

Status: Point in time view as at 03/07/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 9. (See end of Document for details)

SCHEDULES

SCHEDULE 9

INDUSTRIAL TRIBUNALS

Regulations as to tribunal procedure

- 1 (1) The Secretary of State may by regulations (in this Schedule referred to as “the regulations”) make such provision as appears to him to be necessary or expedient with respect to proceedings before industrial tribunals.
- (2) The regulations may in particular include provision—
- (a) for determining by which tribunal any appeal, question [^{F1}application] or complaint is to be determined;
 - (b) for enabling an industrial tribunal to hear and determine proceedings brought by virtue of section 131 concurrently with proceedings brought before the tribunal otherwise than by virtue of that section;
 - (c) for treating the Secretary of State (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before an industrial tribunal, where he would not otherwise be a party to them, and entitling him to appear and to be heard accordingly;
 - (d) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
 - [^{F2}(e) for enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to order—
 - (i) in England and Wales, such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by a county court on an application by a party to proceedings before it, or
 - (ii) in Scotland, such recovery or inspection of documents as might be ordered by the sheriff;]
 - (f) for prescribing the procedure to be followed on any appeal, reference or complaint or other proceedings before an industrial tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and provisions for enabling an industrial tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations;
 - (g) for the appointment of one or more assessors for the purposes of any proceedings before an industrial tribunal, where the proceedings are brought under an enactment which provides for one or more assessors to be appointed;
 - [^{F3}(ga) for authorising an industrial tribunal to require persons to furnish information and produce documents to a person required for the purposes of section 2A(1)(b) of the ^{M1}Equal Pay Act 1970 to prepare a report;]

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- (h) for the award of costs or expenses, including any allowances payable under paragraph 10 other than allowances payable to members of industrial tribunals or assessors;
 - (i) for taxing or otherwise settling any such costs or expenses (and, in particular, in England and Wales, for enabling such costs to be taxed in the county court); and
 - (j) for the registration and proof of decisions, orders and awards of industrial tribunals.
- (3) In relation to proceedings on complaints under section 67 or any other enactment in relation to which there is provision for conciliation, the regulations shall include provision—
- (a) for requiring a copy of any such complaint, and a copy of any notice relating to it which is lodged by or on behalf of the employer against whom the complaint is made, to be sent to a conciliation officer;
 - (b) for securing that the complainant and the employer against whom the complaint is made are notified that the services of a conciliation officer are available to them; and
 - (c) for postponing the hearing of any such complaint for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.
- (4) In relation to proceedings under section 67—
- (a) where the employee has expressed a wish to be reinstated 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 [^{F4}childbirth],
- 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.
- [^{F5}(4A) Without prejudice to sub-paragraph (5) or paragraph 2, a Minister of the Crown may on grounds of national security direct an industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.]
- (5) Without prejudice to paragraph 2, the regulations may enable an industrial tribunal to sit in private for the purpose of hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
- (a) information which he could not disclose without contravening a prohibition imposed by or under any enactment; or
 - (b) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
 - (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 29(1)

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of the ^{M2}Trade Union and Labour Relations Act 1974 (matters to which trade disputes relate) cause substantial injury to any undertaking of his or in which he works.

[^{F6}(5A) The regulations may include provision—

- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation;
- (b) for cases involving allegations of sexual misconduct, enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

In this sub-paragraph—

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

“restricted reporting order” means an order prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain;

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

“sexual offence” means any offence to which section 141A(2) of the ^{M3}Criminal Procedure (Scotland) Act 1975, section 4 of the ^{M4}Sexual Offences (Amendment) Act 1976 or the ^{M5}Sexual Offences (Amendment) Act 1992 applies (offences under the ^{M6}Sexual Offences Act 1956, the ^{M7}Sexual Offences (Scotland) Act 1976 and certain other enactments);

and “written publication” and “relevant programme” have the same meaning as in that Act of 1992.]

- (6) The regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send [^{F7}(subject to any regulations under sub-paragraph (5A)(a))] 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 government department or other person or body so specified.
- (7) Any person who without reasonable excuse fails to comply with any requirement imposed by the regulations by virtue of subparagraph (2)(d) [^{F8}or (ga)] or any requirement with respect to the discovery, recovery or inspection of documents so imposed by virtue of subparagraph (2)(e) shall be liable on summary conviction to a fine not exceeding [^{F9}level 3 on the standard scale].
- [^{F10}(8) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—
 - (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

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- (b) in the case of publication in any other form, the person publishing the matter; and
- (c) in the case of matter included in a relevant programme—
 - (i) any body corporate engaged in providing the service in which the programme is included; and
 - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Expressions used in this sub-paragraph and in sub-paragraph (5A) have the same meaning in this sub-paragraph as in that sub-paragraph.

- (9) Where a person is charged with an offence under sub-paragraph (8) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.
- (10) Where an offence under sub-paragraph (8) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in any such capacity,
 he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (11) In relation to a body corporate whose affairs are managed by its members “director”, in sub-paragraph (10), means a member of the body corporate.]

Textual Amendments

- F1** Word inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 26](#)
- F2** [Sch. 9 para. 1\(2\)\(e\)](#) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(6), [Sch. 6 para. 26](#), [Sch. 9 para. 4\(1\)](#)
- F3** [Para. 1\(2\)\(ga\)](#) inserted by [S.I. 1983/1794](#), [reg. 3\(3\)](#)
- F4** Word in [Sch. 9 para. 1\(4\)\(b\)](#) substituted (10.6.1994) by [1993 c. 19, s. 49\(2\)](#), [Sch. 8 para. 28\(a\)](#); [S.I. 1994/1365](#), art. 2, [Sch.](#)
- F5** [Sch. 9 para. 1\(4A\)](#) inserted (30.11.1993) by [1993 c. 19, s. 49\(1\)](#), [Sch. 7 para. 6\(a\)](#); [S.I. 1993/2503](#), art. 2(2), [Sch. 2](#)
- F6** [Sch. 9 para. 1\(5A\)](#) inserted (30.8.1993) by [1993 c. 19, s. 40\(2\)](#); [S.I. 1993/1908](#), art. 2(1), [Sch. 1](#)
- F7** Words in [Sch. 9 para. 1\(6\)](#) inserted (30.8.1993) by [1993 c. 19, s. 40\(3\)](#); [S.I. 1993/1908](#), art. 2(1), [Sch. 1](#)
- F8** Words inserted by [S.I. 1983/1794](#), [reg. 3\(3\)](#)
- F9** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and [Criminal Procedure \(Scotland\) Act 1972 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 54](#))
- F10** [Sch. 9 para. 1\(8\)-\(11\)](#) inserted (30.8.1993) by [1993 c. 19, s. 40\(4\)](#); [S.I. 1993/1908](#), art. 2(1), [Sch. 1](#)

Marginal Citations

- M1** 1970 c. 41.
- M2** 1974 c. 52.
- M3** 1975 c. 21.
- M4** 1976 c. 82.
- M5** 1992 c. 34.
- M6** 1956 c. 69.

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M7 1976 c. 67.

- [^{F11}1A (1) The regulations may include provision—
- [for authorising the carrying out by an industrial tribunal of a preliminary
 - ^{F12}(a) consideration of any proceedings before it (“a pre-hearing review”); and]
 - (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.
- (2) The regulations may in particular include provision—
- (a) for authorising any ^{F13} . . . tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding £150;
 - (b) for prescribing—
 - (i) the manner in which the amount of any such deposit is to be determined in any particular case,
 - (ii) the consequences of non-payment of any such deposit, and
 - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it, or be paid over to another party to the proceedings.
- (3) The Secretary of State may from time to time by order substitute for the sum specified in sub-paragraph (2)(a) such other sum as is specified in the order.]

Textual Amendments

- F11** Sch. 9 para. 1A inserted by Employment Act 1989 (c. 38, SIF 43:1), ss. 20, 29(6), **Sch. 9 para. 4(1)**
- F12** Sch. 9 para. 1A(1)(a) substituted (15.10.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 28(b)**; S.I. 1993/2503, art. 2(1), **Sch. 1**
- F13** Words in Sch. 9 para. 1A(2)(a) repealed (15.10.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/2503, art. 2(1), **Sch.1**

- [^{F14}1B The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.]

Textual Amendments

- F14** Sch. 9 para. 1B inserted (15.10.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 28(c)**; S.I. 1993/2503, art. 2(1), **Sch.1**

National security

- 2 (1) If on a complaint [^{F15}under—

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- (a) section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (action short of dismissal on grounds related to union membership or activities), or
- (b) section 67 of this Act (unfair dismissal),]

it is shown that the action complained of was taken for the purpose of safe-guarding national security, the industrial tribunal shall dismiss the complaint.

- (2) [^{F16}Except where the complaint is that a dismissal is unfair by reason of section 57A, 59(1)(a) or 60, a certificate] purporting to be signed by or on behalf of a Minister of the Crown, and certifying that the action specified in the certificate was taken for the purpose of safeguarding national security, shall for the purposes of sub-paragraph (1) be conclusive evidence of that fact.

Textual Amendments

F15 Words in Sch. 9 para. 2(1) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para. 24(2).

F16 Words in Sch. 9 para. 2(2) substituted (30.11.1993 for specified purposes and otherwise 10.6.1994) by 1993 c. 19, s. 49(1), Sch. 7 para. 6(b); S.I. 1993/2503, art. 2(2), Sch. 2; S.I. 1994/1365, art. 2, Sch.

Payment of certain sums into Redundancy Fund

^{F17}3

Textual Amendments

F17 Sch. 9 para. 3 repealed by Employment Act 1990 (c. 38, SIF 43:5), s. 16(2), Sch. 3

Exclusion of Arbitration Act 1950

- 4 The ^{M8}Arbitration Act 1950 shall not apply to any proceedings before an industrial tribunal.

Marginal Citations

M8 1950 c. 27.

Presumption as to dismissal for redundancy

- 5 Where in accordance with the regulations an industrial tribunal determines in the same proceedings—
- (a) a question referred to it under sections 81 to 102, and
 - (b) a complaint presented under section 67,

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section 91(2) shall not have effect for the purposes of the proceedings in so far as they relate to the complaint under section 67.

Right of appearance

- 6 Any person may appear before an industrial tribunal in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

Interest on sums awarded

- [^{F18}6A (1) The Secretary of State may by order made with the approval of the Treasury provide that sums payable in pursuance of decisions of industrial tribunals shall carry interest at such rate and between such times as may be prescribed by the order.
- (2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.
- (3) The power conferred by sub-paragraph (1) includes power—
- (a) to specify cases or circumstances in which interest shall not be payable;
 - (b) to provide that interest shall be payable only on sums exceeding a specified amount or falling between specified amounts;
 - (c) to make provision for the manner in which and the periods by reference on which interest is to be calculated and paid;
 - (d) to provide that any enactment shall or shall not apply in relation to interest payable by virtue of an order under sub-paragraph (1) or shall apply to it with such modifications as may be specified in the order;
 - (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from industrial tribunals;
 - (f) to make such incidental or supplemental provision as the Secretary of State considers necessary.
- (4) Without prejudice to the generality of sub-paragraph (3), an order under sub-paragraph (1) may provide that the rate of interest shall be the rate specified in section 17 of the ^{M9}Judgments Act 1838 as that enactment has effect from time to time.]

Textual Amendments

F18 Para. 6A inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 7](#)

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M9 1838 c. 110.

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Recovery of sums awarded

- 7 (1) Any sum payable in pursuance of a decision of an industrial tribunal in England and Wales which has been registered in accordance with the regulations shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.
- [^{F19}(2) Any order for the payment of any sum made by an industrial tribunal in Scotland (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the Sheriff Court of any Sheriffdom in Scotland.]
- (3) In this paragraph any reference to a decision or order of an industrial tribunal—
- (a) does not include a decision or order which, on being reviewed, has been revoked by the tribunal, and
 - (b) in relation to a decision or order which, on being reviewed, has been varied by the tribunal, shall be construed as a reference to the decision or order as so varied.

Textual Amendments

F19 Para. 7(2) substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 27](#)

Constitution of tribunals for certain cases

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^{F20}8

Textual Amendments

F20 [Sch. 9 para. 8](#) repealed (30.11.1993) by [1993 c. 19, s. 51](#), [Sch.10](#); [S.I. 1993/2503, art. 2\(2\)](#), [Sch. 2](#)

Remuneration for presidents and full-time chairmen of industrial tribunals

- 9 The Secretary of State may pay such remuneration as he may with the consent of [^{F21}the Treasury] determine to the President of the Industrial Tribunals (England and Wales), the President of the Industrial Tribunals (Scotland) and any person who is a member on a full-time basis of a panel of chairmen of tribunals which is appointed in accordance with regulations under subsection (1) of section 128.

Textual Amendments

F21 Words substituted by virtue of [S.I. 1981/1670, arts. 2\(2\), 3\(5\)](#)

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Remuneration etc. for members of industrial tribunals and for assessors and other persons

- 10 The Secretary of State may pay to members of industrial tribunals and to any assessors appointed for the purposes of proceedings before industrial tribunals [^{F22}and to any persons required for the purposes of section 2A(1)(b) of the ^{M10}Equal Pay Act 1970 to prepare reports] such fees and allowances as he may with the consent of [^{F23}the Treasury] determine and may pay to any other persons such allowances as he may with the consent of [^{F23}the Treasury] determine for the purposes of, or in connection with, their attendance at industrial tribunals.

Textual Amendments

F22 Words inserted by [S.I. 1983/1794, reg. 3\(4\)](#)

F23 Words substituted by virtue of [S.I. 1981/1670, arts. 2\(2\), 3\(5\)](#)

Marginal Citations

M10 [1970 c. 41.](#)

F24

11

Textual Amendments

F24 [Sch. 9 para. 11](#) repealed by [Judicial Pensions Act 1981 \(c. 20, SIF 71:2\)](#), [Sch. 4](#)

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