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SCHEDULES

SCHEDULE 7

Section 89.

AMENDMENTS OF WAGES COUNCILS ACT 1959

PART I

SECTION 11, AS SUBSTITUTED

Note: This Part of the Schedule reproduces section 11 with amendments enabling wages councils, instead of the Secretary of State, to make orders under that section and enabling wages councils 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.

“11 Power to fix terms and conditions of employment

- (1) A wages council may make an order, subject to and in accordance with the provisions of this section.—
 - (a) fixing the remuneration,
 - (b) requiring holidays to be allowed,
 - (c) fixing any other terms and conditions,for all or any of the workers in relation to whom the council operates.
- (2) An order under this section requiring a holiday to be allowed for a worker—
 - (a) shall not be made unless both holiday remuneration in respect of the period of the holiday and remuneration other than holiday remuneration have been or are being fixed under this Part of this Act for that worker;
 - (b) shall provide for the duration of the holiday being related to the duration of the period for which the worker has been employed or engaged to be employed by the employer who is to allow the holiday ; and
 - (c) subject as aforesaid, may make provision as to the times at which or the periods within which, and the circumstances in which, the holiday shall be allowed.
- (2A) Any order under this section fixing holiday remuneration may contain provisions—
 - (a) as to the times at which, and the conditions subject to which, that remuneration shall accrue and shall become payable, and
 - (b) for securing that any such remuneration which has accrued due to a worker during his employment by any employer shall, in the event of his ceasing to be employed by that employer before he becomes entitled to be allowed a holiday by him, nevertheless become payable by the employer to the worker.
- (3) Before making an order under this section, a wages council shall make such investigations as it thinks fit and shall—
 - (a) publish in the prescribed manner notice of the council's proposals with respect to any new terms and conditions of employment (that is to say, any terms and

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conditions of employment differing from any then in force by virtue of an order made under this section); and

- (b) give the prescribed notice for the purpose of informing, so far as practicable, all persons affected by the proposals, stating the place where copies of the proposals may be obtained and the period (which shall not be less than fourteen days from the date of publication of the notice) within which written representations with respect to the proposals may be sent to the council.

(3A) After considering any written representations made with respect to any such proposals within the said period and making such further inquiries as the council considers necessary, or if no such representations are made within that period, after the expiration of that period, the wages council may make an order—

- (a) giving effect to the proposals ; or
- (b) giving effect to them with such modifications as the council thinks fit having regard to any such representations ;

but if it appears to the council that, having regard to the nature of any proposed modifications, an opportunity should be given to persons concerned to consider the modifications, the council shall again publish the proposals and give notice under subsection (3) of this section, and that subsection and this subsection shall apply accordingly.

(4) An order under this section shall have effect as regards any terms as to remuneration as from a date specified in the order, which may be a date earlier than the date of the order but not earlier than the date on which the council agreed on those terms prior to publishing the original proposals to which effect is given, with or without modifications, by the order; but where any such order fixing workers' remuneration applies to any worker who is paid wages at intervals not exceeding seven days and the date so specified does not correspond with the beginning of the period for which the wages are paid (hereafter in this section referred to as a wages period), the order shall, as respects that worker, have effect as from the beginning of the next wages period following the date specified in the order.

(4A) Any increase in remuneration payable by virtue of an order under this section in respect of any time before the date of the order shall be paid by the employer within a period specified in the order, being—

- (a) in the case of a worker who is in the employment of the employer on the date of the order, a period beginning with that date;
- (b) in the case of a worker who is no longer in the employment of the employer on that date, a period beginning with the date on which the employer receives from the worker or a person acting on his behalf a request in writing for the remuneration ;

but if, in the case of a worker falling within paragraph (a) of this subsection who is paid wages at intervals not exceeding seven days, pay day (the day on which wages are normally paid to him) for any wages period falling wholly or partly within the period so specified occurs within seven days from the end of that specified period, any such remuneration shall be paid not later than pay day.

(5) As soon as a wages council has made an order under this section it shall give the prescribed notice of the making and contents of the order and shall then and subsequently give such notice of other prescribed matters affecting its operation for the purpose of informing, so far as practicable, all persons who will be affected by it.

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- (6) An order under this section may make different provision for different cases and may amend or revoke previous orders under this section.
- (7) A document purporting to be a copy of an order made by a wages council under this section and to be signed by the secretary of the council shall be taken to be a true copy of the order unless the contrary is proved.
- (8) An order under this section shall not prejudice any rights conferred on any worker by or under any other enactment.”

PART II

SECTION 12, AS SUBSTITUTED

Note: This Part of this Schedule reproduces section 12 with amendments substituting any terms and conditions of employment fixed by an order under section 11 (as well as remuneration so fixed) for those contained in a worker's contract of employment, making it an offence to fail to pay arrears of remuneration related to a period before the making of any such order and increasing the powers of a convicting court to order an employer to pay the remuneration or arrears.

“12 Effect and enforcement of orders under section 11.

- (1) If a contract between a worker to whom an order under section 11 of this Act applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, it shall have effect as if the statutory minimum remuneration were substituted for the remuneration provided for in the contract, and if any such contract provides for the payment of any holiday remuneration at times or subject to conditions other than those specified in the order, it shall have effect as if the times or conditions specified in the order were substituted for those provided for in the contract
- (1A) If any such contract fixes terms and conditions other than those relating to remuneration or wages which are less favourable than the corresponding terms and conditions specified in an order under section 11 of this Act it shall have effect as if the corresponding terms and conditions were substituted for those fixed by the contract.
- (2) If an employer fails—
 - (a) to pay a worker to whom an order under section 11 of this Act applies remuneration not less than the statutory minimum remuneration; or
 - (b) to pay him arrears of remuneration before the expiration of the period specified in the order ; or
 - (c) to pay him holiday remuneration at the times and subject to the conditions specified in the order, or
 - (d) to allow to any such worker the holidays fixed by the order;he shall for each offence be liable on summary conviction to a fine not exceeding £100.
- (3) Where proceedings are brought under the foregoing subsection in respect of an offence consisting of a failure to pay remuneration not less than the statutory minimum remuneration, or to pay arrears of remuneration, and the employer or any other person charged as a person to whose act or default the offence was due is found guilty of the offence, then, subject to subsection (3A) below.—

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- (a) evidence may be given of any failure on the part of the employer to pay any such remuneration or arrears during the two years ending with the date of the offence to any worker employed by him ; and
 - (b) on proof of the failure, the court may order the employer to pay such sum as is found by the court to represent the difference between the amount of any such remuneration or arrears which ought to have been paid during that period to any such worker, if the provisions of this Part of this Act had been complied with, and the amount actually so paid.
- (3A) Evidence of any failure to pay any such remuneration or arrears may be given under subsection (3) of this section only if—
- (a) the employer or any other person charged as aforesaid has been convicted of the offence consisting of the failure; and
 - (b) notice of intention to adduce such evidence has been served with the summons or warrant
- (4) The powers given by this section for the recovery of sums due from an employer to a worker shall not be in derogation of any right to recover such sums by civil proceedings
- (5) In the application of this section to Scotland—
- (a) in subsection (3), the words "or any other person charged as a person to whose act or default the offence was due " shall be omitted; and
 - (b) in subsection (3A), in paragraph (a) the words " or any other person charged as aforesaid " shall be omitted, and in paragraph (b) for the words " summons or warrant " there shall be substituted the word " complaint ""

PART III

SCHEDULE 2, AS SUBSTITUTED

Note: This Part of this Schedule reproduces Schedule 2 with amendments as to the method and terms of appointment of members of wages councils. Constitution, Officers and Proceedings of Wages Councils and Co-ordinating Committees

“CONSTITUTION, OFFICERS AND PROCEEDINGS OF WAGES COUNCILS AND CO-ORDINATING COMMITTEES

- 1 (1) A wages council or, subject to paragraph 2 of this Schedule, central co-ordinating committee shall consist of—
- (a) not more than three persons appointed by the Secretary of State as being independent persons ;
 - (b) such number of persons appointed to represent employers and workers on the council or committee as falls within the limits for the time being specified for the purposes of this paragraph by the Secretary of State.
- (2) Subject to sub-paragraphs (4) and (5) of this paragraph, the persons appointed under the foregoing sub-paragraph to represent employers shall be appointed by one or more employers' associations for the time being nominated for that purpose by the Secretary of State and those so appointed to represent workers shall be appointed by one or more trade unions so nominated.

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- (3) A nominated employers' association or trade union shall on making such an appointment inform the secretary of the wages council or central co-ordinating committee, in writing, of that appointment.
 - (4) If the nominated employers' association or the nominated trade union are unable to agree on such an appointment, they shall consult the Secretary of State who may make the appointment on their behalf.
 - (5) If it appears to the Secretary of State that an insufficient number of persons has been appointed to represent either employers or workers on a wages council or central co-ordinating committee he may, after consultation with such persons or organisations as he thinks fit, himself appoint such number of persons for the purpose as will secure a sufficiency of representatives of employers or workers, as the case may be, on the council or committee.
 - (6) Of the independent persons appointed under sub-paragraph (1)(a) above, one shall be appointed by the Secretary of State to act as chairman, and another may be appointed by the Secretary of State to act as chairman in the absence of the chairman.
- 2 (1) A central co-ordinating committee operating in relation only to two or more statutory joint industrial councils shall consist of equal numbers of persons appointed by one or more employers' associations to represent employers on the committee and of persons appointed by one or more trade unions to represent workers on the committee.
 - (2) Any such committee shall elect a chairman and deputy chairman from among its members.
- 3 The Secretary of State may on the application of a wages council or central co-ordinating committee make such changes in the number of members or the machinery for appointing them as is necessary or expedient in the circumstances.
 - 4 The Secretary of State may appoint a secretary and such other officers as he thinks fit of a wages council or central co-ordinating committee.
 - 5 The proceedings of a wages council or central co-ordinating committee shall not be invalidated by reason of any vacancy therein or by any defect in the appointment of a member.
- 6 (1) A wages council or central co-ordinating committee may delegate any of its functions, other than the power to make orders under section 11 of this Act, to a committee or sub-committee consisting of such number of members of the council as the council or committee thinks fit.
 - (2) The number of members representing employers and the number of members representing workers on a committee of a council or any such sub-committee shall be equal.
- 7 The Secretary of State may make regulations as to the meetings and procedure of a wages council or central co-ordinating committee and of any committee or, as the case may be, sub-committee thereof, including regulations as to the quorum and the method of voting, but, subject to the provisions of this Act and to any regulations so made, a wages council or central co-ordinating committee and any committee or, as the case may be, sub-committee thereof may regulate its procedure in such manner as it thinks fit.

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- 8 (1) A member of a wages council or central co-ordinating committee shall hold and vacate office in accordance with the terms of his appointment, but the period for which he is to hold office, shall, without prejudice to his re-appointment, not exceed five years.
- (2) Where the term for which the members of a wages council or central co-ordinating committee were appointed comes to an end before their successors are appointed, those members shall, except so far as the Secretary of State or, as the case may be, the appointing body otherwise directs, continue in office until the new appointments take effect.
- 9 There may be paid to the members of a wages council or central co-ordinating committee appointed under sub-paragraph (a) of paragraph 1 of this Schedule such remuneration, and to any member of any such council or committee such travelling and other allowances, as the Secretary of State may, with the consent of the Minister for the Civil Service, determine, and all such remuneration and allowances shall be defrayed as part of the expenses of the Secretary of State in carrying this Act into effect.”

PART IV

MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 For the words "a wages regulation order", wherever they occur, substitute the words " an order under section 11 of this Act " .
- 2 In section 4, after subsection (2) (power by order to vary the field of operation of a wages council) insert the following subsections :—
- “(2A) The power of the Secretary of State to make an order under this section varying the field of operation of a wages council shall include power to vary that field by excluding from it any employers to whom there for the time being applies, as members of an organisation named in the order, an agreement, to which the organisation or any other organisation of which it is a member or on which it is represented, is a party, regulating remuneration or other terms or conditions of employment of their employees.
- (2B) Any organisation so named shall if it has not already done so furnish the Secretary of State with a list of its members and shall from time to time, and also if so required by the Secretary of State, furnish him with particulars of any changes in their membership which have occurred since the list was furnished or, as the case may be, when particulars were last furnished to him.”
- 3 (1) In section 7 (central co-ordinating committees), for subsection (1) substitute the following subsection:—
- “(1) The Secretary of State may, if he thinks fit to do so, by order establish a central co-ordinating committee in relation to any two or more wages councils or statutory joint industrial councils, or wages councils and statutory joint industrial councils, or abolish, or vary the field of operation of, any central co-ordinating committee so established:

Provided that, except where either of the two following subsections applies, the Secretary of State shall, before making any such order, consult the wages

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councils or statutory joint industrial councils, or, as the case may be, the wages councils and the statutory joint industrial councils, concerned.”

- (2) In section 7(2) after the words "wages council" in the first place where they occur, insert the words " or statutory joint industrial council ", and for the words " wages council" wherever else they occur substitute the word " council ".
 - (3) In section 7(3) after the words "wages council" in the first place where they occur, insert the words " or statutory joint industrial council ", and for the words " wages council" wherever else they occur substitute the word " council ".
 - (4) In section 7(5), in paragraph (a) for the words "wages councils " substitute the word " councils ".
- 4 (1) Section 13 (permits to infirm and incapacitated persons) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) for the words from "it may, if it thinks fit" to the end there shall be substituted the words " or makes it inappropriate for other terms and conditions fixed by the order to apply to him, it may, if it thinks fit, grant, subject to any conditions it may determine, a permit authorising his employment at less than the statutory minimum remuneration or dispensing with a term or condition specified in the permit; and while the permit is in force the remuneration authorised by the permit shall, if the conditions specified in the permit are complied with, be deemed to be the statutory minimum remuneration or, as the case may be, the terms and conditions fixed by the order shall be deemed to be observed. ".
 - (3) In subsection (2) after the words "statutory minimum remuneration" insert the words " or dispensing with a term or condition specified in the permit " and after the words " specified remuneration" insert the words " or without compliance with any such term or condition ".
- 5 In section 14(2) (power to authorise benefits to be reckoned as wages) for the words "wages regulation proposals and wages regulation orders " substitute the words " orders under section 11 of this Act ".
- 6 The provisions specified in column 1 of the following Table (which create offences) shall each have effect as if the maximum fine which may be imposed on summary conviction of any offence specified in that provision were a fine not exceeding the amount specified in column 3 of that Table instead of a fine not exceeding the amount specified in column 2 of that Table.

TABLE

<i>Provision</i>	<i>Old maximum fine</i>	<i>New maximum fine</i>
Section 16(2) (employers not to receive premiums)	£20	£100
Section 17(3) (failure to keep records or post or give notices)	£20	£100
Section 19(6) (obstruction, etc.)	£20	£100

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<i>Provision</i>	<i>Old maximum fine</i>	<i>New maximum fine</i>
Section 20 (false records and false information)	£100	£400

- 7 In section 17(2) (notices to be displayed) for the words " wages regulation proposals or wages regulation order " substitute the words " proposals or orders under section 11 of this Act ".
- 8 In section 19(3) (power of officers to obtain information, etc.) for the words " outworkers " and " outworker ", wherever occurring, substitute respectively the words " homeworkers " and " home-worker ".
- 9 (1) In section 24 (definitions), before the definition of " home-worker " insert the following definition:—
“" employers' association " has the same meaning as in Part III of the Employment Protection Act 1975 ;”.
- (2) In the said section, for the definition of " organisation " substitute the following definition:—
“" organisation ", in relation to workers means a trade union and in relation to employers means an employers' association ;”.
- (3) In the said section, after the definition of " prescribed " insert the following definition:—
“" statutory joint industrial council " means a council established under section 90 of the Employment Protection Act 1975 ;”.
- (4) In the said section, for the definition of "trade union" substitute the following definition:—
“" trade union " has the same meaning as in the Trade Union and Labour Relations Act 1974”.
- (5) In the said section, for the provision defining " wages council" and "commission of inquiry", substitute the following definition:—
“" wages council " means a wages council established under this Act:”.
- (6) In the said section, for the definition of " worker " substitute the following definition:—
“" worker ' means any person—
(a) who has entered into or works under a contract with an employer (whether express or implied, and, if express, whether oral or in writing) whether it be a contract of service or of apprenticeship or any other contract whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or
(b) whether or not he falls within the foregoing provision, who is a homeworker ;
but does not include any person who is employed casually and otherwise than for the purposes of the business of the employer or other party to the contract.”.
- 10 For paragraph 4 of Schedule 1 to the Wages Councils Act 1959 (cases where the Secretary of State may make an order establishing, abolishing or varying the field of

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operation of a wages council without further proceedings) there shall be substituted the following paragraph:—

- “4 (1) If there is no objection which the Secretary of State is required by the foregoing paragraph to consider or if, after considering any such objection, he is of the opinion that it satisfies one of the following conditions, that is to say—
- (a) in the case of an order to be made in pursuance of a recommendation of the Advisory, Conciliation and Arbitration Service, the objection was made to the Service and was expressly dealt with in the report embodying the recommendations ; or
 - (b) in the case of such an order as is referred to in paragraph (a) above, the objection is one the subject-matter of which was considered by the Service and was expressly dealt with in that report or is such that a further inquiry into that subject-matter would serve no useful purpose ; or
 - (c) in any case, the objection will be met by a modification which he proposes to make under this paragraph, or is frivolous,
- he may make the order either in the terms of the draft or subject to such modifications, if any, as he thinks fit, being modifications which, in his opinion, do not effect important alterations in the character of the draft order as published.
- (2) The Secretary of State shall not form an opinion as to any matter mentioned in paragraph (b) of the foregoing sub-paragraph without consulting the Service.”.