

*Status: Point in time view as at 15/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the  
Employment Protection (Consolidation) Act 1978, Part I. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2

#### SUPPLEMENTARY PROVISIONS RELATING TO MATERNITY

##### PART I

##### UNFAIR DISMISSAL

###### *Introductory*

- 1 References in this Part to provisions of this Act relating to unfair dismissal are references to those provisions as they apply by virtue of section 56.

###### *Adaptation of unfair dismissal provisions*

- 2 (1) Section 57 shall have effect as if for subsection (3) there were substituted the following subsection:—
- “(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 58(1), 59, 60 and 62, 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 [<sup>F1</sup>in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work; and that question shall be determined in accordance with equity and substantial merits of the case.”]
- (2) If in the circumstances described in section 45(3) no offer is made of such alternative employment as is referred to in that subsection, then the dismissal which by virtue of section 56 is treated as taking place shall, notwithstanding anything in section 57 or 58, be treated as an unfair dismissal for the purposes of Part V of this Act.
- (3) The following references shall be construed as references to the notified day of return, that is to say—
- (a) references in Part V of this Act to the effective date of termination;
- (b) references in sections 69 and 70 to the date of termination of employment.
- (4) The following provisions of this Act shall not apply, that is to say, sections 55, [<sup>F2</sup>[<sup>F3</sup>58(3) to (12)], 58A], 64(1), 65, 66, 73(5) and (6), 141(2), 142(1), [<sup>F4</sup>and 144(2)], paragraph 11(1) of Schedule 13, paragraphs 7(1)(f) to (i) and (2) and 8(3) of Schedule 14 and paragraph 10 of Schedule 15.

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- (5) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of section 71 or 73, the calculation date is the last day on which the employee worked under the original contract of employment.

**Textual Amendments**

- F1** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 23**
- F2** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 24**
- F3** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 27(2)**, with saving in [S.I. 1982/1656](#), **Sch. 2**
- F4** "and 144(2)" substituted by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), **s. 7(4)(a)**

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