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**Changes to legislation:** There are currently no known outstanding effects for the Employment Relations Act 1999, SCHEDULE 5. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 5

Section 16.

#### UNFAIR DISMISSAL OF STRIKING WORKERS

*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 1 The Trade Union and Labour Relations (Consolidation) Act 1992 shall be amended as follows.
- 2 In section 238 (dismissals in connection with industrial action) after subsection (2A) there shall be inserted—  
“(2B) Subsection (2) does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of section 238A below.”
- 3 The following shall be inserted after section 238—

**“238A Participation in official industrial action.**

- (1) For the purposes of this section an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.
- (2) An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) as unfairly dismissed if—
  - (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
  - (b) subsection (3), (4) or (5) applies to the dismissal.
- (3) This subsection applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.
- (4) This subsection applies to a dismissal if—
  - (a) it takes place after the end of that period, and
  - (b) the employee had stopped taking protected industrial action before the end of that period.
- (5) This subsection applies to a dismissal if—
  - (a) it takes place after the end of that period,
  - (b) the employee had not stopped taking protected industrial action before the end of that period, and
  - (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.

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- (6) In determining whether an employer has taken those steps regard shall be had, in particular, to—
    - (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
    - (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;
    - (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
    - (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.
  - (7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.
  - (8) For the purposes of this section no account shall be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day (within the meaning of section 237) after the day on which the repudiation takes place.”
- 4 (1) Section 239 (supplementary provisions relating to unfair dismissal) shall be amended as follows.
- (2) In subsection (1) for “Sections 237 and 238” there shall be substituted “ Sections 237 to 238A ”.
  - (3) At the end of subsection (1) there shall be added “ ; but sections 108 and 109 of that Act (qualifying period and age limit) shall not apply in relation to section 238A of this Act. ”
  - (4) In subsection (2) after “section 238” there shall be inserted “ or 238A ”.
  - (5) At the end there shall be added—
    - “(4) In relation to a complaint under section 111 of the 1996 Act (unfair dismissal: complaint to employment tribunal) that a dismissal was unfair by virtue of section 238A of this Act—
      - (a) no order shall be made under section 113 of the 1996 Act (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,
      - (b) regulations under section 7 of the Employment Tribunals Act 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and
      - (c) regulations under section 9 of that Act may require a pre-hearing review to be carried out in specified circumstances.”

*Employment Rights Act 1996 (c. 18)*

- 5 (1) Section 105 of the Employment Rights Act 1996 (redundancy) shall be amended as follows.

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- (2) In subsection (1)(c) for “subsections (2) to (7)” there shall be substituted “subsections (2) to (7C).”.
- (3) After subsection (7B) (inserted by Schedule 3 to the <sup>M1</sup>Tax Credits Act 1999) there shall be inserted—
- “(7C) This subsection applies if—
- (a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in section 238A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (participation in official industrial action), and
  - (b) subsection (3), (4) or (5) of that section applies to the dismissal.”

**Marginal Citations**

**M1** 1999 c. 10.

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