

## SCHEDULES

### SCHEDULE 10

Section 35.

#### EMPLOYMENT AGENCIES ETC.: REPLACEMENT OF LICENSING

#### PART I

#### GENERAL

#### *Great Britain*

- 1 (1) The Employment Agencies Act 1973 shall be amended as follows.
- (2) Sections 1 to 3 (licences) shall cease to have effect.
- (3) After section 3 there shall be inserted—

#### *“Prohibition orders*

#### **3A Power to make orders**

- (1) On application by the Secretary of State, an industrial tribunal may by order prohibit a person from carrying on, or being concerned with the carrying on of—
  - (a) any employment agency or employment business; or
  - (b) any specified description of employment agency or employment business.
- (2) An order under subsection (1) of this section (in this Act referred to as “a prohibition order”) may either prohibit a person from engaging in an activity altogether or prohibit him from doing so otherwise than in accordance with specified conditions.
- (3) A prohibition order shall be made for a period beginning with the date of the order and ending—
  - (a) on a specified date, or
  - (b) on the happening of a specified event,in either case, not more than ten years later.
- (4) Subject to subsections (5) and (6) of this section, an industrial tribunal shall not make a prohibition order in relation to any person unless it is satisfied that he is, on account of his misconduct or for any other sufficient reason, unsuitable to do what the order prohibits.
- (5) An industrial tribunal may make a prohibition order in relation to a body corporate if it is satisfied that—

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- (a) any director, secretary, manager or similar officer of the body corporate,
  - (b) any person who performs on behalf of the body corporate the functions of a director, secretary, manager or similar officer, or
  - (c) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act,
- is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.
- (6) An industrial tribunal may make a prohibition order in relation to a partnership if it is satisfied that any member of the partnership, or any manager employed by the partnership, is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.
- (7) For the purposes of subsection (4) of this section, where an employment agency or employment business has been improperly conducted, each person who was carrying on, or concerned with the carrying on of, the agency or business at the time, shall be deemed to have been responsible for what happened unless he can show that it happened without his connivance or consent and was not attributable to any neglect on his part.
- (8) A person shall not be deemed to fall within subsection (5)(c) of this section by reason only that the directors act on advice given by him in a professional capacity.
- (9) In this section—
- “director”, in relation to a body corporate whose affairs are controlled by its members, means a member of the body corporate; and
  - “specified”, in relation to a prohibition order, means specified in the order.

### **3B Enforcement**

Any person who, without reasonable excuse, fails to comply with a prohibition order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **3C Variation and revocation of orders**

- (1) On application by the person to whom a prohibition order applies, an industrial tribunal may vary or revoke the order if the tribunal is satisfied that there has been a material change of circumstances since the order was last considered.
- (2) An industrial tribunal may not, on an application under this section, so vary a prohibition order as to make it more restrictive.
- (3) The Secretary of State shall be a party to any proceedings before an industrial tribunal with respect to an application under this section, and be entitled to appear and be heard accordingly.
- (4) When making a prohibition order or disposing of an application under this section, an industrial tribunal may, with a view to preventing the making

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of vexatious or frivolous applications, by order prohibit the making of an application, or further application, under this section in relation to the prohibition order before such date as the tribunal may specify in the order under this subsection.

### **3D Appeals**

- (1) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under section 3A or 3C of this Act.
- (2) No other appeal shall lie from a decision of an industrial tribunal under section 3A or 3C of this Act; and section 11 of the Tribunals and Inquiries Act 1992 (appeals from certain tribunals to High Court or Court of Session) shall not apply to proceedings before an industrial tribunal under section 3A or 3C of this Act.”
- (4) In section 9(4)(a)(iv) (circumstances in which information obtained in exercise of statutory powers may be disclosed) for “hearing under section 3(7) of this Act” there shall be substituted “proceedings under section 3A, 3C or 3D of this Act”.
- (5) In section 13(1) (interpretation) after the definition of “prescribed” there shall be inserted—
  - ““prohibition order” has the meaning given by section 3A(2) of this Act;”.

### *Northern Ireland*

- 2 (1) Articles 3 to 5 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 shall cease to have effect.
- (2) After Article 5 of that Order there shall be inserted—

### *“Prohibition orders*

#### **Power to make orders**

- 5A (1) On application by the Department, an industrial tribunal may by order prohibit a person from carrying on, or being concerned with the carrying on of—
- (a) any employment agency or employment business; or
  - (b) any specified description of employment agency or employment business.
- (2) An order under paragraph (1) (in this Order referred to as “a prohibition order”) may either prohibit a person from engaging in an activity altogether or prohibit him from doing so otherwise than in accordance with specified conditions.
- (3) A prohibition order shall be made for a period beginning with the date of the order and ending—
- (a) on a specified date, or
  - (b) on the happening of a specified event,
- in either case, not more than ten years later.

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- (4) Subject to paragraphs (5) and (6), an industrial tribunal shall not make a prohibition order in relation to any person unless it is satisfied that he is, on account of his misconduct or for any other sufficient reason, unsuitable to do what the order prohibits.
- (5) An industrial tribunal may make a prohibition order in relation to a body corporate if it is satisfied that—
- (a) any director, secretary, manager or similar officer of the body corporate,
  - (b) any person who performs on behalf of the body corporate the functions of a director, secretary, manager or similar officer, or
  - (c) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act,
- is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.
- (6) An industrial tribunal may make a prohibition order in relation to a partnership if it is satisfied that any member of the partnership, or any manager employed by the partnership, is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.
- (7) For the purposes of paragraph (4), where an employment agency or employment business has been improperly conducted, each person who was carrying on, or concerned with the carrying on of, the agency or business at the time, shall be deemed to have been responsible for what happened unless he can show that it happened without his connivance or consent and was not attributable to any neglect on his part.
- (8) A person shall not be deemed to fall within paragraph (5)(c) by reason only that the directors act on advice given by him in a professional capacity.
- (9) In this Article—
- “director”, in relation to a body corporate whose affairs are controlled by its members, means a member of the body corporate; and
  - “specified”, in relation to a prohibition order, means specified in the order.

### **Enforcement**

- 5B. Any person who, without reasonable excuse, fails to comply with a prohibition order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Variation and revocation of orders**

- 5C (1) On application by the person to whom a prohibition order applies, an industrial tribunal may vary or revoke the order if the tribunal is satisfied that there has been a material change of circumstances since the order was last considered.
- (2) An industrial tribunal may not, on an application under this Article, so vary a prohibition order as to make it more restrictive.

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- (3) The Department shall be a party to any proceedings before an industrial tribunal with respect to an application under this Article, and be entitled to appear and be heard accordingly.
- (4) When making a prohibition order or disposing of an application under this Article, an industrial tribunal may, with a view to preventing the making of vexatious or frivolous applications, by order prohibit the making of an application, or further application, under this Article in relation to the prohibition order before such date as the tribunal may specify in the order under this paragraph.”
- (3) In Article 11(1) of that Order (interpretation) after the definition of “prescribed” there shall be inserted—

““prohibition order” has the meaning given by Article 5A(2);”.

## PART II

### SEAMEN

#### *United Kingdom*

- 3 Sections 110 to 112 of the Merchant Shipping Act 1894 (licences to supply seamen) shall cease to have effect.

#### *Great Britain*

- 4 In the Employment Agencies Act 1973, in section 13(7) (exceptions from the Act) paragraph (e) (exception for the making of arrangements for finding seamen for persons to employ or for finding employment for seamen) shall be omitted.

#### *Northern Ireland*

- 5 In the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981, in Article 11(5) (exceptions from Part II of the Order), sub-paragraph (d) shall be omitted.