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SCHEDULES

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

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

- 11 In section 29 of the Employment Protection (Consolidation) Act 1978 (time off for public duties), in subsection (4)(b) (regard to be had to time off permitted under other provisions), for “sections 27 and 28” substitute “sections 168 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for trade union duties and activities)”.
- 12 In section 30 of the Employment Protection (Consolidation) Act 1978 (supplementary provisions as to tribunal proceedings)—
- (a) in subsection (1), for paragraphs (a) and (b) substitute “a complaint under section 29 that an employer has failed to permit an employee to take time off”;
 - (b) in subsection (2) for “any complaint mentioned in subsection (1)(a)” substitute “such a complaint”; and
 - (c) omit subsection (3).
- 13 For section 32 of the Employment Protection (Consolidation) Act 1978 (provisions supplementary to ss.27 to 31A) substitute—

“32 Meaning of “working hours”

For the purposes of sections 29 to 31A the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.”.

- 14 In section 57 of the Employment Protection (Consolidation) Act 1978 (general provisions as to fairness of dismissal), in subsection (3) for “subject to sections 58 to 62” substitute “subject to sections 59 to 61, and to sections 152, 153 and 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 (provisions as to dismissal on ground of trade union membership or activities or in connection with industrial action),”.
- 15 In section 71(2) of the Employment Protection (Consolidation) Act 1978 (compensation for failure to comply with order for reinstatement or re-engagement), in paragraph (b) for the words from the beginning to “or in which” substitute “unless”.
- 16 For section 72 of the Employment Protection (Consolidation) Act 1978 (compensation for unfair dismissal) substitute—

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“72 Compensation for unfair dismissal

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of—

- (a) a basic award calculated in accordance with section 73, and
- (b) a compensatory award calculated in accordance with section 74.”.

17 In section 73 of the Employment Protection (Consolidation) Act 1978 (calculation of basic award), for subsection (7C) substitute—

“(7C) Subsection (7B) does not apply where the reason or principal reason for the dismissal was that the employee was redundant.”.

18 (1) Section 122 of the Employment Protection (Consolidation) Act 1978 (employee’s rights on insolvency of employer) is amended as follows.

(2) In subsection (2)(a) for “section 101 of the Employment Protection Act 1975” substitute “section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992”.

(3) In subsection (4)—

- (a) in paragraph (c) for “section 27(3) or 31(3) or 31A(4)” substitute “section 31(3) or 31A(4) or under section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992”; and
- (b) in paragraph (d) for “section 101 of the Employment Protection Act 1975” substitute “section 189 of that Act”.

19 In section 132(1) of the Employment Protection (Consolidation) Act 1978 (recoupment of unemployment benefit or income support: payments to which the section applies)—

- (a) in paragraph (b) omit “or in pursuance of an award under section 103 of the Employment Protection Act 1975”,
- (b) after that paragraph insert—
 - “(bb) payments by employers to employees under sections 146 to 151 or 168 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992, or in pursuance of an award under section 192 of that Act;”,
- (c) in paragraph (c) after “mentioned in paragraph (b)” insert “or (bb)”, and
- (d) in the closing words, for “section 101 of the said Act of 1975” substitute “section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992”.

20 In section 135 of the Employment Protection (Consolidation) Act 1978 (constitution of Employment Appeal Tribunal), in subsection (3) (representatives of employers and workers) for “the Trade Union and Labour Relations Act 1974” substitute “the Trade Union and Labour Relations (Consolidation) Act 1992”.

21 (1) Section 153 of the Employment Protection (Consolidation) Act 1978 (interpretation) is amended as follows.

(2) In subsection (1) (general definitions)—

- (a) in the definition of “collective agreement”, for “section 30(1) of the Trade Union and Labour Relations Act 1974” substitute “section 178(1) and (2) of the Trade Union and Labour Relations (Consolidation) Act 1992”;

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- (b) in the definition of “employers' association”, for “the Trade Union and Labour Relations Act 1974” substitute “the Trade Union and Labour Relations (Consolidation) Act 1992”;
- (c) in the definition of “official”, for “the meaning given by section 30(1) of the Trade Union and Labour Relations Act 1974” substitute “the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992”;
- (d) for the definition of “successor” substitute—

““successor”, in relation to the employer of an employee, means (subject to subsection (4A) below) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of the undertaking or of that part of it, as the case may be;”;

- (e) in the definition of “trade dispute” for “section 29 of the said Act of 1974” substitute “section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992”;
- (f) in the definition of “trade union” for “section 28 of the said Act of 1974” substitute “section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992”.

(3) After subsection (4) insert—

“(4A) The definition of “successor” in subsection (1) above has effect (subject to the necessary modifications) in relation to a case where—

- (a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or
- (b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,

as it has effect where the previous owner and the new owner are wholly different persons.”.

- 22 In Part I of Schedule 2 to the Employment Protection (Consolidation) Act 1978 (supplementary provisions as to maternity: unfair dismissal), in paragraph 2(1), in the substituted subsection (3) for the words from “subject to sections 58(1)” to “62” substitute “subject to sections 59 to 61, and to sections 152, 153 and 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 (provisions as to dismissal on ground of trade union membership or activities or in connection with industrial action),”.
- 23 In Schedule 3 to the Employment Protection (Consolidation) Act 1978 (rights of employee in period of notice), in paragraph 5 (leave of absence) for “section 27, 28, 29, 31 or 31A” substitute “section 29, 31 or 31A of this Act or section 168 or 170 of the Trade Union and Labour Relations (Consolidation) Act 1992”.
- 24 (1) Schedule 9 to the Employment Protection (Consolidation) Act 1978 (general provisions as to industrial tribunals) is amended as follows.

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- (2) In paragraph 2(1) (dismissal of complaint where action taken for purpose of safeguarding national security), for “under section 24 or 67” substitute—
- “under—
- (a) section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (action short of dismissal on grounds related to union membership or activities), or
 - (b) section 67 of this Act (unfair dismissal).”
- (3) In paragraph 8 (constitution of tribunal for certain cases) for “section 77 or 79” substitute “section 161, 165 or 166 of the Trade Union and Labour Relations (Consolidation) Act 1992 (application for interim relief or arising out of order for interim relief)”.
- 25 In Schedule 11 to the Employment Protection (Consolidation) Act 1978 (general provisions as to Employment Appeal Tribunal)—
- (a) in paragraph 18 (particular matters with respect to which rules may be made), in paragraphs (aa) and (d), and
 - (b) in paragraph 21A (enforcement of awards), in sub-paragraphs (1) and (3), for “section 5 of the Employment Act 1980 or section 5 of the Employment Act 1988” substitute “section 67 or 176 of the Trade Union and Labour Relations (Consolidation) Act 1992”.