

SCHEDULES

SCHEDULE 3

Section 50.

SUPPLEMENTARY PROVISIONS AS TO MATERNITY

Introductory

- 1 References in this Schedule to provisions of this Act and the 1974 Act relating to unfair dismissal and to provisions of the Redundancy Payments Act 1965 are references to those provisions as they apply by virtue of section 50 above.

Adaptation of unfair dismissal provisions

- 2 (1) Paragraph 6 of Schedule 1 to the 1974 Act (fair and unfair dismissal) shall have effect as if for sub-paragraph (8) there were substituted the following sub-paragraph:—
- “(8) Subject to sub-paragraphs (4), (6) and (7) above, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he would have been acting reasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work.”.
- (2) If in the circumstances described in section 48(4) above no offer is made of such alternative employment as is referred to in that subsection, then the dismissal which by virtue of section 50 above is treated as taking place shall, notwithstanding anything in paragraph 6 of that Schedule, be treated as an unfair dismissal for the purposes of that Schedule.
- (3) The following references shall be construed as references to the notified day of return, that is to say—
- (a) references in that Schedule and in section 74 above to the effective date of termination ;
- (b) references in section 71 above to the date of termination of employment.
- (4) The following provisions of that Schedule shall not apply, that is to say, paragraphs 5, 6(5), 9 to 14, and 30(1A).
- (5) The following provisions of this Act shall not apply, that is to say, sections 72(7), 74(4), (6) and (7) and 75(1) to (3) and (6).
- (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 section 72 or 74 above, the calculation date is the last day on which the employee worked under the original contract of employment.

Status: This is the original version (as it was originally enacted).

Adaptation of redundancy payments provisions

- 3 (1) References in the Redundancy Payments Act 1965 shall be adapted as follows, that is to say—
- (a) references to the relevant date, wherever they occur, shall be construed, except where the context otherwise requires, as references to the notified day of return ;
 - (b) references in sections 2(4) and 3(3) of that Act (offer of alternative employment) to a renewal or re-engagement taking effect immediately on the ending of employment under the previous contract or after an interval of not more than four weeks thereafter, shall be construed as references to a renewal or re-engagement taking effect on the notified day of return or not more than four weeks after that day ; and
 - (c) references in section 3(5) of that Act (trial period) to the provisions of the previous contract shall be construed as references to the provisions of the original contract of employment.
- (2) Nothing in section 50 above shall prevent an employee from being treated, by reason of the operation of section 3(3) of the said Act of 1965, as not having been dismissed for the purposes of that Act.
- (3) The following provisions of the said Act of 1965 shall not apply, that is to say, sections 1(1)(6), 2(1) and (2), 3(1), (2) and (10), 4 to 7, 10, 11, 16(2) and (3), 22, 23 and 40, paragraphs 4 and 5(3) and (7) of Schedule 1 and Schedule 4.
- (4) 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 Schedule 1 to the said Act of 1965 (computation of redundancy payments), the calculation date is the last day on which the employee worked under the original contract of employment.

Dismissal during period of absence

- 4 (1) This paragraph applies to the dismissal of an employee who is under the foregoing provisions of this Act entitled to return to work and whose contract of employment continues to subsist during the period of her absence but who is dismissed by her employer during that period after the beginning of the 11th week before the expected week of confinement.
- (2) For the purposes of sub-paragraph (1) above an employee shall not be taken to be dismissed during the period of her absence if the dismissal occurs in the course of the employee's attempting to return to work in accordance with her contract in circumstances in which paragraph 5 below applies.
- (3) In the application of Schedule 1 to the 1974 Act to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, paragraphs 6(5), 9, 10, 11, 13 and 14.
- (4) Any such dismissal shall not affect the employee's right to return to work, but—
- (a) compensation in any unfair dismissal proceedings arising out of that dismissal shall be assessed without regard to the employee's right to return ; and
 - (b) that right shall be exercisable only on her repaying any redundancy payment or compensation for unfair dismissal paid in respect of that dismissal, if the employer requests such repayment.

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

Contractual right to return

- 5 (1) An employee who has a right both under this Act and under a contract of employment, or otherwise, to return to work, may not exercise the two rights separately but may in returning to work take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 48 to 50 and paragraphs 1 to 4 above, shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (1) above as they apply to the exercise of the right to return conferred solely by this Act.

Prior redundancy

- 6 If in proceedings arising out of a failure to permit an employee to return to work, the employer shows—
- (a) that the reason for the failure is that the employee is redundant; and
 - (b) that the employee was dismissed or, had she continued to be employed by him, would have been dismissed, by reason of redundancy during her absence on a day earlier than the notified day of return and falling after the beginning of the 11th week before the expected week of confinement,
- then, for the purposes of the Redundancy Payments Act 1965 the employee—
- (i) shall not be treated as having been dismissed with effect from the notified day of return ; but
 - (ii) shall, if she would not otherwise be so treated, be treated as having been continuously employed until that earlier day and as having been dismissed by reason of redundancy with effect from that day.

Power to amend or modify

- 7 (1) The Secretary of State may by order amend the provisions of this Schedule or modify the application of those provisions to any description of case.
- (2) No order under this paragraph shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.