

## SCHEDULES

### SCHEDULE 12

Section 150.

#### DEATH OF EMPLOYEE OR EMPLOYER

##### 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.

- (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

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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 accrued before the death of the employer 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.

*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.
- 9 Where the employee's contract of employment has been terminated by the employer and by virtue of section 55(5) a date later than the effective date of termination as defined by 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 before that later date the employee or the employer dies, section 55(5) shall have effect as if the notice referred to in that subsection as required to be given by the employer would have expired on the date of the death.

*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.

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- 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)(6) 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.

### **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 purposes of Part VI of this Act as having been dismissed by him, section 82 shall have effect subject to the following modifications—
- (a) for subsection (3) there shall be substituted the following subsection—

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- “(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 reengage 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 ";
- (c) in subsection (5), the reference 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 15 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,

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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 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 purpose of the application, in accordance with section 100 (1), of any provisions of Part VI of this Act in relation to an employee 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 paying terminated or having given notice to terminate the contract subsection (6) or 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 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-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

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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.