unemployment benefit or supplementary benefit paid to an employee ; and
 - (e) make different provision for different cases.
- (4) It is hereby declared for the avoidance of doubt that the power to make regulations under section 114 of the Social Security Act 1975 for the determination of questions arising in connection with that Act includes power to make regulations for the determination of any question arising as to the total or partial recoupment of unemployment benefit in pursuance of regulations under subsection (2) above (including any decision as to the amount of benefit).
- (5) Where in pursuance of any regulations under that subsection a sum has been recovered by or paid to the Secretary of State by way of total or partial recoupment of unemployment benefit or supplementary benefit—
- (a) section 119(1) and (2) of the Social Security Act 1975 (repayment of benefit revised on review) shall not apply to the unemployment benefit recouped; and
 - (b) the following provisions of the Supplementary Benefit Act 1966, that is to say, section 23 (recovery of cost of supplementary benefit from persons liable for maintenance) and section 26 (recovery of benefit and other sums in cases of misrepresentation and non-disclosure), shall not apply to the supplementary benefit recouped.

- (6) Any amount found to have been duly recovered by or paid to the Secretary of State in pursuance of regulations under subsection (2) above by way of total or partial recoupment of unemployment benefit shall be paid into the National Insurance Fund.
- (7) This section applies—
- (a) to a payment of wages or compensation for loss of wages;
 - (b) to any payment under this Act by an employer to an employee or a payment by an employer to an employee of a nature similar to, or for a purpose corresponding to the purpose of, any payment under this Act.
- (8) In this section—
- " monetary award ", in relation to an industrial tribunal, means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under this section;
 - " the prescribed element ", in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2) above ;
 - " supplementary benefit " means benefit under the Supplementary Benefit Act 1966; and
 - " unemployment benefit " means unemployment benefit under the Social Security Act 1975.

113 Payments which are to be treated as earnings for social security purposes

- (1) Where a payment to which this section applies is made by an employer to an employee, the payment and the period for which it is made shall, notwithstanding that the payment is made in respect of a period during which no contract of employment subsists, be respectively treated for the purposes of the Supplementary Benefit Act 1966 and the Social Security Act 1975 as earnings of that employee and a period of his employment by that employer.
- (2) This section applies to the following payments—
- (a) any amount paid in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under section 71 or 78 above ;
 - (b) any amount paid by way of pay in pursuance of an order for the continuation of a contract of employment under section 78 or 80 above ;
 - (c) any remuneration paid under a protective award under section 101 above.

114 Amendments of the Employment Agencies Act 1973

The Employment Agencies Act 1973 shall have effect subject to the amendments specified in Schedule 13 to this Act, being amendments which transfer the licensing functions under that Act from local authorities to the Secretary of State.

115 Amendments of the Employment and Training Act 1973

The Employment and Training Act 1973 shall have effect subject to the amendments specified in Schedule 14 to this Act, being amendments which provide for the status of the bodies established under section 1(1) of that Act and enlarge the powers of the

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Secretary of State to make arrangements for the purpose of providing or obtaining employment.

116 Amendments of the Health and Safety at Work etc. Act 1974

The Health and Safety at Work etc. Act 1974 shall have effect subject to the amendments specified in Schedule 15 to this Act, being amendments which restrict the appointment of safety representatives to those appointed by recognised trade unions, remove the special provisions relating to health and safety at work in agriculture and enable certain statements to be given notwithstanding the restrictions on disclosure of information obtained under that Act.

117 Offences by bodies corporate

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

118 Restrictions on contracting out

- (1) Except as provided by subsection (2) below, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
 - (a) to exclude or limit the operation of any provision of this Act; or
 - (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal, or for making any reference, claim, complaint or application under this Act to the Service or the Committee.
- (2) Subsection (1) above shall not apply—
 - (a) to any provision in a collective agreement excluding rights under section 22 above or Part IV of this Act, if an order under section 28 or, as the case may be, section 107 above is for the time being in force in respect of it;
 - (b) to any union membership agreement so far as it affects the rights of an employee under section 53 above in accordance with subsection (4) of that section;
 - (c) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 108(3) or (4) above ;
 - (d) to any agreement such as is referred to in section 16(7)(b) or (c), or 21(6)(b) or (c) above, or paragraph 11(6) or (c) of Schedule 11 to this Act, to the extent that it varies or supersedes an award under section 16 or 21 above, or, as the case may be, paragraph 10 of the said Schedule 11.

119 Excluded classes of employment

- (1) Subject to the following provisions of this section, Parts II and IV of this Act apply to every employment.
- (2) The following provisions of this Act do not apply to employment where the employer is the husband or wife of the employee, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 64, 65, 70 and 81.
- (3) The following provisions of this Act do not apply to employment as a registered dock worker, as defined by any scheme for the time being in force under the Dock Workers (Regulation of Employment) Act 1946, not being employment by virtue of which the employee is wholly or mainly engaged in work which is not dock work as defined by the scheme, that is to say, sections 22, 29, 61, 64, 65, 70, 99 and 100.
- (4) The following provisions of this Act do not apply to employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 64, 65, 70, 81, 99 and 100.
- (5) The following provisions of this Act do not apply to employment where under his contract of employment the employee ordinarily works outside Great Britain, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 64, 65, 70, 81, 99 and 100.
- (6) For the purposes of subsection (5) above, a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
 - (a) the employment is wholly outside Great Britain or
 - (b) he is not ordinarily resident in Great Britain,be regarded as a person who under his contract ordinarily works in Great Britain.
- (7) The following provisions of this Act do not apply to employment under a contract for a fixed term of 12 weeks or less or to employment under a contract made in contemplation of the performance of a specific task which is not expected to last for more than 12 weeks, unless in either case the employee has been continuously employed for a period of more than 12 weeks, that is to say, sections 22, 29, 99 and 100.
- (8) Subject to subsections (9), (10) and (11) below, the following provisions of this Act (which confer rights which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than 16 hours weekly, that is to say, sections 57, 58, 59 and 81.
- (9) If the employee's relations with his employer cease to be governed by a contract which normally involves work for 16 hours or more weekly and become governed by a contract which normally involves employment for 8 hours or more, but less than 16 hours, weekly, the employee shall nevertheless for a period of 26 weeks computed in accordance with subsection (10) below be treated for the purposes of subsection (8) above as if his contract normally involved employment for 16 hours or more weekly.
- (10) In computing the said period of 26 weeks no account shall be taken of any week—
 - (a) during which the employee is in fact employed for 16 hours or more;
 - (b) during which the employee takes part in a strike, or is absent from work because of a lock-out by his employer; or

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- (c) during which there is no contract of employment but which, by virtue of paragraph 5(1) of Schedule 1 to the Contracts of Employment Act 1972, counts in computing a period of continuous employment.
- (11) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for 8 hours or more, but less than 16 hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of subsection (8) above as if his contract normally involved employment for 16 hours or more weekly.
- (12) The following provisions of this Act do not apply to employment as a merchant seaman, that is to say, sections 59,61,64, 65,81,99 and 100.
- (13) Subject to subsection (14) below, employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer but save as aforesaid includes employment as master or a member of the crew of any ship, as an apprentice to the sea service, and as a trainee undergoing training for the sea service, and employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on such a ship while it is in port.
- (14) For the purposes of subsection (12) above as it applies in relation to sections 99 and 100, employment as a merchant seaman means employment as master or as a member of the crew of a sea-going ship, including an apprentice or trainee employed on any such ship and employment as a radio officer on such a ship.
- (15) The Secretary of State may by order—
 - (a) provide that any enactment contained in this Act which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed by the order, or shall apply to persons or employments of such classes as may be prescribed by the order subject to such exceptions and modifications as may be so prescribed;
 - (b) vary or revoke any of the provisions of subsections (1) to (14) of this section.
- (16) No order under subsection (15) above shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

120 Transfers to and from Crown employment

- (1) In Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment) after paragraph 10 there shall be inserted the following paragraph:—
 - “10A (1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.
 - (2) In this paragraph, subject to the next following sub-paragraph, " Crown employment " means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.

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- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
 - (4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee's relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.
 - (5) The reference in paragraph 9(2) of this Schedule to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown, a government department, or any other officer or body performing functions on behalf of the Crown.”.
- (2) After section 13 of the Redundancy Payments Act 1965 (change of ownership of business) there shall be inserted the following section—

“13A Transfer to Crown employment.

- (1) Section 13 of this Act shall apply to a transfer of functions from a person not acting on behalf of the Crown (in this section referred to as the transferor) to a Minister of the Crown, a government department or any other officer or body exercising functions on behalf of the Crown (in this section referred to as the transferee) as that section applies to a transfer of a business, but with the substitution for references to the previous owner and new owner of references to the transferor and transferee respectively.
- (2) In so far as the renewal or re-engagement of the employee by the transferee is in employment otherwise than under a contract of employment—
 - (a) references in section 13 of this Act (and in sections 2(4) to (6) and 3(3) to (10) of this Act as they apply by virtue of that section) to a contract of employment or to the terms of such a contract shall be construed as references to employment otherwise than under such a contract and to the terms of such employment; and
 - (b) references in subsection (4) of that section, as modified by subsection (1) of this section, to the substitution of the transferee for the transferor shall be construed as references to the substitution of employment by the transferee otherwise than under a contract of employment for employment by the transferor under such a contract.”
- (3) After section 24 of the said Act of 1965 (modification of right to redundancy payment where previous redundancy payment has been paid) there shall be inserted the following section—

“24A Modification of right to redundancy payment where payment equivalent to redundancy payment has previously been paid.

- (1) The provisions of this section shall have effect where—
 - (a) a payment has been made, whether in respect of the termination of any person's employment or in respect of lay-off or short-time.—

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- (i) in accordance with any provisions of a scheme under section 1 of the Superannuation Act 1972 ; or
 - (ii) in accordance with any such arrangements as are mentioned in section 41(3) of this Act:
 - (b) he commences new, or renewed, employment : and
 - (c) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 1(1) of, or Schedule 1 to, this Act whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this section, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.
- (2) Where the conditions mentioned in the preceding subsection are fulfilled, then in determining, for the purposes of section 1(1) of, or Schedule 1 to, this Act, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—
- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in paragraph (a) of the preceding subsection; or
 - (b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment,
- and accordingly no account shall be taken of any time before that date.”.

121 Application to Crown

- (1) Subject to the following provisions of this section, the provisions of this Act (except sections 16, 20, 21, 47, 63 to 69, 90 to 96 and 98 to 107) shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.
- (2) In this section, subject to subsections (3) to (5) below, " Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This section does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
- (4) For the purposes of this section, Crown employment does not include any employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this section for the purpose of safeguarding national security; and any document purporting to be a certificate so

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issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

- (5) For the purposes of this Act (except sections 47(3) and (4), 68(3) and (4), 90 to 96 and 105), none of the bodies referred to in Schedule 3 to the Redundancy Payments Act 1965 (national health service employers) shall be regarded as performing functions on behalf of the Crown, and accordingly employment by any such body shall not be Crown employment within the meaning of this section.
- (6) For the purposes of the application of the provisions of this Act in relation to employment by any such body as is referred to in subsection (5) above, any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to such employment.
- (7) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with subsection (1) above—
- (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
 - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
 - (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
 - (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to Crown employment;
 - (e) the reference in section 18(1)(e) above to the employer's undertaking shall be construed as a reference to the national interest; and
 - (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, officer or body, shall be construed as a reference to the functions of the department, officer or body or (as the context may require) to the department, officer or body.
- (8) Where the terms of employment of a person in Crown employment restrict his right to take part in—
- (a) certain political activities ; or
 - (b) activities which may conflict with his official functions,
- nothing in section 59 above shall require him to be allowed time off work for public duties connected with any such activities.

122 Application of employment legislation to House of Commons staff

- (1) The provisions of this Act, Schedule 1 to the Contracts of Employment Act 1972 and Parts I and II of Schedule 1 to the 1974 Act shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 121 above, and accordingly for the purposes of the application of those provisions in relation to any such members—

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- (a) any reference to an employee shall be construed as a reference to any such member;
 - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of any such member;
 - (c) any reference to dismissal shall be construed as a reference to the termination of any such member's employment ;
 - (d) the references in paragraph 21(5)(c) of Schedule 1 to the 1974 Act and section 18(1)(e) above to any person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons; and
 - (e) any other reference to an undertaking shall be construed as a reference to the House of Commons.
- (2) The provisions of section 1 of the Equal Pay Act 1970 and Parts II and IV of the Sex Discrimination Act 1975 shall apply to an act done by an employer of a relevant member of House of Commons staff and to service as such a member as they apply to an act done by, and to service for the purposes of, a Minister of the Crown or Government department, and accordingly shall so apply as if references in those provisions to a contract of employment included references to the terms of service of such a member.
- (3) Nothing in any rule of law or the law or practice of Parliament shall prevent proceedings under any enactment applied by subsection (1) or (2) above being instituted before an industrial tribunal.
- (4) In this section " relevant member of House of Commons staff" means any person employed in or for the purposes of the House of Commons as follows:—
- (a) in the Department of the Clerk of that House;
 - (b) in Mr. Speaker's Department;
 - (c) in the Department of the Serjeant at Arms ;
 - (d) in the Department of the Library ;
 - (e) in the administration department;
 - (f) in the refreshment department.
- (5) It is hereby declared that in this section " relevant member of House of Commons staff " does not include the Clerk of that House or any Clerk Assistant or the Serjeant at Arms of that House.
- (6) For the purposes of the enactments applied by subsection (1) and (2) above, Mr. Speaker shall be deemed to be the employer of House of Commons staff, except that in relation to any description of members of the staff for the time being designated by Mr. Speaker a person so designated shall be deemed to be the employer of members of that description for those purposes or, if it is so stated in the designation, such of those purposes as are so designated.
- (7) Where any proceedings are brought by virtue of this section against Mr. Speaker or any person designated under subsection (6) above, the person against whom the proceedings are brought may apply to the industrial tribunal to have some other person against whom the proceedings could have been properly brought so substituted for him as a party to those proceedings.

- (8) If the House of Commons resolves at any time that any provision of subsections (4) to (6) above should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.
- (9) It is hereby declared that the powers of nominating or appointing and suspending or removing members of House of Commons staff conferred by sections 14 and 15 of the House of Commons (Offices) Act 1812 (clerks, attendants and messengers) and the power of Mr. Speaker to require the suspension or removal of any such member conferred by section 16 of that Act are exercisable subject to the provisions of the enactments applied by subsections (1) and (2) above to such members.

123 Orders, rules and regulations

- (1) Any power conferred by any provision of this Act to make an order (other than an Order in Council) or to make rules or regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument made under any power conferred by this Act to make an Order in Council or other order or to make rules or regulations, except—
 - (a) an instrument required to be laid before Parliament in draft; and
 - (b) an order under section 28 or 107 above or section 129 below,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any such power shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.
- (4) Any such power to make an order shall, except in the case of an order made under Part III of this Act, include power to revoke or vary the order by a subsequent order made under that provision.

124 Financial provisions

- (1) Subject to the following provisions of this section, there shall be defrayed out of moneys provided by Parliament—
 - (a) all expenses incurred by the Secretary of State or any other Minister of the Crown or any government department in consequence of the provisions of this Act;
 - (b) any expenses incurred by Mr. Speaker or by any person designated by him under section 122 above, in consequence of any enactment which is applied by that section; and
 - (c) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.
- (2) The expenses to be so defrayed shall not include—
 - (a) any sums payable out of the National Loans Fund under section 41 above ;
 - (b) any increase in the sums payable out of that Fund under section 35 of the Redundancy Payments Act 1965 which is attributable to paragraph 17 of Part I of Schedule 16 to this Act,and any such sums or increase shall be payable out of that Fund.

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- (3) There shall be paid out of the Maternity Pay Fund into the Consolidated Fund sums equal to the amount of any expenses incurred by the Secretary of State in exercising his functions under the provisions of this Act relating to maternity pay.
- (4) There shall be paid out of the Redundancy Fund into the Consolidated Fund sums equal to the amount of—
 - (a) any expenses incurred by the Secretary of State (including expenses incurred by persons acting on his behalf) in exercising his functions under sections 64 to 68 above;
 - (b) any increase attributable to provisions of this Act in the sums falling to be so paid under section 55(5) of the Redundancy Payments Act 1965.
- (5) There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act, except sums which are expressly required to be paid into the Maternity Pay Fund, the Redundancy Fund or the National Insurance Fund.
- (6) As respect any increase attributable to the provisions of this Act in the expenses which under section 135(3)(a) of the Social Security Act 1975 are to be paid out of moneys provided by Parliament, subsection (1)(c) above is without prejudice to the provision made by subsection (5) of that section for reimbursement out of the National Insurance Fund.

125 Minor and consequential amendments, transitional provisions and repeals

- (1) The provisions of the Redundancy Payments Act 1965 specified in Part I of Schedule 16 to this Act, the provisions of the Contracts of Employment Act 1972 specified in Part II of that Schedule, the provisions of the 1974 Act specified in Part III of that Schedule and the enactments specified in Part IV of that Schedule, shall have effect subject to the amendments so specified respectively, being minor amendments and amendments consequential on any provisions of this Act.
- (2) The transitional provisions in Schedule 17 to this Act shall have effect.
- (3) The enactments specified in Schedule 18 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

126 Interpretation

- (1) In this Act, except so far as the context otherwise requires—
 - " associated employer ", " collective agreement ", " employee ", " employer ", " independent trade union " and " independence " and " independent " (in relation to a trade union), " official ", " successor ", " trade dispute ", " trade union ", " union membership agreement " and " worker " have the same meanings respectively as in the 1974 Act;
 - " business " includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;
 - " collective bargaining " means negotiations relating to or connected with one or more of the matters specified in section 29(1) of the 1974 Act;
 - " Committee " has the meaning assigned to it by section 10. above;
 - " dismiss ", " dismissal " and " effective date of termination " shall be construed in accordance with paragraph 5 of Schedule 1 to the 1974 Act;
 - " guarantee payment " has the meaning assigned to it by section 22 above ;

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- " maternity pay " has the meaning assigned to it by section 35 above;
- " the 1974 Act " means the Trade Union and Labour Relations Act 1974;
- " recognition " has the meaning assigned to it by section 11. above and cognate expressions shall be construed accordingly;
- " Service " has the meaning assigned to it by section 1 above.
- (2) " Employers' associations", except in Part III of this Act, has the same meaning as in the 1974 Act and in the said Part III and in any enactment thereby amended means any organisation representing employers and any association of such organisations or of employers and such organisations.
- (3) Without prejudice to subsection (1) above, expressions used in the provisions of this Act relating to unfair dismissal and in provisions of the 1974 Act relating to unfair dismissal have the same meaning in this Act as in that Act.
- (4) For the purposes of this Act employees are to be treated, in relation to a union membership agreement, as belonging to the same class if they have been identified as such by the parties to the agreement, and employees may be so identified by reference to any characteristics or circumstances whatsoever.
- (5) The provisions of Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment) and, so far as they modify that Schedule, the provisions of any order under section 10 of that Act and any regulations under paragraph 30(3) of Schedule 1 to the 1974 Act shall have effect for the purposes of this Act in determining for what period an employee has been continuously employed; and, for the purposes of any proceedings brought under or by virtue of this Act, a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.
- (6) In this Act references to redundancy or to being redundant, in relation to an employee, are references to—
- (a) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee is or was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee is or was so employed, or
 - (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he is or was so employed, have ceased or diminished or are expected to cease or diminish.
- (7) In subsection (6) above, " cease" means cease either permanently or temporarily and from whatsoever cause, and " diminish " has a corresponding meaning.
- (8) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or a part of the United Kingdom, or not.
- (9) Except so far as the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

127 Power to extend employment legislation

- (1) Her Majesty may by Order in Council provide that the provisions of—
- (a) the Wages Councils Act 1959 ;

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- (b) the Industrial Training Act 1964 ;
- (c) the Redundancy Payments Act 1965 ;
- (d) the Contracts of Employment Act 1972 ;
- (e) the 1974 Act;
- (f) this Act; and
- (g) any legislation (that is to say any enactment of the Parliament of Northern Ireland and any provision made by or under a Measure of the Northern Ireland Assembly) for the time being in force in Northern Ireland which makes provision for purposes corresponding to any of the purposes of any of the Acts mentioned in paragraphs (a) to (f) above,

shall, to such extent and for such purposes as may be specified in the Order, apply (with or without modification) to or in relation to any person in employment to which this section applies.

- (2) This section applies to employment for the purposes of any activities—
 - (a) in the territorial waters of the United Kingdom; or
 - (b) connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources in any area designated by order under section 1(7) of the Continental Shelf Act 1964.
- (3) An Order in Council under subsection (1) above—
 - (a) may make different provision for different cases;
 - (b) may provide that all or any of the provisions of any Act mentioned in that subsection, as applied by such an Order, shall apply to individuals whether or not they are British subjects and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom (notwithstanding that the application may affect their activities outside the United Kingdom);
 - (c) may make provision for conferring jurisdiction on any court or class of court specified in the Order, or on industrial tribunals, in respect of offences, causes of action or of matters arising in connection with employment to which this section applies ;
 - (d) without prejudice to the generality of subsection (1) above or of paragraph (d) above, may provide that the enactments referred to in that subsection shall apply in relation to any person in employment for the purposes of such activities as are referred to in subsection (2) above in any part of the areas specified in paragraphs (d) and (b) of that subsection ;
 - (e) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the enactments referred to in subsection (1) above in connection with employment to which this section applies;
 - (f) may provide that such proceedings shall not be brought without such consent as may be required by the Order ;
 - (g) may, without prejudice to the generality of the power under subsection (1) above to modify the enactments referred to in that subsection in their application for the purposes of this section, modify or exclude the operation of the following provisions (which relate to mariners and to employment wholly or partly outside Great Britain)—
 - (i) sections 17 and 20 of the Redundancy Payments Act 1965 ;
 - (ii) sections 9(2) and 12 of the Contracts of Employment Act 1972;

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(iii) sub-paragraphs (2) and (3) of paragraph 9 of Schedule 1 to the 1974 Act;

and also of section 119 above and of any corresponding provision in any such Northern Irish legislation as is referred to in subsection (1)(g) above.

- (4) Any jurisdiction conferred on any court or tribunal under this section shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

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- (1) If provision is made by Northern Irish legislation (that is to say by or under a Measure of the Northern Ireland Assembly) for purposes corresponding to any of the purposes of this Act, or of the 1974 Act so far as it relates to unfair dismissal, the Secretary of State may, with the consent of the Treasury make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the relevant provisions of this Act and the 1974 Act with the corresponding provisions of the Northern Irish legislation, so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2) For the purpose of giving effect to any such arrangements the Secretary of State shall have power, in conjunction with the appropriate Northern Irish authority—
- (a) where the arrangements relate to the provisions of this Act relating to maternity pay, to make any necessary financial adjustments between the Maternity Pay Fund and any fund established under Northern Irish legislation; and
 - (b) where the arrangements relate to the provisions of sections 64 to 68 above, to make any necessary financial adjustments between the Redundancy Fund and the Northern Ireland Redundancy Fund.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may make different provision for different cases, and may provide that this Act and the relevant provisions of the 1974 Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
- (a) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act and the relevant provisions of the 1974 Act (but not so as to confer a right to double payment in respect of the same act, omission or event); and
 - (b) for determining, in cases where rights accrue both under this Act or the relevant provisions of the 1974 Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Northern Irish authority " means such authority as may be specified in that behalf in the Northern Irish legislation.

129 Short title, commencement and extent

- (1) This Act may be cited as the Employment Protection Act 1975.

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

- (2) Sections 87 and 88 above and Schedule 6 to this Act shall come into operation on such day as the Lord Chancellor may by order appoint, and different days may be so appointed for different purposes.
- (3) The other provisions of this Act shall come into operation on such day as the Secretary of State may by order appoint, and different days may be so appointed for different purposes.
- (4) Any reference in this Act to the commencement of any provision of this Act shall be construed as a reference to the day appointed under this section for the coming into operation of that provision.
- (5) Without prejudice to the generality of section 123(3) above, an order under this section may contain such transitional provision or savings as appear to the Lord Chancellor or, as the case may be, the Secretary of State to be necessary or expedient in connection with the provisions of this Act which are thereby brought (wholly or in part) into operation, including such adaptations of those provisions then in force as appear to the Lord Chancellor or, as the case may be, the Secretary of State to be necessary or expedient in consequence of their partial operation (whether before, on or after the day appointed by the order).
- (6) Sections 127 and 128 above and any provision of this Act which amends or repeals any provision of the House of Commons Disqualification Act 1975 or the Northern Ireland Assembly Disqualification Act 1975 shall extend to Northern Ireland, but except as aforesaid this Act shall not extend there.