

SCHEDULES

SCHEDULE 3

Section 21.

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

MINOR AMENDMENTS

Unfair dismissal: effective date of termination

1 In section 55 of the 1978 Act (meaning of "dismissal") for subsection (5) there shall be substituted the following—

“(5) Where the contract of employment is terminated by the employer and the notice required by section 49 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 53(2), 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

- (6) Where the contract of employment is terminated by the employee and—
- (a) the material date does not fall during a period of notice given by the employer to terminate that contract ; and
 - (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 49 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

- (7) " Material date " means—
- (a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer ; and
 - (b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.”.

Continuity of employment in certain schools

2 (1) In section 81 of the 1978 Act (general provisions as to right to redundancy payment) the following subsection shall be inserted after subsection (2)—

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“(2A) For the purposes of subsection (2) the activities carried on by a local education authority with respect to the schools maintained by it and the activities carried on by the governors of those schools shall be treated as one business unless either of the conditions specified in subsection (2) would be satisfied without so treating them.”.

(2) In paragraph 17(1) of Schedule 13 to the 1978 Act, for the words " paragraph 18 " there shall be substituted the words " paragraphs 18 and 18A ".

(3) After paragraph 18 of that Schedule there shall be inserted the following paragraph—

“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.”.

Insolvent employers: payments to employees

3 For subsection (2) of section 122 of the 1978 Act (definition of " relevant date " in relation to certain debts due from insolvent employers to their employees) there shall be substituted the following subsection—

“(2) In this section the ' relevant date', in relation to a debt, means whichever is the latest of—

- (a) the date on which the employer became insolvent;
- (b) the date of the termination of the employee's employment ; or
- (c) where the debt falls within section 121(2)(d) or subsection (3)(d), the date on which the award was made.”.

4 (1) Section 122(3) of the 1978 Act (debts to which the provisions of section 122 about employees' rights on insolvency of employers apply) shall be amended as follows.

(2) For paragraph (a) there shall be substituted the following paragraph—

“(a) any arrears of pay in respect of one or more (but not more than eight) weeks ;”.

(3) For paragraph (c) there shall be substituted the following paragraph—

- “(c) any holiday pay—
- (i) in respect of a period or periods of holiday not exceeding six weeks in all; and
 - (ii) to which the employee became entitled during the twelve months ending with the relevant date ;”.

5 (1) Sections 122(11) and 123(9) of the 1978 Act (employee's rights on insolvency of employer and payment of unpaid contributions to occupational pension scheme) shall be amended as follows.

(2) In paragraph (a) for the words from the beginning to " was " there shall be substituted in each case the words " the application for a payment under this section has been ".

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- (3) In paragraph (c) for the word " further " there shall be substituted in each case the word " unreasonable ".

Application of the 1978 Act to employed spouses

- 6 Section 146(1) of the 1978 Act (which provides that certain provisions of that Act do not apply to employment where the employer is the husband or wife of the employee) shall cease to have effect.

Interest on awards made by or on appeal from industrial tribunals

- 7 In Schedule 9 to the 1978 Act (industrial tribunals), after paragraph 6 there shall be inserted the following paragraph—

“Interest on sums awarded

- 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 to 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 Judgments Act 1838 as that enactment has effect from time to time.”.

Employment Appeal Tribunal

- 8 (1) In paragraph 18 of Schedule 11 to the 1978 Act (rules governing proceedings before the Employment Appeal Tribunal), after paragraph (d) there shall be inserted the following paragraph—

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- “(e) for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16.”.
- (2) Where, before the commencement of any rules made by virtue of sub-paragraph (1) above, interlocutory proceedings before the Appeal Tribunal have been dealt with otherwise than in accordance with paragraph 16 of Schedule 11, those proceedings shall be taken to have been dealt with in accordance with the requirements of that paragraph.
- 9 In paragraph 21A of that Schedule (enforcement of awards of Employment Appeal Tribunal under section 5 of the 1980 Act) after sub-paragraph (2) there shall be added the following sub-paragraph—
- “(3) Any sum payable in pursuance of an award of the Appeal Tribunal under section 5 of the Employment Act 1980 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).”.

PART II

CONSEQUENTIAL AMENDMENTS

Industrial Courts Act 1919 (c.69)

- 10 In the Industrial Courts Act 1919, for section 8 (interpretation) there shall be substituted the following section—

“8 Interpretation.

In this Act—

" trade dispute " has the same meaning as in the Employment Protection Act 1975 ;

" worker " has the same meaning as in the Trade Union and Labour Relations Act 1974.”.

Administration of Justice (Scotland) Act 1972 (c.59)

- 11 In section 3 of the Administration of Justice (Scotland) Act 1972 (power of arbiter to state case for opinion of Court of Session), in subsection (3) (which excludes from the section arbitrations on industrial relations matters)—
- (a) for the words from "relating to a trade dispute", where first occurring, to " Trade Union and Labour Relations Act 1974 " there shall be substituted the words " relating to a trade dispute within the meaning of the Employment Protection Act 1975 ";
- (b) for the words " the said Act of 1974 " there shall be substituted the words " the Trade Union and Labour Relations Act 1974 ".

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

- 12 In section 15 of the 1974 Act (peaceful picketing), in subsection (3) (right of former employees to picket their former place of work), for the words " and whose " there

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shall be substituted " where—(a) his, and after the words " trade dispute," there shall be inserted—

“or

(b) the termination of his employment was one of the circumstances giving rise to a trade dispute,”.

Employment Protection Act 1975 (c.71)

- 13 (1) The Employment Protection Act 1975 shall be amended as follows.
- (2) In section 126(1) (interpretation)—
- (a) " " trade dispute "," shall be omitted from the list of expressions which have the same meaning as in the 1974 Act; and
- (b) at the appropriate place there shall be inserted " trade dispute" has the meaning assigned by section 126A below ".
- (3) After section 126 there shall be inserted a section 126A in the same terms as section 29(1) to (6) of the 1974 Act before the amendment of that section by this Act.
- (4) In section 127(1) (power to extend employment legislation), after paragraph (ff) there shall be inserted the following paragraph—
- “(fg) the Employment Act 1982 ; and”.

Aircraft and Shipbuilding Industries Act 1977 (c.3)

- 14 In section 6 of the Aircraft and Shipbuilding Industries Act 1977 (duty of Corporations to take steps to establish and maintain machinery for, amongst other things, the resolution of trade disputes), in subsection (2)(6) (in which " trade dispute " is defined by reference to the 1974 Act), for the words " within the meaning of the Trade Union and Labour Relations Act 1974 " there shall be substituted the words " within the meaning of the Employment Protection Act 1975 ".

Employment Protection (Consolidation) Act 1978 (c.44)

- 15 In section 13(1) of the 1978 Act (exclusion of right to guarantee payment if lack of work due to trade dispute), for the words " trade dispute " there shall be substituted the words " strike, lockout or other industrial action ".
- 16 In section 23 of the 1978 Act (action short of dismissal taken against employee in respect of trade union membership or activities), in subsection (2A)(b), after the words "subsection (1)(c)" there shall be inserted the words " or (1A), ".
- 17 In section 59(a) of the 1978 Act (circumstances where dismissal on ground of redundancy is unfair), for the words "an inadmissible reason " there shall be substituted the words " one of those specified in section 58(1) ".
- 18 In section 62 of the 1978 Act (dismissal in connection with a strike, lock-out or other industrial action), in subsection (4) (which defines " relevant employees " in relation to a lock-out by reference to their interest in the underlying trade dispute), for the words " trade dispute " there shall be substituted the word " dispute ".
- 19 In section 64(3) of the 1978 Act (qualifying period and upper age limit in connection with unfair dismissal), for the words " an inadmissible reason" there shall be substituted the words " one of those specified in section 58(1) ".

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- 20 In section 64A(2) of the 1978 Act (extended qualifying period where there are no more than twenty employees), for the words " an inadmissible reason " there shall be substituted the words " one of those specified in section 58(1) ".
- 21 In section 68(2) of the 1978 Act (compensation for unfair dismissal), for the words " sections 72 to 74 " there shall be substituted the words " sections 72 to 76 ".
- 22 In section 71(2)(a) and (5) of the 1978 Act (compensation after section 69 order), for the words " sections 72 to 74 " there shall be substituted in each case the words " sections 72 to 76 ".
- 23 In section 74(3) of the 1978 Act (calculation of compensatory award), for the words " section 73(7) or (9)" there shall be substituted the words " section 73(7A) to (9) ".
- 24 (1) In section 77 of the 1978 Act (interim relief pending determination of complaint of unfair dismissal), in subsection (2), at the beginning of paragraph (b) there shall be inserted the words " in a case in which the employee relies on section 58(1)(a) or (6) ".
- (2) In subsection (3) of that section, before the words " the relevant certificate " there shall be inserted the words " (where appropriate) ".
- (3) In subsection (5) of that section for the words from "was unfairly " to " subsection (1)" there shall be substituted the words " is by virtue of section 58 to be regarded as having been unfairly dismissed ".
- 25 In section 149(2) of the 1978 Act (general power to amend the Act) for the word " 75 " there shall be substituted the words " 73(4B), 75, 75A(7) ".
- 26 In section 153(1) of the 1978 Act (interpretation) in the definition of " effective date of termination " for the words " and (5)" there shall be substituted the words " to (6) ".
- 27 (1) Schedule 2 to the 1978 Act (supplementary provisions relating to maternity) shall be amended as follows.
- (2) In paragraph 2(4)—
- (a) for the words " 58(3) to (3E)" there shall be substituted the words " 58(3) to (12) "; and
- (b) for the words ", 145(2) and 146(1)" there shall be substituted the words " and 145(2) ".
- (3) In paragraph 6(3)—
- (a) for the words " 58(3) to (3E)" there shall be substituted the words " 58(3) to (12) "; and
- (b) for the words ", 145 and 146(1)" there shall be substituted the words " and 145 ".
- 28 In Schedule 12 to the 1978 Act (death of employee or employer) for paragraph 9 there there shall be substituted—
- “9 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

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(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.”.

29 In paragraph 11(1) of Schedule 13 to the 1978 Act (deemed continuity of employment where a later date is treated as the effective date of termination) after the words " 55(5)" there shall be inserted the words " or, as the case may be, (6) ".

30 (1) Schedule 14 to the 1978 Act (calculation of normal working hours and a week's pay) shall be amended as follows.

(2) In paragraph 7(1) (the calculation date)—

(a) in paragraph (h), after the words " 55(5)" there shall be inserted the words " or, as the case may be, (6) "; and

(b) in paragraph (i), for the words " section 55(5) does not apply " there shall be substituted the words " neither subsection (5) nor subsection (6) of section 55 applies ".

(3) In paragraph 8(3) (maximum amount of week's pay for certain purposes) after the words " 55(5)" there shall be inserted the words " or, as the case may be, (6) ".

Crown Agents Act 1979 (c.43)

31 In paragraph 15 of Schedule 1 to the Crown Agents Act 1979 (duty of Crown Agents to take steps to establish and maintain machinery for, amongst other things, the resolution of trade disputes), in sub-paragraph (2)(b) (in which " trade dispute" is defined by reference to the 1974 Act) for the words " within the meaning of the Trade Union and Labour Relations Act 1974 " there shall be substituted the words " within the meaning of the Employment Protection Act 1975 ".