

SCHEDULES

SCHEDULE 11

Section 98.

EXTENSION OF TERMS AND CONDITIONS

PART I

RECOGNISED TERMS AND CONDITIONS AND GENERAL LEVEL OF TERMS AND CONDITIONS

- 1 A claim may be reported to the Service, in accordance with and subject to the following provisions of this Part of this Schedule, that as respects any worker an employer is, in respect of any matter, observing terms and conditions of employment less favourable than the recognised terms and conditions or, where, or so far as, there are no recognised terms and conditions, the general level of terms and conditions.
- 2 In this Part of this Schedule—
 - (a) the " recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of a trade or industry, in which the employer in question is engaged, either generally or in the district in which he is so engaged, which have been settled by an agreement or award, to which the parties are employers' associations and independent trade unions which represent (generally or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section, being workers of the description to which the agreement or award relates; and
 - (b) the " general level of terms and conditions" means the general level of terms and conditions observed for comparable workers by employers—
 - (i) in the trade, industry or section in which the employer in question is engaged in the district in which he is so engaged ; and
 - (ii) whose circumstances are similar to those of the employer in question,and for the purposes of sub-paragraph (a) above the reference to terms and conditions, in a case where minimum terms and conditions have been settled as mentioned in that sub-paragraph, is a reference to those minimum terms and conditions.
- 3 No claim shall be reported under paragraph 1 above as respects workers whose remuneration or terms and conditions, or minimum remuneration or terms and conditions, is or are fixed (otherwise than by the employer, with or without the approval of any other person) in pursuance of any enactment other than—
 - (a) the Agricultural Wages Act 1948 or the Agricultural Wages (Scotland) Act 1949 ;
 - (b) the Wages Councils Act 1959 ;
 - (c) sections 90 to 94 above ; or
 - (d) this Schedule;

Status: This is the original version (as it was originally enacted).

or in the case of whom provision is made by or under any such enactment for the settlement of questions as to remuneration or terms and conditions or minimum remuneration or terms and conditions.

4 A claim may be reported under paragraph 1 above, where, or so far as, the claim is founded upon recognised terms and conditions, by an employers' association or an independent trade union being one of the parties mentioned in paragraph 2(a) above.

5 (1) A claim may be reported under paragraph 1 above, where, or so far as, the claim is founded upon the general level of terms and conditions, by—

- (a) an employers' association having members engaged in the trade, industry or section, in the district to which the claim relates ; or
- (b) subject to sub-paragraph (2) below, a trade union of which any worker concerned is a member.

(2) Where any such worker is of a description in respect of which an employer recognises one or more independent trade unions, such a claim may be reported by a trade union only if it is that recognised union or, as the case may be, one of those recognised unions.

6 A claim under paragraph 1 above shall be in writing and shall contain such particulars as the Service may require.

7 When a claim is reported to the Service under paragraph 1 above the Service shall take any steps which seem to it expedient to settle the claim or to secure the use of appropriate machinery to settle the claim and shall if the claim is not otherwise settled refer it to the Committee.

8 The Committee shall hear and determine the claim and it shall be for—

- (a) the party making the claim to show that there are recognised terms and conditions and what those terms and conditions are, or, as the case may be, what the general level of terms and conditions is ; and
- (b) the employer to satisfy the Committee that he is observing terms and conditions of employment not less favourable than the recognised terms and conditions or, as the case may be, the general level of terms and conditions.

9 In ascertaining whether, in respect of any matter which is the subject of a claim under paragraph 1 above, the employer is observing terms and conditions less favourable than the recognised terms and conditions, or as the case may be, the general level of terms and conditions regard shall be had to the whole of the terms and conditions observed by the employer as respects the worker to whom the claim relates.

10 If the Committee finds the claim wholly or partly well-founded it shall make an award that the employer shall observe the recognised terms and conditions or, as the case may be, terms and conditions conforming to the general level of terms and conditions and shall identify or specify—

- (a) the recognised terms and conditions or, as the case may be, terms and conditions conforming to the general level of terms and conditions ;
- (b) the description or descriptions of employees in respect of which they are to be observed ; and
- (c) the date from which they are to be observed, being a date not earlier than the date on which the employer was first informed of the claim giving rise

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

- to the award by the union or association which reported the claim to the Service.
- 11 Any terms and conditions which by an award under paragraph 10 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 that paragraph ;
 - (b) by a collective agreement between the employer and the trade 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.
- 12 Where—
- (a) by virtue of any enactment, other than one contained in this Part of this Schedule, 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 paragraph 10 above 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 paragraph 10 above, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.
- 13 If in the course of determining a claim under this Schedule after the commencement of section 3 of the Equal Pay Act 1970, it appears to the Committee that a collective agreement or pay structure within the meaning of that section contains any provision applying specifically to men only or to women only so that it would, had it been referred to the Committee by the Secretary of State under that section, have required amendment in accordance with subsection (4) of that section so as to remove that discrimination between men and women—
- (a) that provision shall not be regarded as part of the recognised terms and conditions or, as the case may be, shall not be taken into account in assessing the general level of terms and conditions; and
 - (b) the Committee shall report its opinion to the Secretary of State and, in the case of a collective agreement, to the parties to that agreement or, in the case of a pay structure, to the employer concerned.
- 14 For the purposes of this Schedule the carrying on of the activities of public or local authorities shall be treated as the carrying on of a trade or industry.

PART II

COLLECTIVELY NEGOTIATED TERMS AND CONDITIONS IN CERTAIN INDUSTRIES

- 15 A claim may be reported to the Service under this paragraph by an independent trade union as respects any worker who is a member of that trade union and who falls within the field of operation of a wages council, a statutory joint industrial council, the Agricultural Wages Board or the Scottish Agricultural Wages Board—
- (a) that the union is a party to one or more collective agreements and that those agreements cover a significant number of establishments within the field

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

of operation of that council or Board either generally or in the district in which the worker is employed ; and

- (b) that in those establishments the circumstances of the employer are similar to those of the employer of the worker in question; and
- (c) that the employer is paying him less than the lowest current , rate of remuneration (disregarding any rate agreed to more than 12 months before the date on which the claim was reported) payable to workers of his description under any of those agreements.

16 The provisions of paragraphs 7, 8 and 10 to 14 above shall apply to a claim under paragraph 15 above—

- (a) as if for any reference to the recognised terms and conditions there were substituted a reference to the rate of remuneration referred to in paragraph 15(c) above ;
- (b) as if references to the general level of terms and conditions were omitted; and
- (c) as if the reference in paragraph 12(a) to Part I of this Schedule were a reference to Part II of this Schedule and so much of Part I as is thereby applied.