

## SCHEDULES

### SCHEDULE 4

Section 4.

#### RIGHTS OF SHOP WORKERS AS RESPECTS SUNDAY WORKING

##### *Interpretation*

- 1 (1) In this Schedule, except where a contrary intention appears—
- “the 1978 Act” means the Employment Protection (Consolidation) Act 1978,
  - “catering business” means—
    - (a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold, or
    - (b) the sale of meals or refreshments prepared to order for immediate consumption off the premises,
  - “the commencement date” means the day on which this Schedule comes into force,
  - “dismissal” has the same meaning as in Part V of the 1978 Act,
  - “intoxicating liquor” has the same meaning as in the Licensing Act 1964,
  - “notice period”, in relation to an opting-out notice, has the meaning given by paragraph 6 below,
  - “opted-out”, in relation to a shop worker, shall be construed in accordance with paragraph 5 below,
  - “opting-in notice” has the meaning given by paragraph 3(2) below,
  - “opting-out notice” has the meaning given by paragraph 4(3) below,
  - “protected”, in relation to a shop worker, shall be construed in accordance with paragraphs 2 and 3 below,
  - “retail trade or business” includes—
    - (a) the business of a barber or hairdresser,
    - (b) the business of hiring goods otherwise than for use in the course of a trade or business, and
    - (c) retail sales by auction,but does not include catering business or the sale at theatres and places of amusement of programmes, catalogues and similar items,
  - “shop” includes, subject to sub-paragraph (2) below, any premises where any retail trade or business is carried on,
  - “shop work” means work in or about a shop in England or Wales on a day on which the shop is open for the serving of customers, and
  - “shop worker” means an employee who, under his contract of employment, is required to do shop work or may be required to do such work.
- (2) Where premises are used mainly for purposes other than those of retail trade or business and would not apart from sub-paragraph (1) above be regarded as a shop, only such part of the premises as—

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- (a) is used wholly or mainly for the purposes of retail trade or business, or
- (b) is used both for the purposes of retail trade or business and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together,

is to be regarded as a shop for the purposes of this Schedule.

- (3) In sub-paragraph (2) above “wholesale trade” means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a business.
- (4) Subject to sub-paragraph (5) below, the following provisions of the 1978 Act—  
  - section 151(1) and (2) (computation of period of continuous employment), and
  - section 153 (general interpretation),
shall have effect for the purposes of this Schedule as they have effect for the purposes of that Act.
- (5) For the purposes of this Schedule, section 151(2) of the 1978 Act shall have effect with the omission of the words from “but” onwards and Schedule 13 to that Act shall have effect with the following modifications—
  - (a) in paragraph 1 for the words “paragraphs 3 to 12” there shall be substituted “paragraph 4 or paragraphs 9 to 12”,
  - (b) paragraph 3 and paragraphs 5 to 8 shall be omitted, and
  - (c) in paragraph 4 the words “which normally involves employment for sixteen hours or more weekly” shall be omitted.
- (6) Where section 56 of the 1978 Act (failure to permit woman to return to work after childbirth treated as dismissal) applies to an employee who was employed as a shop worker under her contract of employment on the last day of her maternity leave period, she shall be treated for the purposes of this Schedule as if she had been employed as a shop worker on the day with effect from which she is treated as dismissed under that section.

*Meaning of “protected shop worker”*

- 2 (1) Subject to paragraph 3 below, a shop worker is to be regarded for the purposes of this Schedule as “protected” if, and only if, sub-paragraph (2) or (3) below applies to him.
- (2) This sub-paragraph applies to a shop worker if—
  - (a) on the day before the commencement date, he was employed as a shop worker,
  - (b) on that day, he was not employed to work only on Sunday,
  - (c) he has been continuously employed during the period beginning with that day and ending with the appropriate date, and
  - (d) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.
- (3) This sub-paragraph applies to any shop worker whose contract of employment is such that under it he—
  - (a) is not, and may not be, required to work on Sunday, and
  - (b) could not be so required even if the provisions of this Schedule were disregarded.

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- (4) In sub-paragraph (2)(c) above “the appropriate date” means—
- (a) in relation to paragraphs 7 and 8 below, the effective date of termination,
  - (b) in relation to paragraph 10 below, the date of the act or failure to act,
  - (c) in relation to sub-paragraph (2) or (3) of paragraph 12 below, the day on which the agreement is entered into,
  - (d) in relation to sub-paragraph (4) of that paragraph, the day on which the employee returns to work,
  - (e) in relation to paragraph 14 below, any time in relation to which the contract is to be enforced, and
  - (f) in relation to paragraph 15 below, the end of the period in respect of which the remuneration is paid or the benefit accrues.
- (5) For the purposes of sub-paragraph (4)(a) above, “the effective date of termination”, in any case falling within paragraph 1(6) above, means the day with effect from which the employee is treated by section 56 of the 1978 Act as being dismissed.
- (6) For the purposes of sub-paragraph (4)(b) above—
- (a) where an act extends over a period, the “date of the act” means the first day of the period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on, and in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.
- (7) Where on the day before the commencement date an employee’s relations with his employer have ceased to be governed by a contract of employment, he shall be regarded as satisfying the conditions in sub-paragraph (2)(a) and (b) above if—
- (a) that day falls in a week which counts as a period of employment with that employer under paragraph 9 or 10 of Schedule 13 to the 1978 Act (absence from work because of sickness, pregnancy etc.) or under regulations made under paragraph 20 of that Schedule (reinstatement or re-engagement of dismissed employee), and
  - (b) on the last day before the commencement date on which his relations with his employer were governed by a contract of employment, the employee was a shop worker and was not employed to work only on Sunday.
- 3 (1) A shop worker is not a protected shop worker if—
- (a) on or after the commencement date, he has given his employer an opting-in notice, and
  - (b) after giving that notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.
- (2) In this Schedule “opting-in notice” means a written notice, signed and dated by the shop worker, in which the shop worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

*Notice of objection to Sunday working*

- 4 (1) This paragraph applies to any shop worker who, under his contract of employment—
- (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but

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- (b) is not employed to work only on Sunday.
- (2) A shop worker to whom this paragraph applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that the shop worker objects to Sunday working.
- (3) In this Schedule “opting-out notice” means a notice given under sub-paragraph (2) above by a shop worker to whom this paragraph applies.

*Meaning of “opted-out shop worker”*

- 5 (1) Subject to sub-paragraph (5) below, a shop worker is to be regarded for the purposes of this Schedule as “opted-out” if, and only if—
  - (a) he has given his employer an opting-out notice,
  - (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the appropriate date, and
  - (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.
- (2) In sub-paragraph (1) above “the appropriate date” means—
  - (a) in relation to paragraphs 7 and 8 below, the effective date of termination,
  - (b) in relation to paragraph 10 below, the date of the act or failure to act,
  - (c) in relation to sub-paragraph (2) or (3) of paragraph 13 below, the day on which the agreement is entered into, and
  - (d) in relation to sub-paragraph (4) of that paragraph, the day on which the employee returns to work.
- (3) For the purposes of sub-paragraph (2)(a) above, “the effective date of termination”, in any case falling within paragraph 1(6) above, means the day with effect from which the employee is treated by section 56 of the 1978 Act as being dismissed.
- (4) For the purposes of sub-paragraph (2)(b) above—
  - (a) where an act extends over a period, the “date of the act” means the first day of the period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on, and in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.
- (5) A shop worker is not an opted-out shop worker if—
  - (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and
  - (b) after giving that opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

*Meaning of “notice period”*

- 6 In this Schedule “notice period”, in relation to an opted-out shop worker, means, subject to paragraph 11(2) below, the period of three months beginning with the day on which the opting-out notice concerned was given.

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*Right not to be dismissed for refusing Sunday work*

- 7 (1) Subject to sub-paragraph (2) below, the dismissal of a protected or opted-out shop worker by his employer shall be regarded for the purposes of Part V of the 1978 Act as unfair if the reason for it (or, if more than one, the principal reason) was that the shop worker refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.
- (2) Sub-paragraph (1) above does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal was that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.
- (3) The dismissal of a shop worker by his employer shall be regarded for the purposes of Part V of the 1978 Act as unfair if the reason for it (or, if more than one, the principal reason) was that the shop worker gave, or proposed to give, an opting-out notice to the employer.
- (4) Section 142 of the 1978 Act (contracts for a fixed term) shall not exclude the application of section 54 of that Act (right of employee not to be unfairly dismissed) in relation to any dismissal which is unfair by virtue of sub-paragraph (1) or (3) above.
- 8 (1) Where the reason or principal reason for the dismissal of a protected or opted-out shop worker was that he was redundant, but it is shown—
- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
- (b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph 7(1) above,
- then, for the purposes of Part V of the 1978 Act, the dismissal shall be regarded as unfair.
- (2) Sub-paragraph (1) above does not apply in relation to an opted-out shop worker where the reason (or principal reason) for which he was selected for dismissal was that specified in paragraph 7(2) above.
- (3) Where the reason or principal reason for the dismissal of a shop worker was that he was redundant, but it is shown—
- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
- (b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph 7(3) above,
- then, for the purposes of Part V of the 1978 Act, the dismissal shall be regarded as unfair.

*Exclusion of section 64(1) of Employment Protection (Consolidation) Act 1978*

- 9 Section 54 of the 1978 Act (right of employee not to be unfairly dismissed) shall apply to a dismissal regarded as unfair by virtue of paragraph 7 or 8 above regardless of the period for which the employee has been employed and of his age; and accordingly section 64(1) of that Act (which provides a qualifying period and an upper age limit) shall not apply to such a dismissal.

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*Right not to suffer detriment for refusing Sunday work*

- 10 (1) Subject to sub-paragraphs (2) and (4) below, a protected or opted-out shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the shop worker refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.
- (2) Sub-paragraph (1) above does not apply to anything done in relation to an opted-out shop worker on the ground that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.
- (3) Subject to sub-paragraph (4) below, a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he gave, or proposed to give, an opting-out notice to his employer.
- (4) Sub-paragraphs (1) and (3) above do not apply where the detriment in question amounts to dismissal.
- (5) For the purposes of this paragraph a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—
- (a) any failure to pay remuneration in respect of shop work on a Sunday which he has not done,
  - (b) any failure to provide him with any other benefit, where that failure results from the application, in relation to a Sunday on which the employee has not done shop work, of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee, or
  - (c) any failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 14 or 15 below the employer is not obliged to provide.
- (6) Where an employer offers to pay a sum specified in the offer to any one or more employees who are protected or opted-out shop workers or who, under their contracts of employment, are not obliged to do shop work on Sunday, if they agree to do shop work on Sunday or on a particular Sunday—
- (a) an employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him that sum, and
  - (b) an employee who does not accept the offer is not to be regarded for those purposes as having been subjected to any detriment by any failure to pay him that sum.

*Employer's duty to give explanatory statement*

- 11 (1) Where a person becomes a shop worker to whom paragraph 4 above applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a shop worker, give him a written statement in the prescribed form.
- (2) If—
- (a) an employer fails to comply with sub-paragraph (1) above in relation to any shop worker, and

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- (b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker,  
paragraph 6 above shall have effect, in relation to the shop worker, with the substitution for “three months” of “one month”.
- (3) An employer shall not be regarded as failing to comply with sub-paragraph (1) above in any case where, before the end of the period referred to in that sub-paragraph, the shop worker has given him an opting-out notice.
- (4) Subject to sub-paragraph (5) below, the prescribed form is as follows—

“STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must—

- be in writing;
- be signed and dated by you;
- say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer—

- dismisses you, or
- does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.”

- (5) The Secretary of State may by order amend the prescribed form set out in sub-paragraph (4) above.
- (6) An order under sub-paragraph (5) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Effect of rights on contracts of employment*

- 12 (1) Any contract of employment under which a shop worker who satisfies the conditions in paragraph 2(2)(a) and (b) above was employed on the day before the commencement date is unenforceable to the extent that it—
- (a) requires the shop worker to do shop work on Sunday on or after the commencement date, or
  - (b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

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- (2) Except as provided by sub-paragraph (3) below, any agreement entered into after the commencement date between a protected shop worker and his employer is unenforceable to the extent that it—
- (a) requires the shop worker to do shop work on Sunday, or
  - (b) requires the employer to provide the shop worker with shop work on Sunday.
- (3) Where, after giving an opting-in notice, a protected shop worker expressly agrees as mentioned in paragraph 3(1)(b) above (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (4) The reference in sub-paragraph (2) above to a protected shop worker includes a reference to an employee who, although not a protected shop worker for the purposes of that sub-paragraph at the time when the agreement is entered into, is a protected shop worker on the day on which she returns to work as mentioned in paragraph 10 of Schedule 13 to the 1978 Act (maternity).
- 13 (1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—
- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.
- (2) Except as provided by sub-paragraph (3) below, any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it—
- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.
- (3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees as mentioned in paragraph 5(5)(b) above (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (4) The reference in sub-paragraph (2) above to an opted-out shop worker includes a reference to an employee who, although not an opted-out shop worker for the purposes of that sub-paragraph at the time when the agreement is entered into, had given her employer an opting-out notice before that time and is an opted-out shop worker on the day on which she returns to work as mentioned in paragraph 10 of Schedule 13 to the 1978 Act (maternity).
- 14 If—
- (a) under the contract of employment under which a shop worker who satisfies the conditions in paragraph 2(2)(a) and (b) above was employed on the day before the commencement date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week,
  - (b) under that contract, the shop worker was or might have been required to work on Sunday before the commencement date, and

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- (c) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after the commencement date, ceased to do so,

then, so long as the shop worker remains a protected shop worker, that contract shall not be regarded as requiring the employer to provide him with shop work on weekdays in excess of the hours normally worked by the shop worker on weekdays before he ceased to do shop work on Sunday.

15 (1) If—

- (a) under the contract of employment under which a shop worker who satisfies the conditions in paragraph 2(2)(a) and (b) above was employed on the day before the commencement date, the shop worker was or might have been required to work on Sunday before that date,
- (b) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after the commencement date, ceased to do so, and
- (c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker was intended to be attributable to shop work on Sunday,

then, so long as the shop worker remains a protected shop worker, that contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker in respect of any period by the proportion which the hours of shop work which (apart from this Schedule) the shop worker could have been required to do on Sunday in the period (in this paragraph referred to as “the contractual Sunday hours”) bears to the aggregate of those hours and the hours of work actually done by the shop worker in the period.

- (2) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of sub-paragraph (1) above.

*Proceedings for contravention of paragraph 10*

- 16 Sections 22B and 22C of the 1978 Act (which relate to proceedings brought by an employee on the ground that he has been subjected to a detriment in contravention of section 22A of that Act) shall have effect as if the reference in section 22B(1) to section 22A included a reference to paragraph 10 above.

*Restrictions on contracting out of Schedule*

- 17 (1) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Schedule, or
  - (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Schedule.
- (2) Sub-paragraph (1) above does not apply to an agreement to refrain from presenting or continuing with a complaint where—
- (a) a conciliation officer has taken action under section 133(2) or (3) of the 1978 Act (general provisions as to conciliation) or under section 134(1), (2) or (3) (conciliation in case of unfair dismissal) of that Act, or

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- (b) the conditions regulating compromise agreements under the 1978 Act (as set out in section 140(3) of that Act) are satisfied in relation to the agreement.

*Transitional modifications relating to maternity cases*

- 18 (1) Where an employee exercises a right to return to work under Part III of the 1978 Act (maternity) and, because amendments of that Part made by the Trade Union Reform and Employment Rights Act 1993 (in this paragraph referred to as “the 1993 Act”) do not have effect in her case, her right is a right to return to work in the job in which she was employed under the original contract of employment—
- (a) the preceding provisions of this Schedule shall have effect subject to the modifications in sub-paragraphs (2) and (3) below, and
- (b) sub-paragraph (4) below shall have effect.
- (2) In paragraph 1(6), for “her contract of employment on the last day of her maternity leave period” there shall be substituted “her original contract of employment”.
- (3) In paragraph 2(7), for paragraph (b) there shall be substituted—
- “(b) under her original contract of employment, she was a shop worker and was not employed to work only on Sunday”.
- (4) If the employee was employed as a shop worker under her original contract of employment, she shall not be regarded as failing to satisfy the condition in paragraph 2(2)(a) or (d) or 5(1)(c) above merely because during her pregnancy she was employed under a different contract of employment by virtue of section 60(2) of the 1978 Act (as it has effect before the commencement of section 24 of the 1993 Act) or otherwise by reason of her pregnancy.
- (5) In this paragraph and in paragraphs 1 and 2 above as modified by sub-paragraphs (2) and (3) above “original contract of employment” has the meaning given by section 153(1) of the 1978 Act as originally enacted.

*Dismissal on grounds of assertion of statutory right*

- 19 In section 60A of the 1978 Act (dismissal on grounds of assertion of statutory right), in subsection (4)(a), after sub-paragraph (ii) there shall be inserted “or
- (iii) Schedule 4 to the Sunday Trading Act 1994”.

*Dismissal procedures agreements*

- 20 In section 65 of the 1978 Act (exclusion in respect of dismissal procedures agreement) at the end of subsection (4) there shall be added “or the right conferred by paragraph 7 or 8 of Schedule 4 to the Sunday Trading Act 1994”.

*Conciliation*

- 21 In section 133 of the 1978 Act (general provisions as to conciliation officers) at the end of subsection (1) there shall be added—
- “(ee) arising out of a contravention, or alleged contravention, of paragraph 10 of Schedule 4 to the Sunday Trading Act 1994.”

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*Application of certain other provisions of 1978 Act*

- 22 In the following provisions of the 1978 Act—  
section 129 (remedy for infringement of certain rights),  
section 141(2) (employee ordinarily working outside Great Britain), and  
section 150 and Schedule 12 (death of employee or employer),  
any reference to Part II of the 1978 Act includes a reference to paragraph 10 of  
this Schedule.

*Keeping of records relating to Sunday employment*

- 23 In section 22 of the Shops Act 1950 (Sunday employment), in subsection (3)  
(keeping of records) for “by virtue of any provision of Part IV of this Act, other  
than section sixty-two, is” there shall be substituted “is lawfully”.

*Employment of children in street trading on Sunday*

- 24 In section 20 of the Children and Young Persons Act 1933, subsection (3) (which  
provides that byelaws under that section may not authorise a child to engage, or be  
employed, on a Sunday in street trading of a description to which certain provisions  
of Part IV of the Shops Act 1950 do not apply) shall cease to have effect.