

SCHEDULES

SCHEDULE 16

MINOR AND CONSEQUENTIAL AMENDMENTS

PART III

TRADE UNION AND LABOUR RELATIONS ACT 1974

- 1 In sections 8 and 11, and in Schedule 2, for the words "Registrar of Friendly Societies" and "Registrar" wherever they occur substitute the words " Certification Officer ".
- 2 In section 8, after subsection (6) insert the following subsection:—

“(6A) The Certification Officer shall remove the name of an organisation from the relevant list—

 - (a) if he is requested by the organisation to do so, or
 - (b) if he is satisfied that the organisation has ceased to exist.”.
- 3 For section 8(7) substitute the following subsection:—

“(7) Any organisation aggrieved by the refusal of the Certification Officer to enter its name in the relevant list or by a decision of his to remove its name from that list may appeal, in accordance with section 88(3) of the Employment Protection Act 1975, to the Employment Appeal Tribunal; and on any such appeal the Tribunal, if satisfied that the name should be or remain so entered, shall declare that fact and give directions to the Certification Officer accordingly.”.
- 4 In section 8(9), for the words from "Chief Registrar" to the end of the subsection substitute the words " Certification Officer under paragraph 13(2) of Schedule 1 to the Employment Protection Act 1975. ".
- 5 In section 8(10), for the words from the beginning to " employers' associations " substitute the words " The fact that the name of an organisation is included in the list of trade unions or employers' associations shall be evidence (and in Scotland sufficient evidence) that the organisation is a trade union or, as the case may be, an employers' association, and on the application of the organisation ", and omit the words from " and that the organisation " to the end.
- 6 Renumber section 17 (restriction on grant of ex parte injunctions and interdicts) as subsection (1) of that section and at the end of that section insert the following subsections:—

“(2) It is hereby declared for the avoidance of doubt that where an application is made to a court, pending the trial of an action, for an interlocutory injunction and the party against whom the injunction is sought claims that he acted in contemplation or furtherance of a trade dispute, the court shall, in exercising

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its discretion whether or not to grant the injunction, have regard to the likelihood of that party's succeeding at the trial of the action in establishing the matter or matters which would, under any provision of section 13, 14(2) or 15 above, afford a defence to the action.

(3) Subsection (2) above shall not extend to Scotland.”

- 7 (1) In section 30(1), after the definition of " act " and " action " insert—
“" Certification Officer " means the officer appointed under section 7 of the Employment Protection Act 1975 ;”.
- (2) In that subsection, after the definition of " employee " insert—
“" employer " (subject to subsection (2) below)—
(a) where the reference is to an employer in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed, and
(b) in any other case, means a person regarded in that person's capacity as one for whom one or more workers work, or have worked or normally work or seek to work;”.
- (3) In that subsection, at the end of the definition of "independent trade union " insert " and ' in relation to a trade union' " independence " and " independent" shall be construed accordingly ; ”.
- (4) In that subsection, after the definition of "individual proprietor" insert—
“" job ", in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;”.
- (5) In that subsection, after the definition of " 1971 Act", insert—
“" officer ", in relation to a trade union or an employers' association includes any member of the governing body of that union or association and any trustee of any fund applicable for the purposes of that union or association ;”.
- 8 In paragraph 5(3) of Schedule 1 (meaning of dismissal), omit the words " obligatory " and " in writing ”.
- 9 Omit paragraph 5(4) of Schedule 1.
- 10 After paragraph 5(5) of Schedule 1 insert the following sub-paragraph—
“(6) Where the notice required to be given by an employer by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by sub-paragraph (5) above, that later date shall be treated as the effective date of termination in relation to the dismissal for the purposes of paragraph 10(a) below and of sections 70(2), 74(3) and 75(6) of the Employment Protection Act 1975 (written statement of reasons for dismissal and calculation of basic award of compensation for unfair dismissal).”.
- 11 After paragraph 6(4) of Schedule 1, insert the following sub-paragraph:—

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“(4A) In sub-paragraph (4) above, " appropriate time" in relation to an employee taking part in the 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 sub-paragraph "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.”.

12 After paragraph 6(5) of Schedule 1 (dismissal in closed shop situation), insert the following sub-paragraph:—

“(5A) For the purposes of sub-paragraph (5) above a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—

- (a) the Service has made a recommendation for recognition covering the employee in question which is operative within the meaning of section 15 of the Employment Protection Act 1975 ; or
- (b) the union has referred a recognition issue (within the meaning of that Act) covering that employee to the Advisory, Conciliation and Arbitration Service under section 11 of that Act and the Service has not declined to proceed on the reference under section 12 of that Act, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.”.

13 For paragraphs 7 and 8 of Schedule 1 (dismissal in connection with industrial action) substitute the following paragraph:—

“7 (1) The provisions of this paragraph shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal—

- (a) the employer was conducting or instituting a lock-out; or
- (b) the employee was taking part in a strike or other industrial action.

(2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed, or
- (b) that one or more such employees have been offered re-engagement, and that the employee concerned has not been offered re-engagement.

(3) Where it is shown that the condition referred to in paragraph (b) of sub-paragraph (2) above is fulfilled, the provisions of paragraph 6 above and of section 34 of the Employment Protection Act 1975 shall have effect as if in that paragraph and that section for any reference to the reason or principal reason for which the employee was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

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- (4) Paragraph 21(4) below shall apply in relation to a complaint to which sub-paragraph (3) above applies as if for references to the effective date of termination there were substituted a reference to the first date on which any relevant employee was offered re-engagement.
- (5) In this paragraph—
- (a) " date of dismissal " means—
 - (i) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and
 - (ii) in any other case, the effective date of termination.
 - (b) " relevant employees " means—
 - (i) in relation to a lock-out, employees who were directly interested in the trade dispute in contemplation or furtherance of which the lock-out occurred, and
 - (ii) in relation to a strike or other industrial action, employees who took part in it; and
 - (c) any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.”.
- 14 (1) In paragraph 9(1) of Schedule 1—
- (a) omit paragraph (a);
 - (b) in paragraph (b), omit the words " or a close relative "; and
 - (c) omit paragraphs (e) and (f).
- (2) Omit paragraph 9(4) of Schedule 1.
- 15 In paragraph 11(1) of Schedule 1 for the words "Paragraphs 9(1) (a) and 10 " substitute the words " Paragraph 10 ".
- 16 In paragraph 17(1) of Schedule 1 omit the words " or by a person acting on the employer's behalf " (which are unnecessary).
- 17 For paragraph 20 of Schedule 1 substitute the following paragraph:—
- “20 (1) The amount of compensation awarded to a person under section 72(1) of the Employment Protection Act 1975 or of a compensatory award to a person calculated in accordance with section 76 of that Act shall not exceed £5,200.
- (2) The Secretary of State may by order increase the said limit of £5,200 or that limit as from time to time increased under this sub-paragraph, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) It is hereby declared for the avoidance of doubt that the limit imposed by this paragraph applies to the amount which the industrial tribunal would, apart from this paragraph, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and

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any reduction in the amount of the award required by any enactment or rule of law.

(4) Section 123 of the Employment Protection Act 1975 shall apply to this paragraph as if it were a provision of that Act.”.

18 In paragraph 21(3) of Schedule 1, after the words "paragraph 17 above " insert the words " or any other enactment in relation to which there is provision for conciliation, " .

19 After paragraph 21(3) of Schedule 1 insert the following sub-paragraph:—

“(3A) In relation to proceedings under paragraph 17 above—

- (a) where the employee has expressed a wish to be re-instated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint; or
- (b) where the proceedings arise out of the employer's failure to permit the employee to return to work after an absence due to pregnancy or confinement,

regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed, or, as the case may be which she held before her absence, or of comparable or suitable employment.”.

20 In paragraph 21(4) of Schedule 1 at the beginning insert the words " Subject to sub-paragraph (4A) below ", and for the word "within" in the second place in which it occurs substitute the words " before the end of " .

21 After paragraph 21(4) of Schedule 1 insert the following sub-paragraph:—

“(4A) An industrial tribunal shall consider a complaint under paragraph 17 of Schedule 1 above if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in relation to such a complaint the provisions of this Act and of the Employment Protection Act 1975, so far as they relate to unfair dismissal, shall have effect—

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires ;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer ;
- (c) as if references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice ; and
- (d) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.”.

22 In paragraph 21(5) of Schedule 1, in paragraph (c) for the words "be seriously prejudicial to the interests of" substitute the words " cause substantial injury to " .

23 After paragraph 21(5) of Schedule 1 insert the following sub-paragraph :—

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- “(5A) The regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send notice or a copy of any document so specified relating to any proceedings before the tribunal, or of any decision, order or award of the tribunal, to any Minister, government department or other person or body so specified.”.
- 24 In paragraph 26(3) of Schedule 1—
- (a) in paragraph (a) omit the words " his engagement ";
- (b) for paragraph (b) substitute:—
- “(b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable,”; and
- (c) for the word " they " substitute the words " the parties ".
- 25 After paragraph 26(4) of Schedule 1 insert the following sub-paragraph :—
- “(4A) In proceeding under sub-paragraphs (2) to (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.”.
- 26 In paragraph 27(1) of Schedule 1, after the words " this Schedule " insert the words " and sections 33, 34, 51 and 71 to 80 of the Employment Protection Act 1975 ".
- 27 In paragraph 27(2) of Schedule 1, for the words from " paragraph 19 " to the end of the sub-paragraph substitute:—
- “(a) section 72(2)(b) of the Employment Protection-Act 1975 shall have effect as if for the words " not practicable to comply " there were substituted the words " not practicable for the local education authority to permit compliance " ; and
- (b) section 76(5) of the said Act of 1975 shall have effect as if any reference to the employer were a reference to the local education authority.”.
- 28 In paragraph 28(2) of Schedule 1 for the word "claimant" substitute the word " complainant ".
- 29 After paragraph 30(1) of Schedule 1 insert the following sub-paragraph :—
- “(1A) Where by virtue of paragraph 5(6) above a date is to be treated as the effective date of termination for the purpose of paragraph 10(a) above which is later than the effective date of termination as defined by paragraph 5(5) above, then in determining for the purpose of paragraph 10(a) above for what period an employee has been continuously employed, the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not count under the said Schedule 1.”.
- 30 In paragraph 30(3) of Schedule 1, for the words from "section 24 " to the end of the sub-paragraph substitute—
- “sections 24 and 24A of the Redundancy Payments Act 1965 (which require the continuity of a period of employment to be treated as broken for the purposes of that Act where a redundancy payment or an equivalent payment is paid to an employee and he is subsequently re-engaged) subject to the recovery of any such payment, in cases where, in consequence of action to

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which sub-paragraph (4) below applies, a dismissed employee is re-instated or re-engaged by his employer or by a successor or associated employer of that employer.”.

- 31 In paragraph 31(1)(b) of Schedule 1 (nominations by members of trade unions) for the words " £500 " substitute the words " £1,500 ".
- 32 In paragraph 31 of Schedule 1, for sub-paragraphs (4) and (5) substitute the following sub-paragraph:—
- “(4) Sub-paragraph (1)(b) above shall be included among the provisions with respect to which the Treasury may make an order under section 6(1) of the Administration of Estates (Small Payments) Act 1965, substituting, for references to the amount for the time being provided for, references to such higher amount as may be specified in the order.”.
- 33 In paragraph 33(2) of Schedule 1, after the words " government department" insert the words " or any officer or body exercising on behalf of the Crown functions conferred by any enactment ", and in paragraph 33(3)(e) of that Schedule, after the word "department" in the second, third and fourth places where it occurs insert the words " , officer or body ".
- 34 After paragraph 33(4) of Schedule 1, insert the following sub-paragraph:—
- “(4A) 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 sub-paragraph (4)(a) 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.”.
- 35 (1) For the avoidance of doubt it is hereby declared that the change of name of the Industrial Court to the Industrial Arbitration Board originally effected by section 124(2) of the Industrial Relations Act 1971 and continued in force, so far as the Industrial Courts Act 1919 is concerned, by paragraph 3 of Schedule 3 to the 1974 Act, shall, as respects the relevant period, be taken not to have divested that body of any functions under any other enactment or any instrument notwithstanding that after the repeal by the 1974 Act of the said section 124(2) references in any such other enactment or any such instrument to the Industrial Court were no longer expressly directed to be construed as references to the Industrial Arbitration Board.
- (2) In this paragraph "the relevant period" means the period beginning with 16th September 1974 (the day appointed for the coming into operation of the said Schedule 3) and ending with the repeal by this Act of Part I of the Industrial Courts Act 1919.