

*Status: Point in time view as at 01/04/1991.*

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

## SCHEDULES

### SCHEDULE 1

Section 19.

#### PROVISIONS LEADING TO SUSPENSION ON MEDICAL GROUNDS

.....  
F<sup>1</sup>1—6.

.....  
**Textual Amendments**

**F1** Provisions removed by [S.I. 1980/1581, art. 3\(2\)](#)

.....  
F<sup>2</sup>7, 8.

.....  
**Textual Amendments**

**F2** Provisions removed by [S.I. 1988/1746, art. 3](#)

.....  
F<sup>3</sup>9

.....  
**Textual Amendments**

**F3** Provisions removed by [S.I. 1980/1581, art. 3\(2\)](#)

.....  
F<sup>4</sup>10

.....  
**Textual Amendments**

**F4** Provisions removed by [S.I. 1980/1581, art. 3\(2\)](#)

.....  
F<sup>5</sup>11

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**Textual Amendments**

**F5** Provisions removed by [S.I. 1980/1581](#), [art. 3\(2\)](#)

F<sup>6</sup>12

**Textual Amendments**

**F6** Provisions removed by [S.I. 1980/1581](#), [art. 3\(2\)](#)

F<sup>7</sup>13—

15.

[ <sup>F8</sup> The Control of Lead at Work Regulations 1980.]	[ <sup>F8</sup> S.I. 1980/1248,]	[ <sup>F8</sup> Reg. 16.]
[ <sup>F9</sup> The Ionising Radiations Regulations 1985.]	[ <sup>F9</sup> S.I. 1985/1333,]	[ <sup>F9</sup> Reg. 16.]
[ <sup>F10</sup> The Control of Substances Hazardous to Health Regulations 1988.]	[ <sup>F10</sup> S.I. 1988/1657,]	[ <sup>F10</sup> reg. 11.]

**Textual Amendments**

- F7** Provisions removed by [S.I. 1985/1787](#), [art. 3](#)
- F8** Provision added by [S.I. 1980/1581](#), [art. 4](#)
- F9** Provision added by [S.I. 1985/1787](#), [art. 4](#)
- F10** Provision added by [S.I. 1988/1746](#), [art. 4](#)

SCHEDULE 2

Section 33.

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.

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### *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>F11</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>F12</sup>[<sup>F13</sup>58(3) to (12)], 58A], 64(1), 65, 66, 73(5) and (6), 141(2), 142(1), [<sup>F14</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.

(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**

**F11** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 23](#)

**F12** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 24](#)

**F13** 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](#)

**F14** “and 144(2)” substituted by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), [s. 7\(4\)\(a\)](#)

## **PART II**

### **REDUNDANCY PAYMENTS**

#### *Introductory*

3 References in this Part to provisions of this Act relating to redundancy are references to those provisions as they apply by virtue of section 86.

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### *Adaptation of redundancy payments provisions*

- 4 (1) References in Part VI of this Act 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 82(4) and 84(1) 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 84(3) 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 86 shall prevent an employee from being treated, by reason of the operation of section 84(1), as not having been dismissed for the purposes of Part VI of this Act.
- (3) The following provisions of this Act shall not apply, that is to say, sections 81(1)(b), 82(1) and (2), 83(1) and (2), 85, 87 to 89, 90(3), 92, 93, 96, 110, 144(2), <sup>F15</sup>and 150, paragraph 4 of Schedule 4, Schedule 12 and paragraphs 7(1)(j) and (k) and 8(4) of Schedule 14.
- (4) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of Schedule 4, the calculation date is the last day on which the employee worked under the original contract of employment.

#### **Textual Amendments**

**F15** Words repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 4(2)(b), [Sch. 4](#) with saving in [S.I. 1982/1656, Sch. 2](#)

### *Prior redundancy*

- 5 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 eleventh week before the expected week of confinement,
- then, for the purposes of Part VI of this Act 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.

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### PART III

#### GENERAL

##### *Dismissal during period of absence*

- 6 (1) This paragraph applies to the dismissal of an employee who is under 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 eleventh week before the expected week of confinement.
- (2) For the purposes of sub-paragraph (1), 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 section 48 applies.
- (3) In the application of Part V of this Act to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, sections [F16[F17]58(3) to (12)], 58A], 64, 65, 66, 141(2), [F18]and 144(2)].
- (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.

#### **Textual Amendments**

**F16** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 24**

**F17** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 27(3)** with saving in [S.I. 1982/1656](#), **Sch. 2**

**F18** "and 144(2)" substituted by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), **s. 7(4)(b)**

##### *Power to amend or modify*

- 7 (1) The Secretary of State may by order amend the provisions of this Schedule and section 48 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.

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## SCHEDULE 3

Section 50.

### RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

#### *Preliminary*

- 1 In this Schedule the “period of notice” means the period of notice required by section 49(1) or, as the case may be, section 49(2).

#### *Employments for which there are normal working hours*

- 2 (1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours—
- the employee is ready and willing to work but no work is provided for him by his employer; or
  - the employee is incapable of work because of sickness or injury; or
  - the employee is absent from work in accordance with the terms of his employment relating to holidays.

then the employer shall be liable to pay the employee for the part of normal working hours covered by paragraphs (a), (b) and (c) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week’s pay by the number of normal working hours.

- (2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice whether by way of sick pay [<sup>F19</sup>statutory sick pay], holiday pay or otherwise, shall go towards meeting the employer’s liability under this paragraph.
- (3) Where notice was given by the employee, the employer’s liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### **Textual Amendments**

**F19** Words inserted by [Social Security and Housing Benefits Act 1982 \(c. 24, SIF 113:1\)](#), [Sch. 2 para. 13](#)

#### *Employments for which there are no normal working hours*

- 3 (1) If an employee does not have normal working hours under the contract of employment in force in the period of notice the employer shall be liable to pay the employee for each week of the period of notice a sum not less than a week’s pay.
- (2) Subject to sub-paragraph (3), the employer’s obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week’s pay.
  - (3) Sub-paragraph (2) shall not apply—

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- (a) in respect of any period during which the employee is incapable of work because of sickness or injury, or
  - (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,
- and any payment made to an employee by his employer in respect of such a period, whether by way of sick pay [<sup>F20</sup>statutory sick pay], holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.
- (4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### Textual Amendments

**F20** Words inserted by [Social Security and Housing Benefits Act 1982 \(c. 24, SIF 113:1\)](#), [Sch. 2 para. 13](#)

#### *Sickness or industrial injury benefit*

- 4 (1) The following provisions of this paragraph shall have effect where the arrangements in force relating to the employment are such that—
- (a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and
  - (b) in calculating any payment so made to any such employee an amount representing, or treated as representing, sickness benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.
- (2) If during any part of the period of notice the employee is incapable of work because of sickness or injury, and—
- (a) one or more payments, by way of sick pay are made to him by the employer in respect of that part of the period of notice, and
  - (b) in calculating any such payment such an amount as is referred to in sub-paragraph (1)(b) is taken into account as therein mentioned,
- then for the purposes of this Schedule the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under paragraph 2 or paragraph 3 accordingly.

#### *Absence on leave granted at request of employee*

- 5 The employer shall not be liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee (including any period of time off taken in accordance with section 27, 28, 29 [<sup>F21</sup>31 or 31A]).

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### Textual Amendments

**F21** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 25](#)

### *Notice given before a strike*

- 6 No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

In this paragraph “strike” has the meaning given by paragraph 24 of Schedule 13.

### *Termination of employment during period of notice*

- 7 (1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.
- (2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment shall be due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

## SCHEDULE 4

Section 81.

### CALCULATION OF REDUNDANCY PAYMENTS

#### Modifications etc. (not altering text)

- C1** [Sch. 4](#) modified by [S.I. 1983/1160](#), [art. 3](#), [Sch. 2 para. 5](#)
- C2** [Sch. 4](#) modified by [S.I. 1986/379](#), [art. 3](#) and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), [ss. 178\(2\)\(b\)](#), [231\(7\)](#), [235\(6\)](#)
- C3** [Sch. 4](#) modified (13.1.1994) by [S.I. 1993/3167](#), [art. 3](#), [Sch. 2 para.4](#)  
[Sch. 4](#) modified (3.4.1995) by [1994 c. 19](#), [s. 44\(4\)](#) (with [ss. 54\(5\)\(7\)](#), [55\(5\)](#), [Sch. 17 paras. 22\(1\)](#), [23\(2\)](#); [S.I. 1995/852](#), [art. 7](#), [Sch. 3](#)

- 1 The amount of a redundancy payment to which an employee is entitled in any case shall, subject to the following provisions of this Schedule, be calculated by reference to the period, ending with the relevant date, during which he has been continuously employed.

- 2 Subject to paragraphs 3 and 4, the amount of the redundancy payment shall be calculated by reference to the period specified in paragraph 1 by starting at the end



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of that period and reckoning backwards the number of years of employment falling within that period, and allowing—

- (a) one and a half weeks' pay for each such year of employment <sup>F22</sup>in which the employee was not below the age of forty-one;
- (b) one week's pay for each such year of employment (not falling within the preceding sub-paragraph) <sup>F22</sup>in which the employee was not below the age of twenty-two; and
- (c) half a week's pay for each such year of employment not falling within either of the preceding sub-paragraphs.

#### Textual Amendments

**F22** Words repealed with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, Sch. 2 para. 6(5), [Sch. 4](#)

- 3 Where, in reckoning the number of years of employment in accordance with paragraph 2, twenty years of employment have been reckoned, no account shall be taken of any year of employment earlier than those twenty years.
- 4 (1) Where in the case of an employee the relevant date is after the specified anniversary, the amount of the redundancy payment, calculated in accordance with the preceding provisions of this Schedule, shall be reduced by the appropriate fraction.  
(2) In this paragraph [<sup>F23</sup>“the specified anniversary”, in relation to an employee, means the sixty-fourth anniversary of the day of his birth,] and “the appropriate fraction” means the fraction of which—
  - (a) the numerator is the number of whole months, reckoned from the specified anniversary, in the period beginning with that anniversary and ending with the relevant date, and
  - (b) the denominator is twelve.

#### Textual Amendments

**F23** Words substituted (with saving) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 16(2), 29(6), [Sch. 9 paras. 3, 4](#)

- 5 For the purposes of any provision contained in Part VI whereby an industrial tribunal may determine that an employer shall be liable to pay to an employee either—
  - (a) the whole of the redundancy payment to which the employee would have been entitled apart from another provision therein mentioned, or
  - (b) such part of that redundancy payment as the tribunal thinks fit,the preceding provisions of this Schedule shall apply as if in those provisions any reference to the amount of a redundancy payment were a reference to the amount of redundancy payment to which the employee would have been so entitled.

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6 The preceding provisions of this Schedule shall have effect without prejudice to the operation of any regulations made under section 98 whereby the amount of a redundancy payment, or part of a redundancy payment, may be reduced.

F24

7

**Textual Amendments**

**F24** Sch. 4 para. 7 repealed with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 6(5), Sch. 4

F25 SCHEDULE 5

**Textual Amendments**

**F25** Sch. 5 repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10

F30 SCHEDULE 6

**Textual Amendments**

**F30** Sch. 6 repealed by Employment Act 1989 (c. 38, SIF 43:1), ss. 17(6), 29(4)(6), Sch. 7 Pt. II, Sch. 9 para. 4(1)

SCHEDULE 7

Section 106.

CALCULATION OF PAYMENTS TO EMPLOYEES OUT OF REDUNDANCY FUND

- 1 (1) Where the employer's payment is a redundancy payment, the sum referred to in section 106(2) is a sum equal to the amount of that payment.
- (2) Where, in a case falling within [F31section 106(1B)], the employer's payment is part of a redundancy payment, the sum referred to in section 106(2) is a sum equal to the amount of that part of the payment.

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#### Textual Amendments

**F31** “section 106(1B)” substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(6), [Sch. 6 para. 25\(2\)](#), [Sch. 9 para. 4\(1\)](#)

- [<sup>F32</sup> (1) Where the employer’s payment is not a redundancy payment or part of a redundancy payment, the sum referred to in section 106(2) is a sum equal to—
- (a) the amount of the employers’ payment, or
  - (b) the amount of the relevant redundancy payment, whichever is less.
- (2) The reference in sub-paragraph (1)(b) to the amount of the relevant redundancy payment is a reference to the amount of the redundancy payment which the employer would have been liable to pay to the employee if—
- (a) the order in force in respect of the agreement as mentioned in section 106(1A)(b) had not been made;
  - (b) the circumstances in which the employer’s payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances;
  - (c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee’s contract of employment is treated for the purposes of the agreement as having taken effect; and
  - (d) in so far as the provisions of the agreement which relate to the following matters, that is to say—
    - (i) the circumstances in which the continuity of an employee’s period of employment is to be treated as broken, and
    - (ii) the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Schedule 13 as to those matters, those provisions of the agreement were substituted for those provisions of that Schedule.
- (3) In sub-paragraph (2) “the agreement” means the agreement falling within section 106(1A)(b) by reference to which the employer’s payment is payable.]

#### Textual Amendments

**F32** [Sch. 7 para. 2](#) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(6), [Sch. 6 para. 25\(2\)](#), [Sch. 9 para. 4\(1\)](#)

## SCHEDULE 8

Section 117.

### EMPLOYEES PAID BY VIRTUE OF STATUTORY PROVISION BY PERSON OTHER THAN EMPLOYER

**Provision of Act**

**Reference to be construed as reference  
to the person responsible for paying the  
remuneration**

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Section 81(1)	The second reference to the employer.
Section 85(3)	The reference to the employer in paragraph (b).
Section 85(4)	The last reference to the employer.
Section 88(4)	The reference to the employer.
Section 89(1)	The first reference to the employer.
Section 89(4) and (5)	The references to the employer.
Section 92(3)	The second reference to the employer.
Section 98(3)	The reference to the employer.
Section 101(1)	The reference to the employer.
Section 102	The references to the employer.
F33	The references to the employer.
F33	
Section 106	
Section 107(1)	The reference to the employer.
Section 108(1)	The references to the employer.
F34	
Section 110(2)	The third reference to the employer.
Section 110(5) and (6)	The reference to the employer.
Schedule 13, paragraph 12(3)	The references to the employer.

#### **Textual Amendments**

**F33** Entry relating to section 104 of the Act repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4)(6), **Sch. 7 Pt. II**

**F34** “, (2), (4) and (5)” repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4)(6), **Sch. 7 Pt. II**

## 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—

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- (a) for determining by which tribunal any appeal, question [<sup>F35</sup>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;
  - [<sup>F36</sup>(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;
  - [<sup>F37</sup>(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 <sup>M3</sup>Equal Pay Act 1970 to prepare a report;]
  - (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

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- (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 confinement,
- 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.
- (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) of the <sup>M4</sup>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.
- (6) The regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send 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) [<sup>F38</sup>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 [<sup>F39</sup>level 3 on the standard scale].

#### Textual Amendments

**F35** Word inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 26](#)

**F36** [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\(1\)](#)

**F37** [Para. 1\(2\)\(ga\)](#) inserted by [S.I. 1983/1794, reg. 3\(3\)](#)

*Status: Point in time view as at 01/04/1991.*

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

**F38** Words inserted by S.I. 1983/1794, **reg. 3(3)**

**F39** 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**)

#### Marginal Citations

**M3** 1970 c. 41.

**M4** 1974 c. 52.

[<sup>F40</sup>1A (1) The regulations may include provision—

- (a) for authorising a preliminary consideration of proceedings before an industrial tribunal (“a pre-hearing review”) to be carried out—
  - (i) by such person as may be determined by or in accordance with the regulations, or
  - (ii) if so determined in accordance with the regulations, by the tribunal itself; 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 person or 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

**F40** Sch. 9 para. 1A inserted by Employment Act 1989 (c. 38, SIF 43:1), ss. 20, 29(6), **Sch. 9 para. 4(1)**

VALID FROM 15/10/1993

[<sup>F41</sup>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.]

*Status: Point in time view as at 01/04/1991.*

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

#### Textual Amendments

**F41** 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 under section 24 or 67 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) 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.

#### *Payment of certain sums into Redundancy Fund*

F42<sub>3</sub>

#### Textual Amendments

**F42** 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 <sup>M5</sup>Arbitration Act 1950 shall not apply to any proceedings before an industrial tribunal.

#### Marginal Citations

**M5** 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,
- 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.



*Status: Point in time view as at 01/04/1991.*

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

### *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*

- [<sup>F43</sup>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 <sup>M6</sup>Judgments Act 1838 as that enactment has effect from time to time.]

#### **Textual Amendments**

**F43** Para. 6A inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 7](#)

#### **Marginal Citations**

**M6** 1838 c. 110.

### *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.

*Status: Point in time view as at 01/04/1991.*

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

- [<sup>F44</sup>(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

**F44** Para. 7(2) substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 27](#)

#### *Constitution of tribunals for certain cases*

- 8 An industrial tribunal hearing an application under section 77 or 79 may consist of a President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by a President to hear such applications.

#### *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 [<sup>F45</sup>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

**F45** Words substituted by virtue of [S.I. 1981/1670, arts. 2\(2\), 3\(5\)](#)

#### *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 [<sup>F46</sup>and to any persons required for the purposes of section 2A(1)(b) of the <sup>M7</sup>Equal Pay Act 1970 to prepare reports] such fees and allowances as he may with the consent of [<sup>F47</sup>the Treasury] determine and may pay to any other persons such allowances as he may with the consent of [<sup>F47</sup>the Treasury] determine for the purposes of, or in connection with, their attendance at industrial tribunals.

*Status: Point in time view as at 01/04/1991.*

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

**Textual Amendments**

- F46** Words inserted by S.I. 1983/1794, **reg. 3(4)**  
**F47** Words substituted by virtue of S.I. 1981/1670, **arts. 2(2), 3(5)**

**Marginal Citations**

- M7** 1970 c. 41.

*F48* .....

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**Textual Amendments**

- F48** Sch. 9 para. 11 repealed by Judicial Pensions Act 1981 (c. 20, SIF 71:2), **Sch. 4**

SCHEDULE 10

Section 130.

STATUTORY PROVISIONS RELATING TO REFEREES AND BOARDS OF REFEREES

1 Regulations under section 37 of the <sup>M8</sup>Coal Industry Nationalisation Act 1946.

**Marginal Citations**

- M8** 1946 c. 59.

2 Regulations under section 67 of the <sup>M9</sup>National Insurance Act 1946.

**Marginal Citations**

- M9** 1946 c. 67.

3 Regulations under section 68 of the <sup>M10</sup>National Health Service Act 1946, and orders under section 11(9) or section 31(5) of that Act.

**Marginal Citations**

- M10** 1946 c. 81.

4 Regulations under section 67 of the <sup>M11</sup>National Health Service (Scotland) Act 1947.

*Status: Point in time view as at 01/04/1991.*

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

**Marginal Citations**

**M11** 1947 c. 27.

5 Regulations under Schedule 5 to the <sup>M12</sup>Fire Services Act 1947.

**Marginal Citations**

**M12** 1947 c. 41.

6 Regulations under section 101 of the <sup>M13</sup>Transport Act 1947.

**Marginal Citations**

**M13** 1947 c. 49.

F49<sup>7</sup>

**Textual Amendments**

**F49** Sch. 10 paras. 7, 17 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35, Sch. 18

8 Regulations under section 140 of the <sup>M14</sup>Local Government Act 1948, and such regulations as applied by any local Act, whether passed before or after this Act.

**Marginal Citations**

**M14** 1948 c. 26.

9 Regulations under subsection (1) or subsection (2) of section 60 of the <sup>M15</sup>National Assistance Act 1948.

**Marginal Citations**

**M15** 1948 c. 29.

10 Rules under section 3 of the <sup>M16</sup>Superannuation (Miscellaneous Provisions) Act 1948.

*Status: Point in time view as at 01/04/1991.*

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

**Marginal Citations**

**M16** 1948 c. 33.

- 11 Subsections (3) and (5) of section 58 of the <sup>M17</sup>Gas Act 1948, and regulations under section 60 of that Act.

**Marginal Citations**

**M17** 1948 c. 67.

- 12 Subsection (4) of section 6 of the <sup>M18</sup>Commonwealth Telegraphs Act 1949 and regulations under that section.

**Marginal Citations**

**M18** 1949 c. 39.

- 13 Regulations under section 25 of the <sup>M19</sup>Prevention of Damage by Pests Act 1949.

**Marginal Citations**

**M19** 1949 c. 55.

- 14 Regulations under section 42 of the <sup>M20</sup>Justices of the Peace Act 1949.

**Marginal Citations**

**M20** 1949 c. 101.

- 15 Regulations under section 27 or section 28 of the <sup>M21</sup>Transport Act 1953.

**Marginal Citations**

**M21** 1953 c. 13.

- 16 Regulations under section 24 of the <sup>M22</sup>Iron and Steel Act 1953.

*Status: Point in time view as at 01/04/1991.*

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

**Marginal Citations**

**M22** 1953 c. 15.

**F50** 17

**Textual Amendments**

**F50** Sch. 10 paras. 7, 17 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35, Sch. 18

18 Orders under section 23 of the <sup>M23</sup>Local Government Act 1958 and regulations under section 60 of that Act.

**Marginal Citations**

**M23** 1958 c. 55.

19 Regulations under section 1 of the <sup>M24</sup>Water Officers Compensation Act 1960.

**Marginal Citations**

**M24** 1960 c. 15.

20 Regulations under section 18(6) of the <sup>M25</sup>Land Drainage Act 1961.

**Marginal Citations**

**M25** 1961 c. 48.

21 Subsection (6) of section 74 of the <sup>M26</sup>Transport Act 1962 and orders under that section, regulations under section 81 of that Act, and paragraph 17(3) of Schedule 7 to that Act.

**Marginal Citations**

**M26** 1962 c. 46.

*Status: Point in time view as at 01/04/1991.*

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

- 22 Orders under section 84 of the <sup>M27</sup>London Government Act 1963 and regulations under section 85 of that Act.

**Marginal Citations**

**M27** 1963 c. 33.

- 23 Regulations under section 106 of the <sup>M28</sup>Water Resources Act 1963.

**Marginal Citations**

**M28** 1963 c. 38.

SCHEDULE 11

Section 135.

EMPLOYMENT APPEAL TRIBUNAL

**PART I**

PROVISIONS AS TO MEMBERSHIP, SITTINGS, PROCEEDINGS AND POWERS

*Tenure of office of appointed members of Appeal Tribunal*

- 1 Subject to paragraphs 2 and 3, a member of the Appeal Tribunal appointed by Her Majesty under section 135(2)(c) (in this Schedule referred to as an “appointed member”) shall hold and vacate office as such a member in accordance with the terms of his appointment.
- 2 An appointed member may at any time resign his membership by notice in writing addressed to the Lord Chancellor and the Secretary of State.
- 3 (1) If the Lord Chancellor, after consultation with the Secretary of State, is satisfied that an appointed member—
- (a) has been absent from sittings of the Appeal Tribunal for a period longer than six consecutive months without the permission of the President of the Tribunal; or
  - (b) has become bankrupt or made an arrangement with his creditors; or
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member;
- the Lord Chancellor may declare his office as a member to be vacant and shall notify the declaration in such manner as the Lord Chancellor thinks fit; and thereupon the office shall become vacant.

*Status: Point in time view as at 01/04/1991.*

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

- (2) In the application of this paragraph to Scotland for the references in sub-paragraph (1) (b) to a member's having become bankrupt and to a member's having made an arrangement with his creditors there shall be substituted respectively references to a member's estate having been sequestrated and to a member's having made a trust deed for behoof of his creditors or a composition contract.

#### *Temporary membership of Appeal Tribunal*

- 4 At any time when the office of President of the Appeal Tribunal is vacant, or the person holding that office is temporarily absent or otherwise unable to act as President of the Tribunal, the Lord Chancellor may nominate another judge nominated under section 135(2)(a) to act temporarily in his place.
- 5 At any time when a judge of the Appeal Tribunal nominated by the Lord Chancellor is temporarily absent or otherwise unable to act as a judge of that Tribunal, the Lord Chancellor may nominate another person who is qualified to be nominated under section 135(2)(a) to act temporarily in his place.
- 6 At any time when a judge of the Appeal Tribunal nominated by the Lord President of the Court of Session is temporarily absent or otherwise unable to act as a judge of the Appeal Tribunal, the Lord President may nominate another judge of the Court of Session to act temporarily in his place.
- 7 At any time when an appointed member is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal, the Lord Chancellor and the Secretary of State may jointly appoint a person appearing to them to have the qualifications for appointment as such a member to act temporarily in his place.
- 8 (1) At any time when it appears to the Lord Chancellor that it is expedient to do so in order to facilitate in England and Wales the disposal of business in the Appeal Tribunal, he may appoint a qualified person to be a temporary additional judge of the Tribunal during such period or on such occasions as the Lord Chancellor thinks fit.
- (2) In this paragraph “qualified person” means a person qualified for appointment as a puisne judge of the High Court under section [F5110 of the M29Supreme Court Act 1981] or any person who has held office as a judge of the Court of Appeal or of the High Court.

#### **Textual Amendments**

**F51** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), [Sch. 5](#)

#### **Marginal Citations**

**M29** [1981 c. 54.](#)



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*Status: Point in time view as at 01/04/1991.*

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

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- 9 A person appointed to act temporarily in place of the President or any other member of the Appeal Tribunal shall, when so acting, have all the functions of the person in whose place he acts.
- 10 A person appointed to be a temporary additional judge of the Appeal Tribunal shall have all the functions of a judge nominated under section 135(2)(a).
- 11 No judge shall be nominated under paragraph 5 or 6 except with his consent.

#### *Organisation and sittings of Appeal Tribunal*

- 12 The Appeal Tribunal shall be a superior court of record and shall have an official seal which shall be judicially noticed.
- 13 The Appeal Tribunal shall have a central office in London.
- 14 The Appeal Tribunal may sit at any time and in any place in Great Britain.
- 15 The Appeal Tribunal may sit, in accordance with directions given by the President of the Tribunal, either as a single tribunal or in two or more divisions concurrently.
- 16 With the consent of the parties to any proceedings before the Appeal Tribunal, the proceedings may be heard by a judge and one appointed member, but, in default of such consent, any proceedings before the Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there are equal numbers of persons whose experience is as representatives of employers and whose experience is as representatives of workers.

#### *Rules*

- 17 (1) The Lord Chancellor, after consultation with the Lord President of the Court of Session, shall make rules with respect to proceedings before the Appeal Tribunal.  
(2) Subject to those rules, the Tribunal shall have power to regulate its own procedure.
- 18 Without prejudice to the generality of paragraph 17 the rules may include provision—  
(a) with respect to the manner in which an appeal may be brought and the time within which it may be brought;

*Status: Point in time view as at 01/04/1991.*

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

- [<sup>F52</sup>(aa) with respect to the manner in which an application to the Appeal Tribunal under section 5 of the Employment Act 1980 [<sup>F53</sup>or section 5 of the Employment Act 1988] may be made;]
- (b) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
- (c) enabling the Appeal Tribunal to sit in private for the purpose of hearing evidence to hear which an industrial tribunal may sit in private by virtue of paragraph 1 of Schedule 9.
- [<sup>F54</sup>(d) for the registration and proof of any award made on an application to the Appeal Tribunal under section 5 of the Employment Act 1980 [<sup>F53</sup>or section 5 of the Employment Act 1988].]
- [<sup>F55</sup>(e) for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16.]

#### Textual Amendments

- F52** Para. 18(aa) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 28](#)
- F53** Words inserted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33(1), [Sch. 3 Pt. I para. 2\(5\)](#)
- F54** Para. 18(d) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 28](#)
- F55** Para. 18(e) inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 8](#)

VALID FROM 30/08/1993

- [<sup>F56</sup>18A(1) Without prejudice to the generality of paragraph 17 the rules may, as respects proceedings to which this paragraph applies, 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; and
- (b) for cases involving allegations of sexual misconduct, enabling the Appeal Tribunal, on the application of any party to the 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 Appeal Tribunal.
- (2) This paragraph applies to—
- (a) proceedings on an appeal against a decision of an industrial tribunal to make, or not to make, a restricted reporting order; and
- (b) proceedings on an appeal against any interlocutory decision of an industrial tribunal in proceedings in which the industrial tribunal has made a restricted reporting order which it has not revoked.
- (3) 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—

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- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (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.
- (4) Where a person is charged with an offence under sub-paragraph (3) 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.
- (5) Where an offence under sub-paragraph (3) 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.
- (6) In relation to a body corporate whose affairs are managed by its members “director”, in sub-paragraph (5), means a member of the body corporate.
- (7) In this 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 <sup>M30</sup>Criminal Procedure (Scotland) Act 1975, section 4 of the <sup>M31</sup>Sexual Offences (Amendment) Act 1976 or the <sup>M32</sup>Sexual Offences (Amendment) Act 1992 applies (offences under the <sup>M33</sup>Sexual Offences Act 1956, the <sup>M34</sup>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.]

*Status: Point in time view as at 01/04/1991.*

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

#### Textual Amendments

**F56** Sch. 11 para. 18A inserted (30.8.1993) by 1993 c. 19, s. 41(1); S.I. 1993/1908, art. 2(1), Sch.1

#### Marginal Citations

**M30** 1975 c. 21.

**M31** 1976 c. 82.

**M32** 1992 c. 34.

**M33** 1956 c. 69.

**M34** 1976 c. 67.

- 19 (1) Without prejudice to the generality of paragraph 17 the rules may empower the Appeal Tribunal to order a party to any proceedings before the Tribunal to pay to any other party to the proceedings the whole or part of the costs or expenses incurred by that other party in connection with the proceedings, where in the opinion of the Tribunal—
- (a) the proceedings were unnecessary, improper or vexatious, or
  - (b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings.
- (2) Except as provided by sub-paragraph (1), the rules shall not enable the Appeal Tribunal to order the payment of costs or expenses by any party to proceedings before the Tribunal.
- 20 Any person may appear before the Appeal 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.

#### *Powers of Tribunal*

- 21 (1) For the purpose of disposing of an appeal the Appeal Tribunal may exercise any powers of the body or officer from whom the appeal was brought or may remit the case to that body or officer.
- (2) Any decision or award of the Appeal Tribunal on an appeal shall have the same effect and may be enforced in the same manner as a decision or award of a body or officer from whom the appeal was brought.
- [<sup>F57</sup>21A(1) Any sum payable in England and Wales in pursuance of an award of the Appeal Tribunal under section 5 of the Employment Act 1980 [<sup>F58</sup>or section 5 of the Employment Act 1988] which has been registered in accordance with the rules 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.
- (2) Any order by the Appeal Tribunal for the payment in Scotland of any sum in pursuance of such an award (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

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

bearing a warrant for execution issued by the Sheriff Court of any Sheriffdom in Scotland.]

[<sup>F59</sup>(3) Any sum payable in pursuance of an award of the Appeal Tribunal under section 5 of the <sup>M35</sup>Employment Act 1980 [<sup>F58</sup>or section 5 of the Employment Act 1988] shall be treated as if it were a sum payable in pursuance of a decision of an industrial tribunal for the purposes of paragraph 6A of Schedule 9 (interest on industrial tribunal awards).]

#### Textual Amendments

**F57** Para. 21A inserted by Employment Act 1980 (c. 42, SIF 43:5), Sch. 1 para. 29

**F58** Words inserted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), Sch. 3 Pt. I para. 2(5)

**F59** Para. 21A(3) added by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 9

#### Marginal Citations

**M35** 1980 c. 42.

- 22 (1) The Appeal Tribunal shall, in relation to the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority—
- (a) in England and Wales, as the High Court,
  - (b) in Scotland, as the Court of Session.
- (2) No person shall be punished for contempt of the Tribunal except by, or with the consent of, a judge.

- 23 (1)
- <sup>F60</sup>(2) A magistrates' court shall not remit the whole or any part of a fine imposed by the Appeal Tribunal except with the consent of a judge who is a member of the Tribunal.
- (3) This paragraph does not extend to Scotland.

#### Textual Amendments

**F60** Sch. 11 para. 23(1) repealed by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 16(6)

#### Staff

- 24 The Secretary of State may appoint such officers and servants of the Appeal Tribunal as he may determine, subject to the approval of [<sup>F61</sup>the Treasury] as to numbers and as to terms and conditions of service.

#### Textual Amendments

**F61** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

*Status: Point in time view as at 01/04/1991.*

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## PART II

### SUPPLEMENTARY

#### *Remuneration and allowances*

- 25 The Secretary of State shall pay the appointed members of the Appeal Tribunal, the persons appointed to act temporarily as appointed members, and the officers and servants of the Tribunal such remuneration and such travelling and other allowances as he may with the approval of [<sup>F62</sup>the Treasury] determine.

#### Textual Amendments

**F62** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

- 26 A person appointed to be a temporary additional judge of the Appeal Tribunal shall be paid such remuneration and allowances as the Lord Chancellor may, with the approval of [<sup>F63</sup>the Treasury] determine.

#### Textual Amendments

**F63** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

#### *Pensions, etc.*

- 27 If the Secretary of State determines, with the approval of [<sup>F64</sup>the Treasury], that this paragraph shall apply in the case of an appointed member, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of that member on his retirement or death or make that member such payments towards the provision of such a pension, allowance or gratuity as the Secretary of State may with the like approval determine.

#### Textual Amendments

**F64** Words substituted by virtue of S.I. 1981/1670, arts. 2(1)(c), 3(5)

- 28 Where a person ceases to be an appointed member otherwise than on his retirement or death and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may, with the approval of [<sup>F65</sup>the Treasury], determine.

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### Textual Amendments

**F65** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(d), 3(5)**

## SCHEDULE 12

Section 150.

### DEATH OF EMPLOYEE OR EMPLOYER

#### Modifications etc. (not altering text)

- C4** Sch. 12 extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 22**  
Sch. 12 extended (*prosp.*) by 1995 c. 26, ss. **46(4)(c)**, 180(1) (with s. 121(5))  
Sch. 12 extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 22**; S.I. 1994/1841, **art. 2**

## PART I

### GENERAL

#### *Introductory*

- 1 In this Schedule “the relevant provisions” means Part I (so far as it relates to itemised pay statements), section 53 and Parts II, III, V, VI and VII of this Act and this Schedule.

#### *Institution or continuance of tribunal proceedings*

- 2 Where an employee or employer has died, tribunal proceedings arising under any of the relevant provisions may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.
- 3 (1) If there is no personal representative of a deceased employee, tribunal proceedings arising under any of the relevant provisions (or proceedings to enforce a tribunal award made in any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the industrial tribunal may appoint being either—
- (a) a person authorised by the employee to act in connection with the proceedings before the employee’s death; or
  - (b) the widower, widow, child, father, mother, brother or sister of the deceased employee,
- and references in this Schedule to a personal representative shall be construed as including such a person.

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- (2) In such a case any award made by the industrial tribunal shall be in such terms and shall be enforceable in such manner as may be provided by regulations made by the Secretary of State.
- 4 (1) Subject to any specific provision of this Schedule to the contrary, in relation to an employee or employer who has died—
- (a) any reference in the relevant provisions to the doing of anything by or in relation to an employee or employer shall be construed as including a reference to the doing of that thing by or in relation to any personal representative of the deceased employee or employer; and
- (b) any reference in the said provisions to a thing required or authorised to be done by or in relation to an employee or employer shall be construed as including a reference to any thing which, in accordance with any such provision as modified by this Schedule (including sub-paragraph (a)), is required or authorised to be done by or in relation to any personal representative of the deceased employee or employer.
- (2) Nothing in this paragraph shall prevent references in the relevant provisions to a successor of an employer from including a personal representative of a deceased employer.

*Rights and liabilities accruing after death*

- 5 Any right arising under any of the relevant provisions as modified by this Schedule shall, if it had not accrued before the death of the employee in question, nevertheless devolve as if it had so accrued.
- 6 Where by virtue of any of the relevant provisions as modified by this Schedule a personal representative of a deceased employer is liable to pay any amount and that liability had not accrued before the death of the employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before the death.

**PART II**

UNFAIR DISMISSAL

*Introductory*

- 7 In this Part of this Schedule “the unfair dismissal provisions” means Part V of this Act and this Schedule.



*Status: Point in time view as at 01/04/1991.*

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### *Death during notice period*

8 Where an employer has given notice to an employee to terminate his contract of employment and before that termination the employee or the employer dies, the unfair dismissal provisions shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

[<sup>F669</sup> Where—

- (a) the employee’s contract of employment has been terminated; and
- (b) by virtue of subsection (5) or (6) of section 55 a date later than the effective date of termination as defined in subsection (4) of that section is to be treated as the effective date of termination for the purposes of certain of the unfair dismissal provisions; and
- (c) before that later date the employer or the employee dies;

subsection (5) or, as the case may be, (6) shall have effect as if the notice referred to in that section as required by section 49 would have expired on the date of the death.]

#### **Textual Amendments**

**F66** Para. 9 substituted by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 28** with saving in S.I. 1982/1656, **Sch. 2**

### *Remedies for unfair dismissal*

10 Where an employee has died, then, unless an order for reinstatement or re-engagement has already been made, section 69 shall not apply; and accordingly if the industrial tribunal finds that the grounds of the complaint are well-founded the case shall be treated as falling within section 68(2) as a case in which no order is made under section 69.

11 If an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

- (a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, section 71(2) and (3) shall apply and an award shall be made under section 71(2)(b) unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order;
- (b) if there has been no such refusal, section 71(1) shall apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee’s death as it would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

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### PART III

#### REDUNDANCY PAYMENTS: DEATH OF EMPLOYER

##### *Introductory*

- 12 The provisions of this Part shall have effect in relation to an employee where his employer (in this Part referred to as “the deceased employer”) dies.
- 13 Section 94 shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.

##### *Dismissal*

- 14 Where by virtue of subsection (1) of section 93 the death of the deceased employer is to be treated for the purposes of Part VI of this Act as a termination by him of the contract of employment, section 84 shall have effect subject to the following modifications:—
- (a) for subsection (1) there shall be substituted the following subsection—
- “(1) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer, then, subject to subsections (3) and (6), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract.”
- (b) in subsection (2), paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;
- (c) in subsections (5) and (6), references to the employer shall be construed as references to the personal representative of the deceased employer.
- 15 Where by reason of the death of the deceased employer the employee is treated for the purpose of Part VI of this Act as having been dismissed by him, section 82 shall have effect subject to the following modifications—
- (a) for subsections (3) there shall be substituted the following subsection—
- “(3) If a personal representative of the deceased employer makes an employee an offer (whether in writing or not) to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect not later than eight weeks after the death of the deceased employer the provisions of subsections (5) and (6) shall have effect.”
- (b) in subsection (4), paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;

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- (c) in subsection (5), the references to the employer shall be construed as a reference to the personal representative of the deceased employer.

- 16 For the purposes of section 82 as modified by paragraph 15—
- (a) an offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted as the employer for the deceased employer, and
  - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable, or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 84.

*Lay-off and short-time*

- 17 Where the employee has before the death of the deceased employer been laid off or kept on short-time for one or more weeks, but has not given to the deceased employer notice of intention to claim, then if after the death of the deceased employer—
- (a) his contract of employment is renewed, or he is re-engaged under a new contract by a personal representative of the deceased employer, and
  - (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,
- the provisions of sections 88 and 89 shall apply as if the week in which the deceased employer died and the first week of the employee's employment by the personal representative were consecutive weeks, and any reference in those sections to four weeks or thirteen weeks shall be construed accordingly.
- 18 The provisions of paragraph 19 or (as the case may be) paragraph 20 shall have effect where the employee has given to the deceased employer notice of intention to claim, and—
- (a) the deceased employer has died before the end of the next four weeks after the service of that notice, and
  - (b) the employee has not terminated the contract of employment by notice expiring before the death of the deceased employer.
- 19 If in the circumstances specified in paragraph 18 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, and he is not re-engaged under a new contract by such a personal representative before the end of those four weeks, section 88(1) and (2) and (in relation to subsection (1) of that section) section 89(2) and (3) shall apply as if—
- (a) the deceased employer had not died, and
  - (b) the employee had terminated the contract of employment by a week's notice (or, if under the contract he is required to give more than a week's

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notice to terminate the contract, he had terminated it by the minimum notice which he is so required to give) expiring at the end of those four weeks, but sections 88(3) and (4) and 89(1) and (4) shall not apply.

- 20 (1) The provisions of this paragraph shall have effect where, in the circumstances specified in paragraph 18, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those four weeks, and—
- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks, and
  - (b) he is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement.
- (2) Where the conditions specified in sub-paragraph (1) are fulfilled, sections 88 and 89 shall apply as if—
- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in sub-paragraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer, and
  - (b) each of the periods specified in paragraphs (a) and (b) of subsection (5) of section 89 were extended by any week or weeks any part of which was after the death of the deceased employer and before the date on which the renewal or re-engagement took effect.

*Continuity of period of employment*

- 21 For the purposes of the application, in accordance with section 100(1), of any provisions of Part VI of this Act in relation to an employee who was employed as a domestic servant in a private household, any reference to a personal representative in—
- (a) this Part of this Schedule, or
  - (b) paragraph 17 of Schedule 13,
- shall be construed as including a reference to any person to whom, otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.

**PART IV**

REDUNDANCY PAYMENTS: DEATH OF EMPLOYEE

- 22 (1) Where an employer has given notice to an employee to terminate his contract of employment, and before that notice expires the employee dies, the provisions of Part VI of this Act shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

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- (2) Where the employee's contract of employment has been terminated by the employer and by virtue of section 90(3) a date later than the relevant date as defined by subsection (1) of that section is to be treated as the relevant date for the purposes of certain provisions of Part VI of this Act, and before that later date the employee dies, section 90(3) shall have effect as if the notice referred to in that subsection as required to be given by an employer would have expired on the employee's death.
- 23 (1) Where an employer has given notice to an employee to terminate his contract of employment, and has offered to renew his contract of employment, or to re-engage him under a new contract, then if—
- (a) the employee dies without having either accepted or refused the offer, and
  - (b) the offer has not been withdrawn before his death,
- section 82 shall apply as if for the words “the employee unreasonably refuses” there were substituted the words “it would have been unreasonable on the part of the employee to refuse”.
- (2) Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period the employee dies without having terminated or having given notice to terminate the contract, subsection (6) of that section shall apply as if for the words from “and during the trial period” to “terminated” there were substituted the words “and it would have been unreasonable for the employee, during the trial period referred to in section 84, to terminate or give notice to terminate the contract”.
- 24 Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period he gives notice to terminate the contract but dies before the expiry of that notice, sections 82(6) and 84(6)(a) shall have effect as if the notice had expired and the contract had thereby been terminated on the date of the employee's death.
- 25 (1) Where, in the circumstances specified in paragraphs (a) and (b) of subsection (1) of section 85, the employee dies before the notice given by him under paragraph (b) of that subsection is due to expire and before the employer has given him notice under subsection (3) of that section, subsection (4) of that section shall apply as if the employer had given him such notice and he had not complied with it.
- (2) Where, in the said circumstances, the employee dies before his notice given under section 85(1)(b) is due to expire but after the employer has given him notice under subsection (3) of section 85, subsections (3) and (4) of that section shall apply as if the circumstances were that the employee had not died, but did not comply with the last-mentioned notice.
- 26 (1) Where an employee has given notice of intention to claim and dies before he has given notice to terminate his contract of employment and before the period allowed for the purposes of subsection (2)(a) of section 88 has expired, the said subsection (2) (a) shall not apply.
- (2) Where an employee, who has given notice of intention to claim, dies within seven days after the service of that notice, and before the employer has given a counter-

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notice, the provisions of sections 88 and 89 shall apply as if the employer had given a counter-notice within those seven days.

- (3) In this paragraph “counter-notice” has the same meaning as in section 89(1).
- 27 (1) In relation to the making of a claim by a personal representative of a deceased employee who dies before the end of the period of six months beginning with the relevant date, subsection (1) of section 101 shall apply with the substitution for the words “six months”, of the words “one year”.
- (2) In relation to the making of a claim by a personal representative of a deceased employee who dies after the end of the period of six months beginning with the relevant date and before the end of the following period of six months, subsection (2) of section 101 shall apply with the substitution for the words “six months”, of the words “one year”.
- 28 In relation to any case where, under any provision contained in Part VI of this Act as modified by this Schedule, an industrial tribunal has power to determine that an employer shall be liable to pay to a personal representative of a deceased employee either—
- (a) the whole of a redundancy payment to which he would have been entitled apart from another provision therein mentioned, or
  - (b) such part of such a redundancy payment as the tribunal thinks fit,
- any reference in paragraph 5 to a right shall be construed as including a reference to any right to receive the whole or part of a redundancy payment if the tribunal determines that the employer shall be liable to pay it.

## SCHEDULE 13

Section 151.

### COMPUTATION OF PERIOD OF EMPLOYMENT

#### Modifications etc. (not altering text)

- C5** Sch. 13 extended by Employment Protection Act 1975 (c.71, SIF 43:1), s. 119(7) (as amended by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 6(1); modified by Crown Agents Act 1979 (c. 43, SIF 57), s. 1, Sch. 1 para. 13(3), New Towns Act 1981 (c. 64, SIF 123:3), s. 54(5), Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), Sch. 13 para. 8(4) and Civil Aviation Act 1982 (c. 16, SIF 9), s. 22, Sch. 3 para. 6(1)
- C6** Sch. 13 modified (E.W.) by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), s. 11(5), Local Government Act 1985 (c. 51, SIF 81:1), s. 54(2), Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), s. 5(2), Sch. 4 para. 7(2)(b) and National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 7(2)(d)
- C7** Sch. 13 modified by Pilotage Act 1987 (c. 21, SIF 111), s. 25(6)(a), Education Reform Act 1988 (c. 40, SIF 41:1), ss. 174(2), 231(7), 235(6), Electricity Act 1989 (c. 29, SIF 44:1), ss. 56(3), 104, 105, 112(3), Sch. 14 para. 4(1), Sch. 15 para. 4(1), Sch. 17 para. 35(1) and National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), s. 12C (as added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 31)

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**C8** Sch. 13 modified (S.) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), s. 339(1), [Sch. 22 Pt. II para. 10\(2\)\(b\)](#)

### *Preliminary*

- [<sup>F67</sup>1 (1) Except so far as otherwise provided by the following provisions of this Schedule, a week which does not count under paragraphs 3 to 12 breaks the continuity of the period of employment.
- (2) The provisions of this Schedule apply, subject to paragraph 14, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside Great Britain, or was excluded by or under this Act from any right conferred by this Act.
- (3) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.]

### **Textual Amendments**

**F67** [Para. 1](#) substituted for paras. 1, 2 with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 7\(2\)](#)

### *Normal working weeks*

- 3 Any week in which the employee is employed for sixteen hours or more shall count in computing a period of employment.

### *Employment governed by contract*

- 4 Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment which normally involves employment for sixteen hours or more weekly shall count in computing a period of employment.
- 5 (1) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly and, but for that change, the later weeks would count in computing a period of employment, or would not break the continuity of a period of employment, then those later weeks shall count in computing a period of employment or, as the case may be, shall not break the continuity of a period of employment, notwithstanding that change.
- (2) Not more than twenty-six weeks shall count under this paragraph between any two periods falling under paragraph 4, and in computing the said figure of twenty-six weeks no account shall be taken of any week which counts in computing a period of

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employment, or does not break the continuity of a period of employment, otherwise than by virtue of this paragraph.

- 6
- (1) An employee whose relations with his employer are governed, or have been from time to time governed, by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he satisfies the condition referred to in sub-paragraph (2), be treated for the purposes of this Schedule (apart from this paragraph) as if his contract normally involved employment for sixteen hours or more weekly, and had at all times at which there was a contract during the period of employment of five years or more referred to in sub-paragraph (2) normally involved employment for sixteen hours or more weekly.
  - (2) Sub-paragraph (1) shall apply if the employee, on the date by reference to which the length of any period of employment falls to be ascertained in accordance with the provisions of this Schedule, has been continuously employed within the meaning of sub-paragraph (3) for a period of five years or more.
  - (3) In computing for the purposes of sub-paragraph (2) an employee's period of employment, the provisions of this Schedule (apart from this paragraph) shall apply but as if, in paragraphs 3 and 4, for the words "sixteen hours" wherever they occur, there were substituted the words "eight hours".
- 7
- (1) If an employee has, at any time during the relevant period of employment, been continuously employed for a period which qualifies him for any right which requires a qualifying period of continuous employment computed in accordance with this Schedule, then he shall be regarded for the purposes of qualifying for that right as continuing to satisfy that requirement until the condition referred to in sub-paragraph (3) occurs.
  - (2) In this paragraph the relevant period of employment means the period of employment ending on the date by reference to which the length of any period of employment falls to be ascertained which would be continuous (in accordance with the provisions of this Schedule) if at all relevant times the employee's relations with the employer had been governed by a contract of employment which normally involved employment for sixteen hours or more weekly.
  - (3) The condition which defeats the operation of sub-paragraph (1) is that in a week subsequent to the time at which the employee qualified as referred to in that sub-paragraph—
    - (a) his relations with his employer are governed by a contract of employment which normally involves employment for less than eight hours weekly; and
    - (b) he is employed in that week for less than sixteen hours.
  - (4) If, in a case in which an employee is entitled to any right by virtue of sub-paragraph (1), it is necessary for the purpose of ascertaining the amount of his entitlement to determine for what period he has been continuously employed, he shall be regarded for that purpose as having been continuously employed throughout the relevant period.



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*Power to amend paragraphs 3 to 7 by order*

- [<sup>F68</sup> (1) The Secretary of State may by order—
- (a) amend paragraphs 3 to 7 so as to substitute for each of the references to sixteen hours a reference to such other number of hours less than sixteen as may be specified in the order; and
  - (b) amend paragraphs 6 and 7 so as to substitute for each of the references to eight hours a reference to such other number of hours less than eight as may be specified in the order.
- (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.
- (3) The provisions of any order under this paragraph shall apply to periods before the order takes effect as they apply to later periods.]

**Textual Amendments**

**F68** Para. 8 substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 7\(3\)](#)

*Periods in which there is no contract of employment*

- 9 (1) If in any week the employee is, for the whole or part of the week—
- (a) incapable of work in consequence of sickness or injury, or
  - (b) absent from work on account of a temporary cessation of work, or
  - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes, or
  - (d) absent from work wholly or partly because of pregnancy or confinement,
- that week shall, notwithstanding that it does not fall under paragraph 3, 4 or 5, count as a period of employment.
- (2) Not more than twenty-six weeks shall count under paragraph (a) or, subject to paragraph 10, under paragraph (d) of sub-paragraph (1) between any periods falling under paragraph 3, 4 or 5.

*Maternity*

- 10 If an employee returns to work in accordance with [<sup>F69</sup>section 45(1) or in pursuance of an offer made in the circumstances described in section 56A(2)] after a period of absence from work wholly or partly occasioned by pregnancy or confinement, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 3, 4 or 5.

*Status: Point in time view as at 01/04/1991.*

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

### Textual Amendments

**F69** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 31](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

### *Intervals in employment where section 55(5) or 84(1) or 90(3) applies*

- 11 (1) In ascertaining, for the purposes of section 64(1)(a), [F70 64A(1)] and of section 73(3), the period for which an employee has been continuously employed, where by virtue of section 55(5) [F71 or, as the case may be, (6)] a date is treated as the effective date of termination which is later than the effective date of termination as defined by section 55(4), the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not otherwise count under this Schedule.
- (2) Where by virtue of section 84(1) an employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, then, in determining for the purposes of section 81(1) or Schedule 4 whether he has been continuously employed for the requisite period, the period of that interval shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).
- (3) Where by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of section 81(4) which is later than the relevant date as defined by section 90(1), then in determining for the purposes of section 81(1) or Schedule 4 whether the employee has been continuously employed for the requisite period, the period of the interval between those two dates shall count as a period of employment except in so far as it is to be disregarded under paragraphs 12 to 14 (notwithstanding that it does not otherwise count under this Schedule).

### Textual Amendments

**F70** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 32](#)

**F71** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 29](#) with saving in [S.I. 1982/1656, Sch. 2](#)

### *Payment of previous redundancy payment or equivalent payment*

- 12 (1) Where the conditions mentioned in sub-paragraph (2)(a) or (2)(b) are fulfilled in relation to a person, then in determining, for the purposes of section 81(1) or Schedule 4, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—
- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in sub-paragraph (2)(a) or, as the case may be, sub-paragraph (2)(b); or

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*Status: Point in time view as at 01/04/1991.*

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

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(b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment, and accordingly no account shall be taken of any time before that date.

(2) Sub-paragraph (1) has effect—

(a) where—

- (i) a redundancy payment is paid to an employee, whether in respect of dismissal or in respect of lay-off or short-time; and
- (ii) the contract of employment under which he was employed (in this section referred to as “the previous contract”) is renewed, whether by the same or another employer, or he is re-engaged under a new contract of employment, whether by the same or another employer; and
- (iii) the circumstances of the renewal of re-engagement are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement; or

(b) where—

- (i) a payment has been made, whether in respect of the termination of any person’s employment or in respect of lay-off or short-time, either in accordance with any provisions of a scheme under section 1 of the <sup>M36</sup>Superannuation Act 1972 or in accordance with any such arrangements as are mentioned in section 111(3); and
- (ii) he commences new, or renewed, employment; and
- (iii) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 81(1) or Schedule 4 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.

(3) For the purposes of this paragraph, a redundancy payment shall be treated as having been paid if—

- (a) the whole of the payment has been paid to the employee by the employer, or, in a case where a tribunal has determined that the employer is liable to pay part (but not the whole) of the redundancy payment, that part of the redundancy payment has been paid in full to the employee by the employer, or
- (b) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 106.

*Status: Point in time view as at 01/04/1991.*

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

**Modifications etc. (not altering text)**

**C9** Sch. 13 para. 12 excluded (4.10.1993) by S.I. 1993/2165, reg. 5(1)

**Marginal Citations**

**M36** 1972 c. 11.

F72<sup>13</sup>

**Textual Amendments**

**F72** Sch. 13 para. 13 repealed by Employment Act 1982 (c. 46, SIF 43:5), Sch. 4

*Redundancy payments: employment wholly or partly abroad*

- 14 (1) In computing in relation to an employee the period specified in section 81(4) or the period specified in paragraph 1 of Schedule 4, a week of employment shall not count if—
- (a) the employee was employed outside Great Britain during the whole or part of that week, and
  - (b) he was not during that week, or during the corresponding contribution week,
    - (i) where the week is a week of employment after 1st June 1976, an employed earner for the purposes of the <sup>M37</sup>Social Security Act 1975 in respect of whom a secondary Class 1 contribution was payable under that Act; or
    - (ii) where the week is a week of employment after 6th April 1975 and before 1st June 1976, an employed earner for the purposes of the Social Security Act 1975; or
    - (iii) where the week is a week of employment before 6th April 1975, an employee in respect of whom an employer's contribution was payable in respect of the corresponding contribution week;
 whether or not the contribution mentioned in paragraph (i) or (iii) of this sub-paragraph was in fact paid.
- (2) For the purposes of the application of sub-paragraph (1) to a week of employment where the corresponding contribution week began before 5th July 1948, an employer's contribution shall be treated as payable as mentioned in sub-paragraph (1) if such a contribution would have been so payable if the statutory provisions relating to national insurance which were in force on 5th July 1948 had been in force in that contribution week.
- (3) Where by virtue of sub-paragraph (1) a week of employment does not count in computing such a period as is mentioned in that sub-paragraph, the continuity of that period shall not be broken by reason only that that week of employment does not count in computing that period.

*Status: Point in time view as at 01/04/1991.*

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

- (4) Any question arising under this paragraph whether—
- (a) an employer’s contribution was or would have been payable, as mentioned in sub-paragraph (1) or (2), or
  - (b) a person was an employed earner for the purposes of the <sup>M38</sup>Social Security Act 1975 and if so whether a secondary Class 1 contribution was payable in respect of him under that Act,
- shall be determined by the Secretary of State; and any legislation (including regulations) as to the determination of questions which under that Act the Secretary of State is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the High Court or the Court of Session) shall apply to the determination of any question by the Secretary of State under this paragraph.
- (5) In this paragraph “employer’s contribution” has the same meaning as in the <sup>M39</sup>National Insurance Act 1965, and “corresponding contribution week”, in relation to a week of employment, means a contribution week (within the meaning of the said Act of 1965) of which so much as falls within the period beginning with midnight between Sunday and Monday and ending with Saturday also falls within that week of employment.
- (6) The provisions of this paragraph shall not apply in relation to a person who is employed as a master or seaman in a British ship and is ordinarily resident in Great Britain.

**Marginal Citations**

**M37** 1975 c. 14.

**M38** 1975 c. 14.

**M39** 1965 c. 61.

*Industrial disputes*

- 15 (1) A week shall not count under paragraph 3, 4, 5, 9 or 10 if in that week, or any part of that week, the employee takes part in a strike.
- (2) The continuity of an employee’s period of employment is not broken by a week which does not count under this Schedule, and which begins after 5th July 1964 if in that week, or any part of that week, the employee takes part in a strike.
- (3) Sub-paragraph (2) applies whether or not the week would, apart from sub-paragraph (1), have counted under this Schedule.
- (4) The continuity of the period of employment is not broken by a week which begins after 5th July 1964 and which does not count under this Schedule, if in that week, or any part of that week, the employee is absent from work because of a lock-out by the employer.

*Status: Point in time view as at 01/04/1991.*

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

*Reinstatement after service with the armed forces, etc.*

- 16 (1) If a person who is entitled to apply to his former employer under [<sup>F73</sup>the Reserve Forces (Safeguard of Employment) Act 1985] enters the employment of that employer not later than the end of the six month period mentioned in [<sup>F74</sup>section 1(4)(b)] of that Act, his previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in the said period of six months shall be treated as continuous.

<sup>F75</sup>(2) .....

**Textual Amendments**

- F73** Words substituted by Reserve Forces (Safeguard of Employment) Act 1985 (c. 17, SIF 7:2), s. 21, **Sch. 4 para. 6(a)**
- F74** “section 1(4)(b)” substituted by Reserve Forces (Safeguard of Employment) Act 1985 (c. 17, SIF 7:2), **s. 21(2)(a)**, Sch. 4 para. 6(b)
- F75** **Sch. 13 para. 16(2)** repealed by Reserve Forces (Safeguard of Employment) Act 1985 (c. 17, SIF 7:2), **s. 21(2)(b)**, Sch. 5

*Change of employer*

- 17 (1) Subject to this paragraph and [<sup>F76</sup>paragraphs 18 and 18A], the foregoing provisions of this Schedule relate only to employment by the one employer.
- (2) If a trade or business or an undertaking (whether or not it be an undertaking established by or under an Act of Parliament) is transferred from one person to another, the period of employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.
- (3) If by or under an Act of Parliament, whether public or local and whether passed before or after this Act, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer, the employee’s period of employment at the time when the modification takes effect shall count as a period of employment with the second-mentioned body corporate, and the change of employer shall not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased, the employee’s period of employment at the time of the death shall count as a period of employment with the employer’s personal representatives or trustees, and the death shall not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person, the employee’s period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees after the change, and the change shall not break the continuity of the period of employment.

*Status: Point in time view as at 01/04/1991.*

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

#### Textual Amendments

**F76** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 2\(2\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

#### Modifications etc. (not altering text)

**C10** [Para. 17\(2\)](#) modified by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), s. 22, [Sch. 3 para. 8](#)

**C11** [Sch. 13 para. 17\(3\)](#) modified by [Trustee Savings Banks Act 1985 \(c. 58, SIF 110\)](#), s. 3(7)

**C12** [Sch. 13 para. 17\(3\)](#) modified (1.9.1992) by [Museums and Galleries Act 1992 \(c. 44\)](#), s. 1(7); [S.I. 1992/1874](#), [art.2](#).

18 If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters his employment is an associated employer of the first-mentioned employer, the employee's period of employment at that time shall count as a period of employment with the second-mentioned employer and the change of employer shall not break the continuity of the period of employment.

[<sup>F77</sup>18A(1) If an employee of one of the employers described in sub-paragraph (2) is taken into the employment of another of those employers, his period of employment at the time of the change of employer shall count as a period of employment with the second employer and the change shall not break the continuity of the period of employment.

(2) The employers referred to in sub-paragraph (1) are the governors of the schools maintained by a local education authority and that authority.]

#### Textual Amendments

**F77** [Para. 18A](#) inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 2\(3\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

VALID FROM 28/06/1995

[<sup>F78</sup>18B(1) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer shall count as a period of employment with the second employer and the change shall not break the continuity of the period of employment.

(2) For the purposes of sub-paragraph (1) employment is relevant employment if it is employment of a description—

- (a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and
- (b) which is specified in an order made by the Secretary of State.

(3) The following are health service employers for the purposes of this paragraph—

*Status: Point in time view as at 01/04/1991.*

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- (a) Health Authorities established under section 8 of the National Health Service Act 1977,
- (b) Special Health Authorities established under section 11 of that Act,
- (c) National Health Service trusts established under Part I of the <sup>M40</sup>National Health Service and Community Care Act 1990,
- (d) the Dental Practice Board, and
- (e) the Public Health Laboratory Service Board.]

#### Textual Amendments

**F78** Sch. 13 para. 18B inserted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. III para. 103(3)(b)

#### Marginal Citations

**M40** 1990 c.19

### *Crown employment*

- 19 (1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.
- (2) In this paragraph, subject to sub-paragraph (3), "Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, . . . <sup>F79</sup>but does apply to employment by any association established for the purposes of [<sup>F80</sup>Part VI of the <sup>M41</sup>Reserve Forces Act 1980].
- (4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee's relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.
- (5) The reference in paragraph 17(2) to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown, a government department, or any other officer or body performing functions on behalf of the Crown.

#### Textual Amendments

**F79** Words repealed with saving by Armed Forces Act 1981 (c. 55, SIF 7:1), s. 28(2), Sch. 5 Pt. I

**F80** Words substituted by Reserve Forces Act 1980 (c. 9, SIF 7:2), Sch. 9 para. 17

#### Modifications etc. (not altering text)

**C13** Para. 19 extended by Crown Agents Act 1979 (c. 43, SIF 57) Sch. 1 para. 13(3)



*Status: Point in time view as at 01/04/1991.*

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

#### Marginal Citations

M41 1980 c. 9.

#### *Reinstatement or re-engagement of dismissed employee*

- 20 (1) Regulations made by the Secretary of State may make provision—
- (a) for preserving the continuity of a person's period of employment for the purposes of this Schedule or for the purposes of this Schedule as applied by or under any other enactment specified in the regulations, or
  - (b) for modifying or excluding the operation of paragraph 12 subject to the recovery of any such payment as is mentioned in sub-paragraph (2) of that paragraph,
- in cases where, in consequence of action to which sub-paragraph (2) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.
- (2) This sub-paragraph applies to any action taken in relation to the dismissal of an employee which consists—
- (a) of the presentation by him of a complaint under section 67, or
  - (b) of his making a claim in accordance with a dismissal procedures agreement designated by an order under section 65, or
  - (c) of any action taken by a conciliation officer under section 134(3).

#### *Employment before the commencement of Act*

- 21 Save as otherwise expressly provided, the provisions of this Schedule apply to periods before it comes into force as they apply to later periods.
- 22 If, in any week beginning before 6th July 1964, the employee was, for the whole or any part of the week, absent from work—
- (a) because he was taking part in a strike, or
  - (b) because of a lock-out by the employer,
- the week shall count as a period of employment.
- 23 Without prejudice to the foregoing provisions of this Schedule, any week which counted as a period of employment in the computation of a period of employment in accordance with the <sup>M42</sup>Contracts of Employment Act 1972 whether for the purposes of that Act, the <sup>M43</sup>Redundancy Payments Act 1965, the <sup>M44</sup>Trade Union and Labour Relations Act 1974 or the <sup>M45</sup>Employment Protection Act 1975, shall count as a period of employment for the purposes of this Act, and any week which did not break the continuity of a person's employment for the purposes of those Acts shall not break the continuity of a period of employment for the purposes of this Act.

*Status: Point in time view as at 01/04/1991.*

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

#### **Marginal Citations**

- M42** 1972 c. 53.  
**M43** 1965 c. 62.  
**M44** 1974 c. 52.  
**M45** 1975 c. 71.

#### *Interpretation*

- 24 (1) In this Schedule, unless the context otherwise requires,—
- “lock-out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;
- “strike” means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;
- “week” means a week ending with Saturday.
- (2) For the purposes of this Schedule the hours of employment of an employee who is required by the terms of his employment to live on the premises where he works shall be the hours during which he is on duty or during which his services may be required.

#### SCHEDULE 14

Section 152.

#### CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

#### **Modifications etc. (not altering text)**

- C14** Sch. 14 applied (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\), ss. 190\(5\), 302](#) (with ss. 283-286).
- C15** Sch. 14 applied (with modifications) (30.8.1993) by [1992 c. 52, s. 158\(7\)](#) (as inserted (30.8.1993) by [1993 c. 19, s. 49\(1\)](#), [Sch. 7 para.21](#); [S.I. 1993/1908, art. 2\(1\)](#), [Sch. 1](#))

*Status: Point in time view as at 01/04/1991.*

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

## PART I

### NORMAL WORKING HOURS

#### Modifications etc. (not altering text)

**C16** Sch. 14 Pt. I (paras. 1-2) applied (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), **ss. 281(6)**, 302.

- 1 For the purposes of this Schedule the cases where there are normal working hours include cases where the employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, and, subject to paragraph 2, in those cases that fixed number of hours shall be the normal working hours.
- 2 If in such a case—
  - (a) the contract of employment fixes the number, or the minimum number, of hours of employment in the said week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and
  - (b) that number or minimum number of hours exceeds the number of hours without overtime.that number or minimum number of hours (and not the number of hours without overtime) shall be the normal working hours.

## PART II

### A WEEK'S PAY

#### Modifications etc. (not altering text)

**C17** Sch. 14 Pt. II (paras. 3–12) modified by [S.I. 1986/151](#), **arts. 2, 5**, [S.I. 1986/379](#), art. 3, [S.I. 1989/1139](#), **reg. 5** and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), **ss. 178(2)(b)**, 231(7), 235(6)

#### *Employments for which there are normal working hours*

- 3 (1) This paragraph and paragraph 4 shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date.
  - (2) Subject to paragraph 4, if an employee's remuneration for employment in normal working hours, whether by the hour or week or other period, does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

*Status: Point in time view as at 01/04/1991.*

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

- (3) Subject to paragraph 4, if sub-paragraph (2) does not apply, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks—
- (a) where the calculation date is the last day of a week, ending with that week;
  - (b) in any other case, ending with the last complete week before the calculation date.
- (4) References in this paragraph to remuneration varying with the amount of work done include references to remuneration which may include any commission or similar payment which varies in amount.
- 4 (1) This paragraph shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date, and he is required under that contract to work during those hours on days of the week or at times of the day which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of the said days or times.
- (2) The amount of a week's pay shall be the amount of remuneration for the average weekly number of normal working hours (calculated in accordance with sub-paragraph (3)) at the average hourly rate of remuneration (calculated in accordance with sub-paragraph (4)).
- (3) The average number of weekly hours shall be calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks—
- (a) where the calculation date is the last day of a week, ending with that week;
  - (b) in any other case, ending with the last complete week before the calculation date.
- (4) The average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks—
- (a) where the calculation date is the last day of a week, ending with that week;
  - (b) in any other case, ending with the last complete week before the calculation date.
- 5 (1) For the purpose of paragraphs 3 and 4, in arriving at the average hourly rate of remuneration only the hours when the employee was working, and only the remuneration payable for, or apportionable to, those hours of work, shall be brought in; and if for any of the twelve weeks mentioned in either of those paragraphs no such remuneration was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring the number of weeks of which account is taken up to twelve.
- (2) Where, in arriving at the said hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and the amount of that remuneration was greater than it would have been if the work had been done in normal working hours, account shall be taken of that remuneration as if—

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*Status:* Point in time view as at 01/04/1991.

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

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- (a) the work had been done in normal working hours; and
  - (b) the amount of that remuneration had been reduced accordingly.
- (3) For the purpose of the application of sub-paragraph (2) to a case falling within paragraph 2, sub-paragraph (2) shall be construed as if for the words “had been done in normal working hours”, in each place where those words occur, there were substituted the words “had been done in normal working hours falling within the number of hours without overtime”.

*Employments for which there are no normal working hours*

- 6
- (1) This paragraph shall apply if there are no normal working hours for an employee when employed under the contract of employment in force on the calculation date.
  - (2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of twelve weeks—
    - (a) where the calculation date is the last day of a week, ending with that week;
    - (b) in any other case, ending with the last complete week before the calculation date.
  - (3) In arriving at the said average weekly rate of remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring the number of weeks of which account is taken up to twelve.

*The calculation date*

- 7
- (1) For the purposes of this Part, the calculation date is,—
    - (a) where the calculation is for the purpose of section 14, the day in respect of which the guarantee payment is payable, or, where an employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force;
    - (b) where the calculation is for the purposes of section 21, the day before that on which the suspension referred to in section 19(1) begins;
    - (c) where the calculation is for the purposes of section 31, the day on which the employer's notice was given;
    - [<sup>F81</sup>(cc) where the calculation is for the purposes of section 31A, the day of the appointment concerned;]
    - (d) ..... <sup>F82</sup>
    - (e) where the calculation is for the purposes of Schedule 3, the day immediately preceding the first day of the period of notice required by section 49(1) or, as the case may be, section 49(2);
    - (f) where the calculation is for the purposes of section 53 or 71(2)(b) and the dismissal was with notice, the date on which the employer's notice was given;
    - (g) where the calculation is for the purposes of section 53 or 71(2)(b) but sub-paragraph (f) does not apply, the effective date of termination;

*Status: Point in time view as at 01/04/1991.*

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

- (h) where the calculation is for the purposes of section 73 and by virtue of section 55(5) [<sup>F83</sup>or, as the case may be, (6)] a date is to be treated as the effective date of termination for the purposes of section 73(3) which is later than the effective date of termination as defined by section 55(4), the effective date of termination as defined by section 55(4);
  - (i) where the calculation is for the purposes of section 73 but [<sup>F84</sup>neither subsection (5) nor subsection (6) of section 55 applies] in relation to the date of termination, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not);
  - (j) where the calculation is for the purposes of section 87(2), the day immediately preceding the first of the four or, as the case may be, the six weeks referred to in section 88(1);
  - (k) where the calculation is for the purposes of Schedule 4 and by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of certain provisions of this Act which is later than the relevant date as defined by section 90(1), the relevant date as defined by section 90(1);
  - (l) where the calculation is for the purposes of Schedule 4 but sub-paragraph (k) does not apply, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not).
- (2) The conditions referred to in sub-paragraphs (1)(i) and (l) are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 49 and that the notice expired on the effective date of termination or on the relevant date, as the case may be.

#### Textual Amendments

- F81** Para. 7(1)(cc) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 33**
- F82** Sch. 14 para. 7(1)(d) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), **Sch. 11**
- F83** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 30(2)(a)** with saving in [S.I. 1982/1656](#), **Sch. 2**
- F84** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 30(2)(b)** with saving in [S.I. 1982/1656](#), **Sch. 2**

#### *Maximum amount of week's pay for certain purposes*

- 8 (1) Notwithstanding the preceding provisions of this Schedule, the amount of a week's pay for the purpose of calculating—
- (a) an additional award of compensation (within the meaning of section 71(2)(b)), shall not exceed [<sup>F85</sup>£198.00];
  - (b) a basic award of compensation (within the meaning of section 72) shall not exceed [<sup>F85</sup>£198.00];
  - (c) a redundancy payment shall not exceed [<sup>F85</sup>£198.00].
- (2) The Secretary of State may after a review under section 148 vary the limit referred to in sub-paragraph (1)(a) or (b) or (c) by an order made in accordance with that section.

*Status: Point in time view as at 01/04/1991.*

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

- (3) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this sub-paragraph, as defined by section 55(5) [<sup>F86</sup>or, as the case may be, (6)], falls after the order comes into operation, notwithstanding that the effective date of termination, as defined by section 55(4), for the purposes of other provisions of this Act falls before the order comes into operation.
- (4) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the relevant date for the purposes of this sub-paragraph falls after the order comes into operation, notwithstanding that the relevant date for the purposes of other provisions of this Act falls before the order comes into operation.

#### Textual Amendments

- F85** Words in [Schedule 14 para. 8\(1\)\(a\)\(b\)\(c\)](#) substituted (1.4.1991) by virtue of [S.I. 1991/464, art.2](#) (with effect as specified in [art.3](#)) (which S.I. is revoked (1.4.1992) by [S.I. 1992/312, art. 1\(2\)](#) (with [art. 3](#))).
- F86** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\), Sch. 3 para. 30\(3\)](#) with saving in [S.I. 1982/1656, Sch. 2](#)

#### Supplemental

- 9 In any case in which an employee has not been employed for a sufficient period to enable a calculation to be made under any of the foregoing provisions of this Part, the amount of a week's pay shall be an amount which fairly represents a week's pay; and in determining that amount the tribunal shall apply as nearly as may be such of the foregoing provisions of this Part as it considers appropriate, and may have regard to such of the following considerations as it thinks fit, that is to say—
- (a) any remuneration received by the employee in respect of the employment in question;
  - (b) the amount offered to the employee as remuneration in respect of the employment in question;
  - (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer;
  - (d) the remuneration received by other persons engaged in relevant comparable employment with other employers;
- 10 In arriving at an average hourly rate or average weekly rate of remuneration under this Part account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Schedule 13, a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer.

*Status: Point in time view as at 01/04/1991.*

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

**Modifications etc. (not altering text)**

**C18** Para. 10 modified by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), [Sch. 3 para. 6\(3\)\(5\)\(6\)](#)

- 11 Where under this Part account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, then the remuneration or other payments shall be apportioned in such manner as may be just.
- 12 The Secretary of State may by regulations provide that in prescribed cases the amount of a week's pay shall be calculated in such manner as the regulations may prescribe.

SCHEDULE 15

Section 159.

TRANSITIONAL PROVISIONS AND SAVINGS

*General*

- 1 So far as anything done or treated as done under or for the purposes of any enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under or for the purposes of that provision.
- 2 Where any period of time specified in an enactment repealed by this Act is current immediately before the corresponding provision of this Act comes into force, this Act shall have effect as if the corresponding provision had been in force when that period began to run.
- 3 Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.
- 4 Any reference in an enactment or document, whether express or implied, to—
- (a) an enactment which is re-enacted in a corresponding provision of this Act;
  - (b) an enactment replaced or amended by a provision of the <sup>M46</sup>Employment Protection Act 1975 which is re-enacted in a corresponding provision of this Act;
  - (c) an enactment in the <sup>M47</sup>Industrial Relations Act 1971 which was re-enacted with or without amendment in a corresponding provision in Schedule 1 to the <sup>M48</sup>Trade Union and Labour Relations Act 1974 and that corresponding provision is re-enacted by a corresponding provision of this Act;



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shall, except so far as the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.

**Marginal Citations**

**M46** 1975 c. 71.

**M47** 1971 c. 72.

**M48** 1974 c. 52.

5 Paragraphs 1 to 4 have effect subject to the following provisions of this Schedule.

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F87<sup>6</sup>

**Textual Amendments**

**F87** Sch. 15 paras. 6, 9, 11, 16, 19 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

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F88<sup>7</sup>

**Textual Amendments**

**F88** Sch. 15 para. 7 repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), Sch. 11 and expressed to be repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

*Termination of employment*

8 Sections 49 and 50 apply in relation to any contract made before the commencement of this Act.

*Unfair dismissal*

.....  
F89<sup>9</sup>

**Textual Amendments**

**F89** Sch. 15 paras. 6, 9, 11, 16, 19 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

*Status: Point in time view as at 01/04/1991.*

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

- 10 (1) Section 54 does not apply to a dismissal from employment under a contract for a fixed term of two years or more, where the contract was made before 28th February 1972 and is not a contract of apprenticeship, and the dismissal consists only of the expiry of that term without its being renewed.
- (2) Sub-paragraph (1) in its application to an employee treated as unfairly dismissed by virtue of subsection (1) or (2) of section 60 shall have effect as if for the reference to 28th February 1972 there were substituted a reference to 1st June 1976.

### Redundancy

.....  
 F90<sub>11</sub>

#### Textual Amendments

**F90** Sch. 15 paras. 6, 9, 11, 16, 19 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

- 12 Section 81 shall not apply to an employee who immediately before the relevant date (within the meaning of section 90) is employed under a contract of employment for a fixed term of two years or more, if that contract was made before 6th December 1965 and is not a contract of apprenticeship.

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 F91<sub>13</sub>

#### Textual Amendments

**F91** Sch. 15 para. 13 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 pt. II and expressed to be repealed (16.1.1990) by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. II

.....  
 F92<sub>14</sub>

#### Textual Amendments

**F92** Sch. 15 para. 14 repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10

*Status: Point in time view as at 01/04/1991.*

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

### *Insolvency*

- 15 (1) Subject to sub-paragraph (2), the provisions of sections 122 and 123 shall apply in relation to an employer who becomes insolvent (within the meaning of section 127) after 19th April 1976, and shall in such a case apply to any debts mentioned in section 122 and to any unpaid relevant contribution (within the meaning of section 123), whether falling due before or after that date.
- (2) Section 122 shall have effect in relation to any case where the employer became insolvent before 1st February 1978 as if for each reference to £100 there were substituted a reference to £80.

.....  
F<sup>93</sup>16

#### **Textual Amendments**

**F93** Sch. 15 paras. 6, 9, 11, 16, 19 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

### *Computation of period of continuous employment*

- 17 For the purposes of the computation of a period of continuous employment falling to be made before 1st February 1977—
- (a) paragraphs 3 and 4 of Schedule 13 shall have effect as if for the word “sixteen” there were substituted the word “twenty-one”, and
- (b) paragraphs 5, 6 and 7 of that Schedule shall not apply.

### *Legal proceedings*

- 18 Notwithstanding the repeal of any enactment by this Act, the Employment Appeal Tribunal and the industrial tribunals may continue to exercise the jurisdiction conferred on them by or under any enactment which is repealed by this Act with respect to matters arising out of or in connection with the repealed enactments.

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F<sup>94</sup>19

#### **Textual Amendments**

**F94** Sch. 15 paras. 6, 9, 11, 16, 19 repealed (16.11.1989) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. II

*Status: Point in time view as at 01/04/1991.*

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

SCHEDULE 16

Section 159.

CONSEQUENTIAL AMENDMENTS

**Modifications etc. (not altering text)**

- C19** The text of Sch. 16 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991
- C20** Sch. 16: amendments and repeals to [Trade Union Act 1913 \(c. 30\)](#) extended (N.I.) (1.7.1992) by [S.I. 1992/807 \(N.I. 5\)](#), [art. 67\(2\)\(d\)](#); [S.R. 1992/212](#), [art. 2\(3\)](#).

.....  
F95<sub>1</sub>

**Textual Amendments**

- F95** Sch. 16 para. 1 repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. II](#)

*Trade Union Act 1913 (2 & 3 Geo. 5. c.30)*

- 2 In section 5A of the Trade Union Act 1913, for the words “section 88(2) of the Employment Protection Act 1975” there are substituted the words “section 136(2) of the Employment Protection (Consolidation) Act 1978”.

*Iron and Steel Act 1949 (12, 13 & 14 Geo. 6. c.72)*

- 3 (1) In section 40 of the Iron and Steel Act 1949, in subsection (3), for the words from “a tribunal” to the end there are substituted the words “an industrial tribunal.”.
- (2) In section 41 of the said Act of 1949, in subsection (3), for the words from “a tribunal” to the end there are substituted the words “an industrial tribunal”.

*Industrial Training Act 1964 (c.16)*

- 4 (1) ..... F96
- (2) For subsection (1) of section 12 of the said Act of 1964 there is substituted the following subsection—  
“(1) A person assessed to levy imposed under this Act may appeal to an industrial tribunal.”.

*Status: Point in time view as at 01/04/1991.*

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

**Textual Amendments**

**F96** Sch. 16 para. 4(1) repealed by [Industrial Training Act 1982 \(c. 10, SIF 43:1\)](#), [Sch. 4](#)

*Trade Union (Amalgamations, etc.) Act 1964 (c.24)*

- 5 In section 4(8) of the Trade Union (Amalgamations, etc.) Act 1964, for the words “section 88(2) of the Employment Protection Act 1975” there are substituted the words “section 136(2) of the Employment Protection (Consolidation) Act 1978”.

*Transport Act 1968 (c.73)*

- 6 In section 135(4)(b) of the Transport Act 1968, for the words from “a tribunal” to the end there are substituted the words “an industrial tribunal.”.

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F97<sup>7</sup>

**Textual Amendments**

**F97** Sch. 16 para. 7 repealed by [London Regional Transport Act 1984 \(c. 32, SIF 126\)](#), [s. 71\(3\)\(b\)](#), [Sch. 7](#)

*Post Office Act 1969 (c.48)*

- 8 In paragraph 33 of Schedule 9 to the Post Office Act 1969—
- (a) in sub-paragraph (1) for the words “sections 1 and 2 of the Contracts of Employment Act 1963, Schedule 1” there are substituted the words “sections 49 and 50 and Part VI of the Employment Protection (Consolidation) Act 1978, Schedule 13”, for the words “the said Act of 1963” there are substituted the words “the said Act of 1978”; and for the words “twenty-one hours” there are substituted the words “sixteen hours”;
  - (b) in sub-paragraph (2), for the words “Schedule 1 to the said Act of 1963” there are substituted the words “Schedule 13 to the said Act of 1978”;
  - (c) in sub-paragraph (3), for the words “7 of Schedule 2 to the said Act of 1963” there are substituted the words “10 of Schedule 14 to the said Act of 1978” and for the words from “paragraph 10” to the end there are substituted the words “Schedule 13 to that Act shall be construed as a reference to that Schedule as it has effect by virtue of sub-paragraph (1) above.”;
  - (d) in sub-paragraph (4), for the words “the said Act of 1963” and “Schedule 1” there are substituted respectively the words “the said Act of 1978” and “Schedule 13”;
  - (e) at the end there is added the following sub-paragraph—

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

“(6) This paragraph applies notwithstanding the provisions of section 99 of the Employment Protection (Consolidation) Act 1978.”.

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F989

**Textual Amendments**

**F98** Sch. 16 paras. 9, 14 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 31](#)

*Atomic Energy Authority Act 1971 (c.11)*

- 10 (1) In subsection (1) of section 10 of the Atomic Energy Authority Act 1971, for the words “section 22 of the Redundancy Payments Act 1965” there are substituted the words “section 93 of the Employment Protection (Consolidation) Act 1978”.
- (2) In subsection (2) of the said section 10—
- (a) for the words “section 4 of the Contracts of Employment Act 1963” there are substituted the words “sections 1 to 4 of the Employment Protection (Consolidation) Act 1978”;
  - (b) for the words “subsection (8) of that section”, in both places where they occur, there are substituted the words “section 5 of the said Act of 1978”;
  - (c) for the words “the said section 4” there are substituted the words “the said sections 1 to 4”.
- (3) In subsection (3) of the said section 10—
- (a) for the words “Section 4A(1) of the Contracts of Employment Act 1963” there are substituted the words “Section 11 of the Employment Protection (Consolidation) Act 1978”;
  - (b) for the words “section 4” there are substituted the words “sections 1 to 4”.
- (4) In subsection (4) of the said section 10—
- (a) for the words from the beginning to “Redundancy Payments Act 1965” there are substituted the words “For the purposes of Schedule 13 to the said Act of 1978 (computation of period of employment)”;
  - (b) for the words “paragraph 10” there are substituted the words “paragraph 17”.

*Tribunals and Inquiries Act (c.62)*

- 11 In section 13 of the Tribunals and Inquiries Act 1971, the following subsection is inserted after subsection (1)—
- “(1A) Subsection (1) of this section shall not apply in relation to proceedings before industrial tribunals which arise under or by virtue of any of the enactments mentioned in section 136(1) of the Employment Protection (Consolidation) Act 1978.”.

*Status: Point in time view as at 01/04/1991.*

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

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F99 12

**Textual Amendments**

**F99** Sch. 16 para. 12 repealed by Civil Aviation Act 1982 (c. 16, SIF 9), Sch. 16

*Transport Holding Company Act 1972 (c.14)*

- 13 (1) In section 2(3)(c) of the Transport Holding Company Act 1972, for the words from “a tribunal” to the end there are substituted the words “an industrial tribunal.”.
- (2) In section 2(7) of the said Act of 1972, for the words “a tribunal established under section 12 of the Industrial Training Act 1964” there are substituted the words “an industrial tribunal”.

.....  
F100 14

**Textual Amendments**

**F100** Sch. 16 paras. 9, 14 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 31

*British Library Act 1972 (c.54)*

- 15 In paragraph 13(3)(a) of the Schedule to the British Library Act 1972, for the words “the Acts of 1963 and 1965” there are substituted the words “the Employment Protection (Consolidation) Act 1978”.

*Gas Act 1972 (c.60)*

- 16 In section 36(5) of the Gas Act 1972, for the words from “a tribunal” to the end there are substituted the words “an industrial tribunal.”.

*Health and Safety at Work etc. Act 1974 (c.37)*

- 17 The following subsection is inserted in section 80 of the Health and Safety at Work etc. Act 1974 after subsection (2)—
- “(2A) Subsection (1) above shall apply to provisions in the Employment Protection (Consolidation) Act 1978 which re-enact provisions previously contained in the Redundancy Payments Act 1965, the Contracts of Employment Act 1972 or the Trade Union and Labour Relations Act 1974 as it applies to provisions contained in Acts passed before or in the same Session as this Act.”.

*Status: Point in time view as at 01/04/1991.*

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

*Trade Union and Labour Relations Act 1974 (c.52)*

- 18 In section 8(7) of the Trade Union and Labour Relations Act 1974, for the words “section 88(3) of the Employment Protection Act 1975” there are substituted the words “section 136(3) of the Employment Protection (Consolidation) Act 1978”.

*Social Security Act 1975 (c.14)*

- 19 (1) In section 114 of the Social Security Act 1975, the following subsection is inserted after subsection (2)—
- “(2A) It is hereby declared for the avoidance of doubt that the power to make regulations under subsection (1) above includes power to make regulations for the determination of any question arising as to the total or partial recoupment of unemployment benefit in pursuance of regulations under section 132 of the Employment Protection (Consolidation) Act 1978 (including any decision as to the amount of benefit).”.

(2) ..... **F101**

**Textual Amendments**

**F101** Sch. 16 para. 19(2) repealed by [Social Security Act 1980 \(c. 30, SIF 113:1\)](#), [Sch. 5 Pt. II](#)

*Sex Discrimination Act 1975 (c.65)*

- 20 (1) In section 65(2) of the Sex Discrimination Act 1975, for the words “paragraph 20 of Schedule 1 to the Trade Union and Labour Relations Act 1974” there are substituted the words “section 75 of the Employment Protection (Consolidation) Act 1978”.
- (2) In section 75(5)(c) of the said Act of 1975 for the words “paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974.” there are substituted the words “paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978.”.

*[<sup>F102</sup> Scottish Development Agency Act 1975 (c.69)]*

**Textual Amendments**

**F102** Sch. 16 para. 21 repealed (1.4.1991) by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 38(2), [Sch. 5 Pt. I](#)

- 21 In paragraph 6 of Schedule 3 to the Scottish Development Agency Act 1975, for sub-paragraphs (a), (b) and (c) there are substituted the words “the Employment Protection (Consolidation) Act 1978”.



*Status:* Point in time view as at 01/04/1991.

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

*Welsh Development Agency Act 1975 (c.70)*

- 22 In paragraph 7 of Schedule 2 to the Welsh Development Agency Act 1975, for sub-paragraphs (a), (b) and (c) there are substituted the words “the Employment Protection (Consolidation) Act 1978”.

*Employment Protection Act 1975 (c.71)*

- 23 (1) The Employment Protection Act 1975 shall be amended in accordance with the following provisions of this paragraph.

(2) In section 6(2)—

- (a) the words from “in relation to” to “that is to say” shall be omitted;
- (b) for the words “section 57 below; and” there are substituted the words “section 27 of the Employment Protection (Consolidation) Act 1978, including guidance on the circumstances in which a trade union official is to be permitted to take time off under that section in respect of duties connected with industrial action; and”;
- (c) for the words “section 58 below” there are substituted the words “section 28 of the said Act of 1978, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that section for trade union activities connected with industrial action.”.

(3) In section 8(9), for the words “section 88(3) below” there are substituted the words “section 136(3) of the Employment Protection (Consolidation) Act 1978”.

(4) In section 102(4), for the words “Schedule 2 to the Contracts of Employment Act 1972” there are substituted the words “Schedule 3 to the Employment Protection (Consolidation) Act 1978”, and for the words “section 1(1)” there are substituted the words “section 49(1)”.

(5) ..... F103

(6) In section 106(3), for the words from the beginning to “Redundancy Payments Act 1965” there are substituted the words “Schedule 14 to the Employment Protection (Consolidation) Act 1978 shall apply for the calculation of a week’s pay for the purposes of section 102 above, and, for the purposes of Part II of that Schedule, the calculation date is—

- (a) in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph 7(1)(k) or (l) of the said Schedule 14”.

(7) In section 108(1), for the words “paragraph 21 of Schedule 1 to the 1974 Act” there are substituted the words “paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978”.

(8) In section 119(1), for the words “Parts II and IV of this Act apply” there are substituted the words “Part IV of this Act applies”.

F104(9) .....

*Status: Point in time view as at 01/04/1991.*

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

- (10) In section 121(5), for the words “Schedule 3 to the Redundancy Payments Act 1965” there are substituted the words “Schedule 5 to the Employment Protection (Consolidation) Act 1978”.
- (11) In section 121(6) and (7), for the words “section 41(3) of the Redundancy Payments Act 1965” there are substituted the words “section 111(3) of the Employment Protection (Consolidation) Act 1978”.
- (12) In section 125(1) for the words from the beginning to “Part III of that Schedule” there are substituted the words “The provisions of the 1974 Act specified in Part III of Schedule 16 to this Act”.
- (13) In section 126(1), for the words “paragraph 5 of Schedule 1 to the 1974 Act” there are substituted the words “section 55 of the Employment Protection (Consolidation) Act 1978”.

**Textual Amendments**  
**F103** Sch. 16 para. 23(5) repealed by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(2), [Sch. 5 Pt. I](#)  
**F104** Sch. 16 para. 23(9) repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#)

.....  
F105<sup>24</sup>

**Textual Amendments**  
**F105** Sch. 16 para. 24 repealed by [New Towns Act 1981 \(c. 64, SIF 123:3\)](#), [Sch. 13](#)

*Race Relations Act 1976 (c.74)*

- 25 (1) The Race Relations Act 1976 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 56(2) for the words “paragraph 20 of Schedule 1 to the Trade Union and Labour Relations Act 1974” there are substituted the words “section 75 of the Employment Protection (Consolidation) Act 1978”.
  - (3) In section 66(7) for the words “paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974” there are substituted the words “paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978”.
  - (4) In paragraph 11 of Schedule 2—
    - (a) in sub-paragraph (3) for the words “the Redundancy Payments Act 1965” there are substituted the words “Part VI of the Employment Protection (Consolidation) Act 1978”;
    - (b) for sub-paragraph (4)(a) and (b) there is substituted the following paragraph—
      - “(a) the Employment Protection (Consolidation) Act 1978 except Part VI of that Act;”.

*Status: Point in time view as at 01/04/1991.*

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

*Development of Rural Wales Act 1976 (c.75)*

26 In both paragraph 6 of Schedule 2 and paragraph 6 of Schedule 6 to the Development of Rural Wales Act 1976, for sub-paragraphs (a), (b) and (c) there are substituted the words “the Employment Protection (Consolidation) Act 1978”.

27 <sup>F106</sup>(1) .....

<sup>F107</sup>(2) .....

**Textual Amendments**

**F106** Sch. 16 para. 27(1) repealed by Dock Work Act 1989 (c. 13, SIF 43:1), s. 7(1), Sch. 1 Pt. I

**F107** Sch. 16 para. 27(2) repealed by Dock Work Act 1989 (c. 13, SIF 43:1), ss. 7(1), 8(2)(4), Sch. 1 Pt. II

*Aircraft and Shipbuilding Industries Act 1977 (c.3)*

28 In both section 49(10) and section 50(3)(b) of the Aircraft and Shipbuilding Industries Act 1977, for the words “a tribunal established under section 12 of the Industrial Training Act 1964 or, as the case may require” there are substituted the words “an industrial tribunal or, as the case may require, a tribunal established under”.

*Social Security (Miscellaneous Provisions) Act 1977 (c.5)*

29 In section 18 of the Social Security (Miscellaneous Provisions) Act 1977—  
(a) in subsection (1)(c), for “Act 1975” there shall be substituted “(Consolidation) Act 1978”;  
(b) in subsection (2)(a), for the words “section 43 of the Employment Protection Act 1975” there are substituted the words “section 40 of the Employment Protection (Consolidation) Act 1978”;  
(c) in subsection (2)(b), for “64(3)(a)” and “45(1)” there are substituted “122(3)(a)” and “42(1)” respectively;  
(d) in subsection (2)(e), for the words “that Act” there are substituted the words “the Employment Protection Act 1975”.

*New Towns (Scotland) Act 1977 (c.16)*

30 In section 3(6) of the New Towns (Scotland) Act 1977 for paragraphs (a), (b) and (c) there are substituted the words “Parts I, IV, V and VI of the Employment Protection (Consolidation) Act 1978”.

*Status: Point in time view as at 01/04/1991.*

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

**Textual Amendments**

**F108** Sch. 16 para. 31 repealed by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 3, **Sch. 1 Pt. I**

F109<sup>32</sup>

**Textual Amendments**

**F109** Sch. 16 para. 32 repealed by [Housing and Building Control Act 1984 \(c. 29, SIF 61\)](#), s. 61(2), **Sch. 12 Pt. I**

F110<sup>33</sup>

**Textual Amendments**

**F110** Sch. 16 para. 33 repealed by [Statute Law \(Repeals\) Act 1981 \(c. 19\)](#), **Sch. 1 Pt. IV**

*House of Commons (Administration) Act 1978 (c.36)*

- 34 In paragraph 1 of Schedule 2 to the House of Commons (Administration) Act 1978, after the words “the Employment Protection Act 1975” there are inserted the words “and section 139 of the Employment Protection (Consolidation) Act 1978”.

SCHEDULE 17.

Section 159.

REPEALS

**Modifications etc. (not altering text)**

**C21** The text of s. 159(2)(3) and Sch. 17 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Chapter	Short title	Extent of repeal
1964 c. 16.	Industrial Training Act 1964.	Section 12(2B), (3) and (4).
1965 c. 62.	Redundancy Payments Act 1965.	Sections 1 to 26.  Sections 30 to 44.

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		Sections 46 to 55 except section 55(6)(b).
		Sections 56 to 58.
		In section 59, subsection (2) and in subsection (3) the words “except the last preceding section”.
		Schedules 1 to 9.
1967 c. 17.	Iron and Steel Act 1967.	In section 31, in subsection (3), paragraph (c) and all the words following paragraph (c), and subsections (4)(b) and (6).
1967 c. 28.	Superannuation (Miscellaneous Provisions) Act 1967.	Section 9.
1968 c. 13.	National Loans Act 1968.	In Schedule 1, the paragraph relating to the Redundancy Payments Act 1965.
1969 c. 8.	Redundancy Rebates Act 1969.	The whole Act.
1969 c. 48.	Post Office Act 1969.	In Schedule 9, paragraph 34.
1970 c. 41.	Equal Pay Act 1970.	Section 2(7).
1971 c. 75.	Civil Aviation Act 1971.	In Schedule 9, paragraph 2.
1972 c. 11.	Superannuation Act 1972.	In Schedule 6, paragraphs 54 and 55.
1972 c. 53.	Contracts of Employment Act 1972.	The whole Act.
1972 c. 54.	British Library Act 1972.	In paragraph 13(2) of the Schedule, the definition of “the Act of 1963”.
1972 c. 58.	National Health Service (Scotland) Act 1972.	In Schedule 6, paragraph 130.
1973 c. 32.	National Health Service Reorganisation Act 1973.	In Schedule 4, paragraph 106.
1973 c. 38.	Social Security Act 1973.	In Schedule 27, paragraphs 54 to 59.
1973 c. 50.	Employment and Training Act 1973.	In Schedule 2 in Part I, paragraph 15.
1974 c. 52.	Trade Union and Labour Relations Act 1974.	In section 1(2), paragraphs (b) and (c) and, in paragraph (d), the references

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		to sections 146, 148, 149, 150 and 151 of the 1971 Act.
		In section 30(1), the definitions of “dismissal procedures agreement”, “position” and “job”.
		In Schedule 1, paragraphs 4 to 16, 17(1), 18, 20 to 27 and 30, in paragraph 32, sub-paragraphs (1)(b) and (2)(b) to (e) and, in paragraph 33. sub-paragraphs (3)(c) and (d) and (4A).
		In Schedule 3, paragraph 16.
		In Schedule 4, paragraphs 1, 3 and 6(4).
1975 c. 18.	Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraphs 19 to 23.
1975 c. 60.	Social Security Pensions Act 1975.	Section 30(5).
1975 c. 71.	Employment Protection Act 1975.	Part II except section 40.
		Section 108(2) to (8).
		Section 109.
		Section 112.
		In section 118(2), in paragraph (a) the words “section 22 above or” and “section 28 or, as the case may be,” and paragraphs (b) and (c).
		In section 119—
		subsection (2);
		in subsection (3) the figures from “22” to “70”;
		in subsection (4) the figures from “22” to “81”;
		in subsection (5) the figures from “22” to “81”;
		in subsection (7) the figures “22” and “79”;
		subsections (8) to (11);

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in subsection (12) the figures from “59” to “81”.

Section 120.

In section 121—

in subsection (1), the reference to sections 47 and 63 to 69;

in subsection (5), the reference to sections 47(3) and (4) and 68(3) and (4);

subsection (8).

In section 122(1), the words “Schedule 1 to the Contracts of Employment Act 1972 and Parts I and II of Schedule 1 to the 1974 Act”; and in paragraph (d), the words “paragraph 21(5)(c) of Schedule 1 to the 1974 Act and”.

In section 122, subsection (3), in subsection (4) the definition of “civil employment claim” and in subsection (5) the words from “and of the Redundancy” to “employment claim”.

In section 123(2)(b) the words “28 or”.

In section 124, subsections (2) to (4).

In section 126—

in subsection (1), the definitions of “guarantee payment” and “maternity pay”;

subsections (3) and (5).

In section 127—

in subsection (1), paragraphs (c) and (d);

in subsection (3)(g), the words from “the following” to “also of”.

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		In section 128—
		in subsection (1), the words “or of the 1974 Act so far as it relates to unfair dismissal” and “and the 1974 Act”;
		subsection (2);
		in subsection (3), the words “and the relevant provisions of the 1974 Act” in both places where they occur, and the words “or the relevant provisions of the 1974 Act”.
		Section 129(2).
		Schedules 2 to 6.
		In Schedule 12—
		in paragraph 1, the words from “and” to the end;
		paragraphs 8 to 12.
		In Schedule 16—
		Parts I and II;
		in Part III, paragraphs 8 to 30 and 34;
		in Part IV, paragraph 14.
		In Schedule 17, paragraphs 7 to 10, 16 and 17.
1976 c. 7.	Trade Union and Labour Relations (Amendment) Act 1976.	Section 1(e).
		Section 3(5) and (6).
1976 c. 68.	New Towns (Amendment) Act 1976.	In section 13(5), the words “sections 1 and 2 of”.
1976 c. 71.	Supplementary Benefits Act 1976.	In Schedule 7, paragraph 40.
1976 c. 74.	Race Relations Act 1976.	In Schedule 3, paragraphs 1(2), (3) and (4).
1976 c. 79.	Dock Work Regulation Act 1976.	In section 14, subsections (1) to (5) and in subsection (6), paragraph (a) and so much of paragraph (b) as relates to sections 22, 29, 61, 64, 65 and 70 of the Employment Protection Act 1975.



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

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		In Schedule 1, paragraph 17(2).
1977 c. 5.	Social Security (Miscellaneous Provisions) Act 1977.	Section 16.
1977 c. 22.	Redundancy Rebates Act 1977.	The whole Act.
1977 c. 38.	Administration of Justice Act 1977.	Section 6.
		Section 32(11).
1977 c. 48.	Housing (Homeless Persons) Act 1977.	In section 14(4)(b), the words “sections 1 and 2 of”.

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**Status:**

Point in time view as at 01/04/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the **Employment Protection (Consolidation) Act 1978**.