Trade Union Reform and Employment Rights Act 1993

CHAPTER 19

LONDON : HMSO
Reprinted Incorporating Corrections

Trade Union Reform and Employment Rights Act 1993

CHAPTER 19

ARRANGEMENT OF SECTIONS

PART I

TRADE UNIONS ETC.

Union elections and ballots

Section
1. Election scrutineer to check register.
2. Counting of election votes etc. by independent person.
3. Political fund ballots.
4. Ballots for union amalgamations and transfers of engagements.
5. Ballots for union amalgamations and transfers of engagements: notice and voting papers not to include influential material.
6. Confidentiality of trade union's register of members' names and addresses.
7. Ballots: repeal of provisions for financial assistance and use of employers' premises.

Financial affairs of unions etc.

8. Annual return to contain additional information.
9. Statement to members following annual return.
10. Investigation of financial affairs.
11. Offences.
12. Disqualification of offenders.

Rights in relation to union membership

13. Action short of dismissal: non infringing actions.
14. Right not to be excluded or expelled.
15. Right not to suffer deduction of unauthorised or excessive subscriptions.
16. Extension of right not to be unjustifiably disciplined.

Industrial action

Section
17. Requirement of postal ballot.
18. Notice of ballot and sample voting paper for employers.
19. Ballot result for employers.
20. Scrutiny of ballots.
21. Notice of industrial action for employers.
22. Industrial action affecting supply of goods or services to an individual.

PART II

EMPLOYMENT RIGHTS

Maternity

23. Right to maternity leave and right to return to work.
24. Dismissal rights.
25. Rights on suspension on maternity grounds.

Employment particulars

26. Right to employment particulars.
27. Entitlement to itemised pay statement.

Employment protection in health and safety cases

28. Rights to claim unfair dismissal and not to suffer detriment.

Unfair dismissal: assertion of statutory right

29. Dismissal on ground of assertion of statutory right.

Reinstatement orders: compensation

30. Compensation for unfair dismissal when reinstatement or re-engagement ordered.

Service in armed forces

31. Application of 1978 Act to service in armed forces.

Sex discrimination

32. Right to declaration of invalidity of discriminatory terms and rules.

Transfer and redundancy rights

33. Amendments of transfer of undertakings regulations.
34. Redundancy consultation procedures.

PART III

OTHER EMPLOYMENT MATTERS

Abolition of right to statutory minimum remuneration

35. Repeal of Part II of Wages Act 1986.

Constitution and jurisdiction of tribunals

Section

36. Constitution of industrial tribunals.
37. Constitution of Employment Appeal Tribunal.
38. Extension of power to confer on industrial tribunals jurisdiction in respect of contracts of employment etc.
39. Agreements not to take proceedings before industrial tribunal.
40. Restriction of publicity in cases involving sexual misconduct: industrial tribunals.
41. Restriction of publicity in cases involving sexual misconduct: Employment Appeal Tribunal.
42. Restriction of vexatious proceedings.

ACAS

43. Functions of ACAS.
44. Fees for exercise of functions by ACAS.

Careers services

45. Careers services.
46. Careers services: ancillary services.

Training etc. in Scotland

47. Employment and training functions of Scottish Enterprise and Highlands and Islands Enterprise.

PART IV

SUPPLEMENTARY

48. Interpretation.
49. Miscellaneous and consequential amendments.
50. Transitional provisions and savings.
51. Repeals and revocations.
52. Commencement.
53. Financial provision.
54. Northern Ireland.
55. Short title.

SCHEDULES:

Schedule 1—Political fund ballots.
Schedule 2—Maternity: the right to return to work.
Schedule 3—Suspension from work on maternity grounds.
Schedule 4—Provisions substituted for sections 1 to 6 of 1978 Act.
Schedule 5—Employment protection in health and safety cases.
Schedule 6—Compromise contracts.
Schedule 7—Miscellaneous amendments.
Schedule 8—Consequential amendments.
Schedule 9—Transitional provisions and savings.
Schedule 10—Repeals and revocations.

Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

An Act to make further reforms of the law relating to trade unions and industrial relations; to make amendments of the law relating to employment rights and to abolish the right to statutory minimum remuneration; to amend the law relating to the constitution and jurisdiction of industrial tribunals and the Employment Appeal Tribunal; to amend section 56A of the Sex Discrimination Act 1975; to provide for the Secretary of State to have functions of securing the provision of careers services; to make further provision about employment and training functions of Scottish Enterprise and of Highlands and Islands Enterprise; and for connected purposes. [1st July 1993]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

TRADE UNIONS ETC.

Union elections and ballots

Election scrutineer to check register. 1992 c. 52.

1.—(1) In the Trade Union and Labour Relations (Consolidation) Act 1992 (referred to in this Act as "the 1992 Act"), in section 49 (appointment of independent scrutineer for election)—

(a) after paragraph (a) of subsection (3) (terms of appointment of scrutineer) there shall be inserted—

"(aa) to—

(i) inspect the register of names and addresses of the members of the trade union, or

PART I

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;",

(b) in paragraph (d) (scrutineer to retain custody of voting papers) of that subsection, after the words "purposes of the election" there shall be inserted the words "and the copy of the register supplied to him in accordance with subsection (5A)(a)" and after the words "of the papers" there shall be inserted the words "or copy",

(c) after that subsection there shall be inserted—

"(3A) The conditions referred to in subsection (3)(aa) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.

(3B) In subsection (3A) "the appropriate period" means the period—

(a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.",

(d) after subsection (5) there shall be inserted—

"(5A) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.", and

(e) after subsection (7) there shall be inserted—

"(8) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and

PART I

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.".

(2) In section 52 of the 1992 Act (scrutineer's report on election), after subsection (2) there shall be inserted—

"(2A) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 49(5A)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,

(c) whether he declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member or candidate who has requested such an inspection or examination.".

Counting of election votes etc. by independent person.

2.—(1) After section 51 of the 1992 Act there shall be inserted—

"Counting of votes etc. by independent person.

51A.—(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the election, and

(b) the counting of the votes cast in the election,

are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to an election if—

(a) he is the scrutineer, or

(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.

PART I

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.".

(2) In section 52 of the 1992 Act (scrutineer's report on election)—

(a) in subsection (1), after paragraph (d) there shall be inserted ", and

(e) the name of the person (or of each of the persons) appointed under section 51A or, if no person was so appointed, that fact.",

(b) in subsection (2)(b), after the word "made" there shall be inserted "(whether by him or any other person)", and

(c) after subsection (2A) (which is inserted by section 1 above) there shall be inserted—

"(2B) Where one or more persons other than the scrutineer are appointed under section 51A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.".

Political fund ballots.

3. Schedule 1 to this Act (which makes in relation to political fund ballots provision corresponding to that made in relation to elections by sections 1 and 2 above) shall have effect.

PART I

Ballots for union amalgamations and transfers of engagements.

4. For section 100 of the 1992 Act (requirement of resolution to approve instrument of amalgamation or transfer) there shall be substituted—

"Requirement of ballot on resolution.

100.—(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.

Appointment of independent scrutineer.

100A.—(1) The trade union shall, before the ballot is held, appoint a qualified independent person ("the scrutineer") to carry out—

(a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and

(b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) A person is a qualified independent person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer's appointment shall require him—

(a) to be the person who supervises the production of the voting papers and (unless he is appointed under section 100D to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;

(b) to—

(i) inspect the register of names and addresses of the members of the trade union, or

PART I

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (9)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (4) are satisfied;

(c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 100E);

(d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and

(e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with subsection (9)(a)—

(i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and

(ii) if within that period a complaint is made under section 103 (complaint as regards passing of resolution), until the Certification Officer or Employment Appeal Tribunal authorises him to dispose of the papers or copy.

(4) The conditions referred to in subsection (3)(b) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member's suspicion is ill-founded.

(5) In subsection (4) "the appropriate period" means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(8) The trade union shall, before the scrutineer begins to carry out his functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(9) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(10) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.

(11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

(13) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

Entitlement to vote.

100B. Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

Voting.

100C.—(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(3) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference or constraint, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—

(a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and

(b) be given a convenient opportunity to vote by post.

(5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—

(a) the notice which, under section 99(1), is to accompany the voting paper,

(b) an addressed envelope, and

(c) a document containing instructions for the return of the voting paper,

without any other statement.

(6) The ballot shall be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

Counting of votes etc. by independent person.

100D.—(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the trade union.

(2) A person is an independent person in relation to a ballot if—

(a) he is the scrutineer, or

PART I

(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.

Scrutineer's report.

100E.—(1) The scrutineer's report on the ballot shall state—

(a) the number of voting papers distributed for the purposes of the ballot,

(b) the number of voting papers returned to the scrutineer,

(c) the number of valid votes cast in the ballot for and against the resolution,

(d) the number of spoiled or otherwise invalid voting papers returned, and

(e) the name of the person (or of each of the persons) appointed under section 100D or, if no person was so appointed, that fact.

PART I

(2) The report shall also state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

(b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 100A(9)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,

(c) whether he declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under section 100D, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

PART I

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.

(5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

(6) The trade union shall within the period of three months after it receives the report—

(a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or

(b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

(8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.".

Ballots for union amalgamations and transfers of engagements: notice not to include influential material.

5. In section 99 of the 1992 Act (notice relating to proposed amalgamation or transfer), after subsection (3), there shall be inserted—

"(3A) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.".

Confidentiality of trade union's register of members' names and addresses.

6. After section 24 of the 1992 Act there shall be inserted—

"Securing confidentiality of register during ballots.

24A.—(1) This section applies in relation to a ballot of the members of a trade union on—

(a) an election under Chapter IV for a position to which that Chapter applies,

(b) a political resolution under Chapter VI, and

(c) a resolution to approve an instrument of amalgamation or transfer under Chapter VII.

(2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.

PART I

(3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—

(a) not to disclose any name or address in the register except in permitted circumstances; and

(b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;

and any reference in this Act to "the duty of confidentiality" is a reference to the duty prescribed in this subsection.

(4) The circumstances in which disclosure of a member's name and address is permitted are—

(a) where the member consents;

(b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;

(c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;

(d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

(5) Any provision of this Part which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

(6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the court in respect of the same matter.".

Ballots: repeal of provisions for financial assistance and use of employers' premises

7.—(1) Sections 115 and 116 of the 1992 Act (financial assistance towards expenditure on certain ballots and obligations of employers to make premises available) shall cease to have effect.

(2) No application under regulations under section 115 (whether made before or after its repeal) shall be entertained by the Certification Officer in relation to expenditure in respect of a ballot if the date of the ballot falls after 31 March 1996 or in respect of arrangements to hold a ballot which is not proceeded with if the date of the ballot would have fallen after that

date; but, for the purposes of applications made after (as well as before) the repeal in relation to expenditure not excluded by this subsection, the regulations shall continue in force notwithstanding the repeal.

(3) In subsection (2) above, the "date of the ballot" means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

(4) Subsection (1) above shall come into force on 1 April 1996.

Financial affairs of unions etc.

Annual return to contain additional information.

8. In section 32(3) of the 1992 Act (contents of annual return)—

(a) after paragraph (a) there shall be inserted—

"(aa) details of the salary paid to and other benefits provided to or in respect of—

(i) each member of the executive,

(ii) the president, and

(iii) the general secretary,

by the trade union during the period to which the return relates,", and

(b) after paragraph (c) there shall be inserted ", and

(d) in the case of a trade union required to maintain a register by section 24, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member's address for the purposes of that section;".

Statement to members following annual return.

9. After section 32 of the 1992 Act there shall be inserted—

"Statement to members following annual return.

32A.—(1) A trade union shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this section by any of the methods allowed by subsection (2).

(2) Those methods are—

(a) the sending of individual copies of the statement to members; or

(b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

(3) The statement required by this section shall specify—

(a) the total income and expenditure of the trade union for the period to which the return relates,

(b) how much of the income of the union for that period consisted of payments in respect of membership,

PART I

(c) the total income and expenditure for that period of any political fund of the union, and

(d) the salary paid to and other benefits provided to or in respect of—

(i) each member of the executive,

(ii) the president, and

(iii) the general secretary,

by the trade union during that period.

(4) The requirement imposed by this section is not satisfied if the statement specifies anything inconsistent with the contents of the return.

(5) The statement—

(a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and

(b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.

(6) The statement—

(a) shall also include the following statement—

"A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he may apply for material assistance from the Commissioner for the Rights of Trade Union Members and should, in any case, consider obtaining independent legal advice."; and

PART I

(b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.

(7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.

(8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with subsection (7) a copy of each form of statement provided to any of them.

(9) If at any time during the period of two years beginning with the day referred to in subsection (1) any member of the trade union requests a copy of the statement required by this section, the union shall, as soon as practicable, furnish him with such a copy free of charge.".

Investigation of financial affairs.

10. After section 37 of the 1992 Act there shall be inserted—

"Investigation of financial affairs

Power of Certification Officer to require production of documents etc.

37A.—(1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.

(2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union, or a branch or section of a trade union, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.

(3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of subsection (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.

(4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.

PART I

(5) The power under this section to require the production of documents includes power—

(a) if the documents are produced—

(i) to take copies of them or extracts from them, and

(ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) In subsections (1) and (2) "relevant documents", in relation to a trade union or a branch or section of a trade union, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union.

(7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under subsection (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—

(a) on a prosecution for an offence under section 45(9) (false explanations and statements), or

(b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

Investigations by inspectors.

37B.—(1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union and to report on them in such manner as he may direct.

(2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—

(a) that the financial affairs of the trade union are being or have been conducted for a fraudulent or unlawful purpose,

(b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,

(c) that the trade union has failed to comply with any duty imposed on it by this Act in relation to its financial affairs, or

(d) that a rule of the union relating to its financial affairs has not been complied with.

PART I

(3) Where an inspector is, or inspectors are, appointed under this section it is the duty of all persons who are or have been officials or agents of the trade union—

(a) to produce to the inspector or inspectors all relevant documents which are in their possession,

(b) to attend before the inspector or inspectors when required to do so, and

(c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.

(4) Where any person (whether or not within subsection (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—

(a) to produce to the inspector or inspectors any relevant documents relating to that matter,

(b) to attend before the inspector or inspectors, and

(c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;

and it is the duty of the person to comply with the requirement.

(5) In subsections (3) and (4) "relevant documents", in relation to an investigation of the financial affairs of a trade union, means accounting documents, and documents of any other description, which may be relevant to the investigation.

(6) A person shall not be excused from providing an explanation or making a statement in compliance with subsection (3) or a requirement imposed under subsection (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—

(a) on a prosecution for an offence under section 45(9) (false explanations and statements), or

(b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

Inspectors' reports etc.

37C.—(1) An inspector or inspectors appointed under section 37B—

(a) may, and if so directed by the Certification Officer shall, make interim reports, and

(b) on the conclusion of their investigation shall make a final report,

to the Certification Officer.

(2) Any report under subsection (1) shall be written or printed, as the Certification Officer directs.

(3) An inspector or inspectors appointed under section 37B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.

(4) The Certification Officer may direct an inspector or inspectors appointed under section 37B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—

(a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or

(b) it appears to the Certification Officer appropriate to do so in any other circumstances.

(5) Where an investigation is the subject of a direction under subsection (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that subsection or subsequently.

(6) The Certification Officer shall publish a final report made to him under this section.

(7) The Certification Officer shall furnish a copy of such a report free of charge—

(a) to the trade union which is the subject of the report,

(b) to any auditor of that trade union or of any branch or section of the union, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and

(c) to any member of the trade union if—

(i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),

(ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and

(iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.

(8) A copy of any report under this section, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this subsection shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

Expenses of investigations.

37D.—(1) The expenses of an investigation under section 37B shall be defrayed in the first instance by the Certification Officer.

(2) For the purposes of this section there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.

(3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

Sections 37A and 37B: supplementary.

37E.—(1) Where—

(a) a report of the auditor or auditors of a trade union, or a branch or section of a trade union, on the accounts audited by him or them and contained in the annual return of the union, or branch or section—

(i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or

(ii) includes a statement in compliance with section 36(4), or

(b) a member of a trade union has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by sections 37A and 37B.

(2) If in a case where a member of a trade union has complained as mentioned in subsection (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those sections he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in section 37A or 37B—

(a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court or the Court of Session be entitled to refuse to disclose

PART I

on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or

(b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

(4) Nothing in section 37A or 37B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation is owed is the trade union, or any branch or section of the union, concerned or a trustee of any fund concerned, or

(b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(5) In sections 37A and 37B and this section—

(a) references to documents include information recorded in any form, and

(b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.".

Offences.

11.—(1) In section 45 of the 1992 Act (offences), for subsection (5) there shall be substituted—

"(5) If a person contravenes any duty, or requirement imposed, under section 37A (power of Certification officer to require production of documents etc.) or 37B (investigations by inspectors) he commits an offence.

(6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under section 37A(3) or 37B(4) to produce documents it is a defence for him to prove—

(a) that the documents were not in his possession, and

(b) that it was not reasonably practicable for him to comply with the requirement.

(7) If an official or agent of a trade union—

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union, or

(b) makes, or is privy to the making of, a false entry in any such document,

he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or to defeat the law.

(8) If such a person fraudulently—

(a) parts with, alters or deletes anything in any such document, or

(b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,

he commits an offence.

(9) If a person in purported compliance with a duty, or requirement imposed, under section 37A or 37B to provide an explanation or make a statement—

(a) provides or makes an explanation or statement which he knows to be false in a material particular, or

(b) recklessly provides or makes an explanation or statement which is false in a material particular,

he commits an offence.".

(2) After that section there shall be inserted—

"Penalties and prosecution time limits.

45A.—(1) A person guilty of an offence under section 45 is liable on summary conviction—

(a) in the case of an offence under subsection (1) or (5), to a fine not exceeding level 5 on the standard scale;

(b) in the case of an offence under subsection (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under section 45(1) relating to the duty imposed by section 32 (duty to send annual return to Certification Officer) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.

(3) Proceedings for any other offence under section 45(1) may be commenced—

(a) at any time before the end of the period of six months beginning with the date when the offence was committed, or

(b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer or, in Scotland, the procurator fiscal, to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.

(4) For the purposes of subsection (3)(b), a certificate signed by or on behalf of the Certification Officer or the procurator fiscal which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.

PART I

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) For the purposes of this section—

(a) in England and Wales, proceedings are commenced when an information is laid, and

(b) in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) applies as it applies for the purposes of that section.".

1975 c. 21.

Disqualification of offenders.

12. After section 45A of the 1992 Act (which is inserted by section 11 above) there shall be inserted—

"Duty to secure positions not held by certain offenders.

45B.—(1) A trade union shall secure that a person does not at any time hold a position in the union to which this section applies if—

(a) within the period of five years immediately preceding that time he has been convicted of an offence under subsection (1) or (5) of section 45, or

(b) within the period of ten years immediately preceding that time he has been convicted of an offence under subsection (4), (7), (8) or (9) of that section.

(2) Subject to subsection (4), the positions to which this section applies are—

(a) member of the executive,

(b) any position by virtue of which a person is a member of the executive,

(c) president, and

(d) general secretary.

(3) For the purposes of subsection (2)(a) "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This section does not apply to the position of president or general secretary if the holder of that position—

(a) is not, in respect of that position, either a voting member of the executive or an employee of the union,

(b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up, and

PART I

(c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) In subsection (4)(a) "a voting member of the executive" means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

Remedies and enforcement.

45C.—(1) A member of a trade union who claims that the union has failed to comply with the requirement of section 45B may apply to the Certification Officer or to the court for a declaration to that effect.

(2) On an application being made to him, the Certification Officer—

(a) shall, where he considers it appropriate, give the applicant and the trade union an opportunity to be heard,

(b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(c) may make or refuse the declaration asked for, and

(d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where an application is made to the Certification Officer, the person who made that application, or any other person, is not prevented from making an application to the court in respect of the same matter.

(4) If, after an application is made to the Certification Officer, an application in respect of the same matter is made to the court, the court shall have due regard to any declaration which has been made by the Certification Officer.

(5) Where the court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

(6) Where an order has been made, any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.".

Rights in relation to union membership

Action short of dismissal: non-infringing actions.

13. In section 148 of the 1992 Act (consideration of complaint of action short of dismissal), after subsection (2) there shall be inserted—

"(3) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—

(a) there is evidence that the employer's purpose was to further a change in his relationship with all or any class of his employees, and

(b) there is also evidence that his purpose was one falling within section 146,

the tribunal shall regard the purpose mentioned in paragraph (a) (and not the purpose mentioned in paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in paragraph (a).

(4) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action by the employer paragraph (a) of subsection (3) is satisfied if the purpose mentioned in that paragraph was the purpose of the previous action.

(5) In subsection (3) "class", in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.".

Right not to be excluded or expelled.

14. For sections 174 to 177 of the 1992 Act (right not to be unreasonably excluded or expelled from union where employment subject to union membership agreement) and the heading immediately preceding them there shall be substituted—

"Right to membership of trade union

Right not to be excluded or expelled from union.

174.—(1) An individual shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.

(2) The exclusion or expulsion of an individual from a trade union is permitted by this section if (and only if)—

(a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,

(b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Great Britain,

(c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or

(d) the exclusion or expulsion is entirely attributable to his conduct.

(3) A requirement in relation to membership of a union is "enforceable" for the purposes of subsection (2)(a) if it restricts membership solely by reference to one or more of the following criteria—

(a) employment in a specified trade, industry or profession,

(b) occupational description (including grade, level or category of appointment), and

(c) possession of specified trade, industrial or professional qualifications or work experience.

(4) For the purposes of subsection (2)(d) "conduct", in relation to an individual, does not include—

(a) his being or ceasing to be, or having been or ceased to be—

(i) a member of another trade union,

(ii) employed by a particular employer or at a particular place, or

(iii) a member of a political party, or

(b) conduct to which section 65 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.

(5) An individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an industrial tribunal.

Time limit for proceedings.

175. An industrial tribunal shall not entertain a complaint under section 174 unless it is presented—

(a) before the end of the period of six months beginning with the date of the exclusion or expulsion, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

Remedies.

176.—(1) Where the industrial tribunal finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.

(2) An individual whose complaint has been declared to be well-founded may make an application for an award of compensation to be paid to him by the union.

The application shall be made to an industrial tribunal if when it is made the applicant has been admitted or re-admitted to the union, and otherwise to the Employment Appeal Tribunal.

PART I

(3) The application shall not be entertained if made—

(a) before the end of the period of four weeks beginning with the date of the declaration, or

(b) after the end of the period of six months beginning with that date.

(4) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal or the Employment Appeal Tribunal considers just and equitable in all the circumstances.

(5) Where the industrial tribunal or Employment Appeal Tribunal finds that the exclusion or expulsion complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation calculated in accordance with subsections (4) and (5) shall not exceed the aggregate of—

(a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for basic award in unfair dismissal cases), and

1978 c. 44.

(b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases);

and, in the case of an award by the Employment Appeal Tribunal, shall not be less than £5,000.

(7) The Secretary of State may by order increase the sum specified in subsection (6).

(8) An order under subsection (7)—

(a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and

(b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.

Interpretation and other supplementary provisions.

177.—(1) For the purposes of section 174—

(a) "trade union" does not include an organisation falling within paragraph (b) of section 1,

(b) "conduct" includes statements, acts and omissions, and

(c) "employment" includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).

(2) For the purposes of sections 174 to 176—

(a) if an individual's application for membership of a trade union is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, he shall be treated as having been excluded from the union on the last day of that period, and

(b) an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.

(3) The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an industrial tribunal in accordance with that section, sections 175 and 176 and this section, and not otherwise.

(4) Where a complaint relating to an expulsion which is presented under section 174 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 66 (complaint of infringement of right not to be unjustifiably disciplined).

(5) The rights conferred by section 174 are in addition to, and not in substitution for, any right which exists apart from that section; and, subject to subsection (4), nothing in that section, section 175 or 176 or this section affects any remedy for infringement of any such right.".

Right not to suffer deduction of unauthorised or excessive subscriptions.

15. For section 68 of the 1992 Act (right to require employer to stop deduction of union dues on termination of membership) and the heading immediately preceding it there shall be substituted—

"Right not to suffer deduction of unauthorised or excessive union subscriptions

Right not to suffer deduction of unauthorised or excessive subscriptions.

68.—(1) Where arrangements ("subscription deduction arrangements") exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union ("subscription deductions"), the employer shall ensure—

(a) that no subscription deduction is made from wages payable to the worker on any day ("the relevant day") unless it is an authorised deduction, and

(b) that the amount of any subscription deduction which is so made does not exceed the permitted amount.

PART I

(2) For the purposes of subsection (1)(a) a subscription deduction is an authorised deduction in relation to the relevant day if—

(a) a document containing the worker's authorisation of the making from his wages of subscription deductions has been signed and dated by the worker, and

(b) the authorisation is current on that day.

(3) For the purposes of subsection (2)(b) an authorisation is current on the relevant day if that day falls within the period of three years beginning with the day on which the worker signs and dates the document containing the authorisation and subsection (4) does not apply.

(4) This subsection applies if a document containing the worker's withdrawal of the authorisation has been received by the employer in time for it to be reasonably practicable for him to secure that no subscription deduction is made from wages payable to the worker on the relevant day.

(5) For the purposes of subsection (1)(b) the permitted amount in relation to the relevant day is—

(a) the amount of the subscription deduction which falls to be made from wages payable to the worker on that day in accordance with the subscription deduction arrangements, or

(b) if there is a relevant increase in the amount of subscription deductions and appropriate notice has not been given by the employer to the worker at least one month before that day, the amount referred to in paragraph (a) less the amount of the increase.

(6) So much of the increase referred to in subsection (5)(b) is relevant as is not attributable solely to an increase in the wages payable on the relevant day.

(7) In subsection (5)(b) "appropriate notice" means, subject to subsection (8) below, notice in writing stating—

(a) the amount of the increase and the increased amount of the subscription deductions, and

(b) that the worker may at any time withdraw his authorisation of the making of subscription deductions by giving notice in writing to the employer.

(8) Where the relevant increase is attributable to an increase in any percentage by reference to which the worker's subscription deductions are calculated, subsection (7) above shall have effect with the substitution, in paragraph (a), for the reference to the amount of the increase and the increased amount of the deductions of a reference to the percentage before and the percentage after the increase.

PART I

(9) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

(10) Where arrangements, whether included in subscription deduction arrangements or not, exist between the parties to subscription deduction arrangements for the making from workers' wages of deductions representing payments to the union which are additional to subscription deductions, the amount of the deductions representing such additional payments shall be treated for the purposes of this section (where they would otherwise not be so treated) as part of the subscription deductions.

(11) In this section and section 68A "employer", "wages" and "worker" have the same meanings as in Part I of the Wages Act 1986.

1986 c. 48.

Complaint of infringement of rights.

68A.—(1) A worker may present a complaint to an industrial tribunal that his employer has made a deduction from his wages in contravention of section 68—

(a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(2) Where a tribunal finds that a complaint under this section is well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker—

(a) in the case of a contravention of paragraph (a) of subsection (1) of section 68, the whole amount of the deduction, and

(b) in the case of a contravention of paragraph (b) of that subsection, the amount by which the deduction exceeded the amount permitted to be deducted by that paragraph,

less any such part of the amount as has already been paid to the worker by the employer.

(3) Where the making of a deduction from the wages of a worker both contravenes section 68(1) and involves one or more of the contraventions specified in subsection (4) of this section, the aggregate amount which may be ordered by an industrial tribunal or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in

PART I

respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.

(4) The contraventions referred to in subsection (3) are—

(a) a contravention of the requirement not to make a deduction without having given the particulars required by section 8 (itemised pay statements) or 9(1) (standing statements of fixed deductions) of the Employment Protection (Consolidation) Act 1978,

1978 c. 44.

(b) a contravention of section 1(1) of the Wages Act 1986 (requirement not to make unauthorised deductions), and

1986 c. 48.

(c) a contravention of section 86(1) or 90(1) of this Act (requirements not to make deductions of political fund contributions in certain circumstances).".

Extension of right not to be unjustifiably disciplined.

16.—(1) In section 65(2) of the 1992 Act (conduct for which an individual may not be disciplined by a trade union), after paragraph (e) there shall be inserted the following paragraphs—

"(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,

(g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,

(h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,

(i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or

(j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.".

(2) In section 65(7) of the 1992 Act (definitions), after the definition of "representative", there shall be inserted the following—

""require" (on the part of an individual) includes request or apply for, and "requisition" shall be construed accordingly.".

Industrial action

Requirement of postal ballot.

17. In section 230 of the 1992 Act (conduct of ballot), for subsections (2) and (3) (method of voting) there shall be substituted—

"(2) Except as regards persons falling within subsection (2A), so far as is reasonably practicable, every person who is entitled to vote in the ballot must—

(a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and

(b) be given a convenient opportunity to vote by post.

(2A) Where a merchant seaman to whom this subsection applies is entitled to vote in the ballot he must, so far as is reasonably practicable—

(a) have a voting paper made available to him while he is on board the ship or is at a place where the ship is; and

(b) be given an opportunity to vote while he is on board the ship or is at a place where the ship is.

(2B) Subsection (2A) applies to a merchant seaman who the trade union reasonably believes will, throughout the period during which votes may be cast in the ballot, be employed in a ship either at sea or at a place outside Great Britain.

(2C) In subsections (2A) and (2B) "merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships.".

Notice of ballot and sample voting paper for employers.

18.—(1) In subsection (1) of section 226 of the 1992 Act (industrial action not protected unless it has support of a ballot), for the words from "is not protected" to the end there shall be substituted the words "—

(a) is not protected unless the industrial action has the support of a ballot, and

(b) where section 226A falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with section 226A in relation to him.".

(2) After that section there shall be inserted—

"Notice of ballot and sample voting paper for employers.

226A.—(1) The trade union must take such steps as are reasonably necessary to ensure that—

(a) not later than the seventh day before the opening day of the ballot, the notice specified in subsection (2), and

(b) not later than the third day before the opening day of the ballot, the sample voting paper specified in subsection (3),

is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.

(2) The notice referred to in paragraph (a) of subsection (1) is a notice in writing—

(a) stating that the union intends to hold the ballot,

PART I

(b) specifying the date which the union reasonably believes will be the opening day of the ballot, and

(c) describing (so that he can readily ascertain them) the employees of the employer who it is reasonable for the union to believe (at the time when the steps to comply with that paragraph are taken) will be entitled to vote in the ballot.

(3) The sample voting paper referred to in paragraph (b) of subsection (1) is—

(a) a sample of the form of voting paper which is to be sent to the employees who it is reasonable for the trade union to believe (at the time when the steps to comply with paragraph (a) of that subsection are taken) will be entitled to vote in the ballot, or

(b) where they are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

(4) In this section references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.

(5) This section, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution in subsection (3), for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.".

Ballot result for employers.

19. After section 231 of the 1992 Act there shall be inserted—

"Employers to be informed of ballot result.

231A.—(1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in section 231.

(2) In subsection (1) "relevant employer" means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.".

Scrutiny of ballots.

20.—(1) After section 226A of the 1992 Act (which is inserted by section 18 above) there shall be inserted—

"Appointment of scrutineer.

226B.—(1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person ("the scrutineer") whose terms of appointment shall require him to carry out in relation to the ballot the functions of—

(a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see section 231B); and

PART I

(b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.

(2) A person is a qualified person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under subsection (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under subsection (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.

(4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.".

(2) In section 229 of that Act (voting paper), after subsection (1) there shall be inserted—

"(1A) Each voting paper must—

(a) state the name of the independent scrutineer,

(b) clearly specify the address to which, and the date by which, it is to be returned,

(c) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(d) be marked with its number.

This subsection, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.".

(3) After section 231A of that Act (which is inserted by section 19 above) there shall be inserted—

"Scrutineer's report.

231B.—(1) The scrutineer's report on the ballot shall state whether the scrutineer is satisfied—

PART I

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

(b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out the functions conferred on him under section 226B(1) without any interference from the trade union or any of its members, officials or employees;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.

(2) If at any time within six months from the date of the ballot—

(a) any person entitled to vote in the ballot, or

(b) the employer of any such person,

requests a copy of the scrutineer's report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.".

(4) After section 226B of the 1992 Act there shall be inserted—

"Exclusion for small ballots.

226C. Nothing in section 226B, section 229(1A)(a) or section 231B shall impose a requirement on a trade union unless—

(a) the number of members entitled to vote in the ballot, or

(b) where separate workplace ballots are held in accordance with section 228(1), the aggregate of the number of members entitled to vote in each of them,

exceeds 50.".

Notice of industrial action for employers.

21. After section 234 of the 1992 Act there shall be inserted—

"Requirement on trade union to give notice of industrial action

Notice to employers of industrial action.

234A.—(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not protected as respects his employer unless the union has taken or takes such steps as are reasonably necessary to ensure that the employer receives within the appropriate period a relevant notice covering the act.

(2) Subsection (1) imposes a requirement in the case of an employer only if it is reasonable for the union to believe, at the latest time when steps could be taken to ensure that he receives such a notice, that he is the employer of persons who will be or have been induced to take part, or continue to take part, in the industrial action.

(3) For the purposes of this section a relevant notice is a notice in writing which—

(a) describes (so that he can readily ascertain them) the employees of the employer who the union intends to induce or has induced to take part, or continue to take part, in the industrial action ("the affected employees"),

(b) states whether industrial action is intended to be continuous or discontinuous and specifies—

(i) where it is to be continuous, the intended date for any of the affected employees to begin to take part in the action,

(ii) where it is to be discontinuous, the intended dates for any of the affected employees to take part in the action, and

(c) states that it is given for the purposes of this section.

(4) For the purposes of subsection (1) the appropriate period is the period—

(a) beginning with the day when the union satisfies the requirement of section 231A in relation to the ballot in respect of the industrial action, and

(b) ending with the seventh day before the day, or before the first of the days, specified in the relevant notice.

(5) For the purposes of subsection (1) a relevant notice covers an act done by the union if the person induced is one of the affected employees and—

(a) where he is induced to take part or continue to take part in industrial action which the union intends to be continuous, if—

(i) the notice states that the union intends the industrial action to be continuous, and

(ii) there is no participation by him in the industrial action before the date specified in the notice in consequence of any inducement by the union not covered by a relevant notice; and

(b) where he is induced to take part or continue to take part in industrial action which the union intends to be discontinuous, if there is no participation by him in the industrial action on

PART I

a day not so specified in consequence of any inducement by the union not covered by a relevant notice.

(6) For the purposes of this section—

(a) a union intends industrial action to be discontinuous if it intends it to take place only on some days on which there is an opportunity to take the action, and

(b) a union intends industrial action to be continuous if it intends it to be not so restricted.

(7) Where—

(a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed otherwise than to enable the union to comply with a court order or an undertaking given to a court, and

(b) the industrial action has at a later date again been authorised or endorsed by the union (whether as continuous or discontinuous action),

no relevant notice covering acts done to induce persons to take part in the earlier action shall operate to cover acts done to induce persons to take part in the action authorised or endorsed at the later date and this section shall apply in relation to an act to induce a person to take part, or continue to take part, in the industrial action after that date as if the references in subsection (3)(b)(i) to the industrial action were to the industrial action taking place after that date.

(8) The requirement imposed on a trade union by subsection (1) shall be treated as having been complied with if the steps were taken by other relevant persons or committees whose acts were authorised or endorsed by the union and references to the belief or intention of the union in subsection (2) or, as the case may be, subsections (3), (5) and (6) shall be construed as references to the belief or the intention of the person or committee taking the steps.

(9) The provisions of section 20(2) to (4) apply for the purpose of determining for the purposes of subsection (1) who are relevant persons or committees and whether the trade union is to be taken to have authorised or endorsed the steps the person or committee took and for the purposes of subsection (7) whether the trade union is to be taken to have authorised or endorsed the industrial action.".

Industrial action affecting supply of goods or services to an individual.

22. After section 235 of the 1992 Act there shall be inserted—

"Industrial action affecting supply of goods or services to an individual

PART I

Industrial action affecting supply of goods or services to an individual.

235A.—(1) Where an individual claims that—

(a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and

(b) an effect, or a likely effect, of the industrial action is or will be to—

(i) prevent or delay the supply of goods or services, or

(ii) reduce the quality of goods or services supplied,

to the individual making the claim,

he may apply to the High Court or the Court of Session for an order under this section.

(2) For the purposes of this section an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—

(a) if it is actionable in tort by any one or more persons, or

(b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under section 62.

(3) In determining whether an individual may make an application under this section it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.

(4) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—

(a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and

(b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.

(5) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

(6) For the purposes of this section an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purposes of determining whether such an act is to be taken to be so authorised or endorsed.

PART I

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.

Application for assistance for proceedings under section 235A.

235B.—(1) An individual who is an actual or prospective party to proceedings to which this section applies may apply to the Commissioner for Protection Against Unlawful Industrial Action (in this section and section 235C referred to as "the Commissioner") for assistance in relation to the proceedings, and the Commissioner shall, as soon as reasonably practicable after receiving the application, consider it and decide whether and to what extent to grant it.

(2) This section applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A brought with respect to an act of a trade union; but the Secretary of State may by order provide that this section shall also apply to such proceedings brought with respect to an act of a person other than a trade union.

Any order shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(3) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this section include—

(a) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with it unaided, and

(b) whether, in the Commissioner's opinion, the case involves a matter of substantial public interest or concern.

(4) If the Commissioner decides not to provide assistance, he shall, as soon as reasonably practicable after making the decision, notify the applicant of his decision and, if he thinks fit, of the reasons for it.

(5) If the Commissioner decides to provide assistance, he shall, as soon as reasonably practicable after making the decision—

(a) notify the applicant, stating the extent of the assistance to be provided, and

(b) give him a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance.

(6) The assistance provided may include the making of arrangements for, or for the Commissioner to bear the costs of—

(a) the giving of advice or assistance by a solicitor or counsel, and

(b) the representation of the applicant, or the provision to him of such assistance as is usually given by a solicitor or counsel—

(i) in steps preliminary or incidental to the proceedings, or

(ii) in arriving at or giving effect to a compromise to avoid or bring an end to the proceedings.

Provisions supplementary to section 235B.

235C.—(1) Where assistance is provided under section 235B with respect to the conduct of proceedings—

(a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the court in the proceedings,

(b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in respect of the matter in connection with which the assistance is provided in order to avoid or bring proceedings to an end, and

(c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief (in Scotland, an interim order) to the applicant.

(2) Where the Commissioner provides assistance in relation to any proceedings, he shall do so on such terms, or make such other arrangements, as will secure that a person against whom the proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to them.

(3) In England and Wales, the recovery of expenses incurred by the Commissioner in providing an applicant with assistance (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Commissioner—

(a) on any costs which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and

(b) on any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

PART I

(4) In Scotland, the recovery of such expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall be paid to the Commissioner, in priority to other debts—

(a) out of any expenses which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and

(b) out of any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

(5) Where a person is receiving assistance in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words "(assisted by the Commissioner for Protection Against Unlawful Industrial Action)".

(6) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(7) Where the Commissioner grants an application to a person who for the purposes of the application—

(a) has made a statement which he knew to be false in a material particular, or

(b) has recklessly made a statement which was false in a material particular,

he is entitled to recover from that person any sum paid by him to that person, or to any other person, by way of assistance; but nothing in this subsection affects the power of the Commissioner to enter into any agreement he thinks fit as to the terms on which assistance is provided.

(8) Nothing in section 235B or this section affects the law and practice regulating the description of persons who may appear in, conduct, defend and address the court in any proceedings.

(9) In section 235B and this section "applicant", in relation to assistance, means the individual on whose application the assistance is provided.".

PART II

EMPLOYMENT RIGHTS

Maternity

Right to maternity leave and right to return to work. 1978 c. 44.

23.—(1) In the Employment Protection (Consolidation) Act 1978 (referred to in this Act as "the 1978 Act"), for Part III (maternity: right to return to work) there shall be substituted—

(a) the sections 33 to 38A set out in subsection (2) below (which provide for a new right to maternity leave), and

(b) the sections 39 to 44, together with the heading, set out in Schedule 2 to this Act (which continue in effect the right to return to work with amendments to take account of the new right).

(2) The provisions referred to in subsection (1)(a) above are—

"PART III

MATERNITY

General right to maternity leave

General right to maternity leave.

33.—(1) An employee who is absent from work at any time during her maternity leave period shall, subject to sections 36 and 37, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Subsection (1) does not confer any entitlement to remuneration.

Commencement of maternity leave period.

34.—(1) Subject to subsection (2), an employee's maternity leave period commences with—

(a) the date which, in accordance with section 36, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence, or

(b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

(2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.

(3) The Secretary of State may by order vary either of the provisions of subsections (1) and (2).

(4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Duration of maternity leave

35.—(1) Subject to subsections (2) and (3), an

PART II

period.

employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to subsection (3), where any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, other than a provision for the time being specified in an order made under section 45(3), prohibits her working for any period after the end of the period mentioned in subsection (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.

(3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this subsection) that period would end, the period ends at the time of the dismissal.

(4) The Secretary of State may by order vary any of the provisions of this section.

(5) No order shall be made under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Notice of commencement of leave.

36.—(1) An employee shall not have the right conferred by section 33 unless—

(a) she notifies her employer of the date (within the restriction imposed by subsection (2)) ("the notified leave date") on which she intends her period of absence from work in exercise of her right to maternity leave to commence—

(i) not less than twenty-one days before that date, or

(ii) if that is not reasonably practicable, as soon as is reasonably practicable,

(b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason, or

(c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

(2) No date may be notified under subsection (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.

(3) Where, in the case of an employee, either paragraph (b) or (c) of subsection (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subsection shall impose any requirement on the employee.

Requirement to inform employer of pregnancy etc.

37.—(1) An employee shall not have the right conferred by section 33 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—

(a) that she is pregnant, and

(b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by section 33 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

Requirement to inform employer of return during maternity leave period.

37A.—(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in subsection (1) without notifying her employer of her intention to do so or without giving him the notice required by that subsection her employer shall be entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has seven days notice of her return.

(3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee who has been notified under subsection (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

Special provision where redundancy during maternity leave period.

38.—(1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (2) (and takes effect immediately on the ending of her employment under the previous contract).

PART II

(2) The new contract of employment must be such that—

(a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and

(b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract.

Contractual right to maternity leave.

38A.—(1) An employee who has the right to maternity leave under section 33 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of sections 34 to 38 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right under section 33.".

Dismissal rights.

24.—(1) For section 60 of the 1978 Act (dismissal on ground of pregnancy) there shall be substituted—

"Dismissal on ground of pregnancy or childbirth.

60. An employee shall be treated for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy,

(b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,

(c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave,

(d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—

(i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating

that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period, and

(ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current,

is that she has given birth to a child or any other reason connected with her having given birth to a child,

(e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in section 45(1), or

(f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and section 38 has not been complied with.

For the purposes of paragraph (c) above a woman "takes maternity leave" if she is absent from work during her maternity leave period and a woman "avails herself of the benefits of maternity leave" if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 33 during that period.".

(2) In section 59 of the 1978 Act (dismissal on ground of redundancy),—

(a) for the words "employer, and" there shall be substituted the words "employer, and either—

(a) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason; or"; and

(b) there shall be inserted at the end, as subsection (2), the following—

"(2) For the purposes of this section "inadmissible", in relation to a reason, means that it is one of those specified in section 60(a) to (e)";

and the words preceding that subsection (2) shall become subsection (1).

(3) In section 64 of the 1978 Act (qualifying period for right not to be unfairly dismissed), after subsection (2) there shall be inserted—

"(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.

(4) For the purposes of subsection (3) "inadmissible", in relation to a reason, means that it is one of those specified in section 60(a) to (e).

PART II

(5) Subsection (1) shall not apply to a case falling within section 60(f).".

(4) In section 53 of that Act (written statement of reasons for dismissal), after subsection (2) there shall be inserted—

"(2A) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the reasons for her dismissal if she is dismissed—

(a) at any time while she is pregnant, or

(b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.".

Rights on suspension on maternity grounds.

25. After section 44 of the 1978 Act (set out in Schedule 2 to this Act) there shall be inserted as provisions of Part III the sections 45 to 47, together with the heading, set out in Schedule 3 to this Act (which makes provision conferring rights on employees suspended from work on grounds of maternity).

Employment particulars

Right to employment particulars.

26. For sections 1 to 6 of the 1978 Act (particulars relating to employment) there shall be substituted the sections set out in Schedule 4 to this Act.

Entitlement to itemised pay statement.

27. After section 146(4) of the 1978 Act (provisions disapplied in relation to employment below minimum number of hours weekly) there shall be inserted—

"(4A) Subject to subsection (4B), subsection (4) shall have effect as respects section 8 subject to the following modifications, namely—

(a) the substitution of a reference to eight hours weekly for the reference to sixteen hours weekly, and

(b) the omission of the words " Subject to subsections (5), (6) and (7)".

(4B) Subsection (4A) shall not apply in relation to employment if, at the relevant date, the number of employees employed by the employer, added to the number employed by any associated employer, is less than twenty.

(4C) For the purposes of subsection (4B) "relevant date" means the date on which any payment of wages or salary is made to an employee in respect of which he would, apart from subsection (4B), have the right to an itemised pay statement.".

Employment protection in health and safety cases

Rights to claim unfair dismissal and not to suffer detriment.

28. Schedule 5 to this Act (which makes amendments of the 1978 Act for protecting employees against dismissal, and being subjected to other detriment, in health and safety cases) shall have effect.

Unfair dismissal: assertion of statutory right

PART II

Dismissal on ground of assertion of statutory right.

29.—(1) After section 60 of the 1978 Act (as substituted by section 24 of this Act), there shall be inserted—

"Dismissal on grounds of assertion of statutory right.

60A.—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following statutory rights are relevant for the purposes of this section, namely—

(a) any right conferred by—

(i) this Act, or

(ii) the Wages Act 1986,

1986 c. 48.

for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;

(b) the right conferred by section 49 (minimum notice);

(c) the rights conferred by the following provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, namely, sections 68, 86, 146, 168, 169 and 170 (deductions from pay, union activities and time off).".

1992 c. 52.

(2) In section 59 of the 1978 Act (dismissal on ground of redundancy), in subsection (2) (inserted by section 24(2) of this Act), after the word "(e)" there shall be inserted the words "or 60A(1) (read with (2) and (3))".

(3) In section 64 of the 1978 Act (qualifying period for right not to be unfairly dismissed), in subsection (4) (inserted by section 24(3) of this Act), after the word "(e)" there shall be inserted the words "or 60A(1) (read with (2) and (3))".

Reinstatement orders: compensation

Compensation for unfair dismissal when reinstatement or re-engagement ordered.

30.—(1) Sections 71, 74 and 75 of the 1978 Act (awards of compensation for unfair dismissal) shall be amended in accordance with subsections (2), (3) and (4).

PART II

(2) In section 71—

(a) in subsection (1), for the words "section 75" there shall be substituted the words "subsection (1A)"; and

(b) after subsection (1) there shall be inserted—

"(1A) Subsection (1) is subject to section 75 except that the limit imposed by that section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be.".

(3) In section 74—

(a) in subsection (1), for the words "sections 75 and 76" there shall be substituted the words "subsection (8) and section 76"; and

(b) after subsection (7) there shall be inserted—

"(8) Subsection (1) is subject also to section 75 except that, in the case of an award of compensation under section 71(2)(a) where an additional award falls to be made, the limit imposed by section 75 may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be, if that limit would otherwise reduce the amount of the compensatory award when added to the additional award.".

(4) In section 75(1), after the word "shall" there shall be inserted the words "(save where the exception in section 71(1A) or 74(8) applies)".

Service in armed forces

Application of 1978 Act to service in armed forces.

31.—(1) In section 138 of the 1978 Act (application of Act to Crown employment) for subsection (3) (service in the armed forces excepted) there shall be substituted—

1980 c. 9.

"(3) This section applies to service as a member of the naval, military or air forces of the Crown but only in accordance with section 138A and it applies also to employment by any association established for the purposes of Part VI of the Reserve Forces Act 1980.".

(2) After section 138, there shall be inserted—

"Application of Act to armed forces.

138A.—(1) The provisions of this Act which apply, by virtue of section 138, to service as a member of the naval, military or air forces of the Crown are—

Part I;

in Part II, sections 19 to 22 and 31A;

Part III;

in Part IV, section 53;

Part V, except sections 57A and 80;

Part VIII; and

this Part.

PART II

(2) Her Majesty may, by Order in Council,—

(a) amend subsection (1) above by making additions to, or omissions from, the provisions for the time being specified in that subsection by an Order under this subsection; and

(b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order.

(3) Subject to subsection (5) below, modifications made under subsection (2) above may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.

(4) Where modifications include the provision authorised by subsection (3) above the Order in Council shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the Order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.

(5) No provision shall be made by virtue of subsection (3) above which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.

(6) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (2) above unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(7) In this section—

"the normal period for a complaint or reference", in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant enactment as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and

"the service procedures for the redress of complaints" means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the Army Act 1955, sections 180 and 181 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957.".

1955 c. 18.
1955 c. 19.
1957 c. 53.

PART II

Sex discrimination

Right to declaration of invalidity of discriminatory terms and rules. 1986 c. 59. 1975 c. 65.

32. In section 6 of the Sex Discrimination Act 1986 (application of section 77 of the Sex Discrimination Act 1975, which provides for discriminatory terms of contracts to be void, to terms of collective agreements, employers' rules and rules of certain organisations), after subsection (4) there shall be inserted—

"(4A) A person to whom this subsection applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of subsection (1) of the said section 77 if he has reason to believe—

(a) that the term or rule may at some future time have effect in relation to him, and

(b) where he alleges that it is void by virtue of paragraph (c) of that subsection, that—

(i) an act for the doing of which it provides may at some such time be done in relation to him, and

(ii) the act would be, or be deemed by virtue of subsection (3) above to be, rendered unlawful by the 1975 Act if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

(a) a term of a collective agreement made by or on behalf of—

(i) an employer,

(ii) an organisation of employers of which an employer is a member, or

(iii) an association of such organisations of one of which an employer is a member, or

(b) a rule made by an employer,

subsection (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(4C) In the case of a complaint about a rule made by an organisation, authority or body to which subsection (2) above applies, subsection (4A) applies to any person—

(a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body,

(b) on whom the organisation, authority or body has conferred an authorisation or qualification, or

(c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

(4D) When an industrial tribunal finds that a complaint presented to it under subsection (4A) above is well-founded the tribunal shall make an order declaring that the term or rule is void.".

Transfer and redundancy rights

Amendments of transfer of undertakings regulations. S.I. 1981/1794.

33.—(1) The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall be amended as follows.

(2) In Regulation 2(1), in the definition of "undertaking" (which excludes from the Regulations undertakings, and parts of undertakings, not in the nature of a commercial venture), the words from "but does not" to the end shall cease to have effect.

(3) In Regulation 3(4) (transfers to which the Regulations apply), for the words from "one" to the end there shall be substituted the words "one—

(a) may be effected by a series of two or more transactions; and

(b) may take place whether or not any property is transferred to the transferee by the transferor.".

(4) In Regulation 5 (effect of relevant transfer on contracts of employment, etc)—

(a) in paragraph (1), at the beginning, there shall be inserted the words "Except where objection is made under paragraph (4A) below,";

(b) in paragraph (2) after the words "paragraph (1) above" there shall be inserted the words "but subject to paragraph (4A) below,";

(c) after paragraph (4), there shall be inserted—

"(4A) Paragraphs (1) and (2) above shall not operate to transfer his contract of employment and the rights, powers, duties and liabilities under or in connection with it if the employee informs the transferor or the transferee that he objects to becoming employed by the transferee.

(4B) Where an employee so objects the transfer of the undertaking or part in which he is employed shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor."; and

(d) in paragraph (5), for the words "Paragraph (1) above is" there shall be substituted the words "Paragraphs (1) and (4A) above are".

(5) Regulation 7 (exclusion of occupational pension schemes) shall be re-numbered as paragraph (1) of that Regulation and after that provision as so re-numbered there shall be inserted—

"(2) For the purposes of paragraph (1) above any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall be treated as not being part of the scheme.".

(6) At the end of Regulation 10(5) (duty to consult) there shall be added the words "with a view to seeking their agreement to measures to be taken.".

(7) In Regulation 11 (remedies for failure to inform or consult)—

(a) paragraph (7) (deduction from compensation of any payments relating to failure to consult on redundancy) shall cease to have effect, and

(b) in paragraph (11) (compensation subject to maximum of two weeks' pay for employee in question), for the words "two weeks' pay" there shall be substituted the words "four weeks' pay".

PART II

Redundancy consultation procedures.

34.—(1) Chapter II of Part IV of the 1992 Act (procedure for handling redundancies) shall be amended in accordance with subsections (2) to (5) below.

(2) In section 188 (duty of employer to consult trade union representatives)—

(a) in subsection (4) (information to be disclosed to representatives), after paragraph (e) there shall be inserted "and

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.",

(b) for subsection (6) there shall be substituted—

"(6) The consultation required by this section shall include consultation about ways of—

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the trade union representatives.", and

(c) at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

"Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.".

(3) In section 190 (entitlement under protective award), subsection (3) (avoidance of double payments) shall cease to have effect.

(4) In section 193 (duty of employer to notify Secretary of State of certain redundancies), at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

"Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.".

(5) For section 195 there shall be substituted—

"Construction of references to dismissal as redundant etc.

195.—(1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.

(2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.".

(6) Section 283 of the 1992 Act (which excepts employment as a merchant seaman from the provisions of Chapter II of Part IV) shall cease to have effect.

PART III

OTHER EMPLOYMENT MATTERS

Abolition of right to statutory minimum remuneration

Repeal of Part II of Wages Act 1986.
1986 c. 48.

35. Part II of the Wages Act 1986 (which provides for statutory minimum remuneration for certain workers in accordance with wages orders made by wages councils) shall cease to have effect.

Constitution and jurisdiction of tribunals

Constitution of industrial tribunals.

36.—(1) Section 128 of the 1978 Act (industrial tribunals) shall be amended as follows.

(2) After subsection (2) there shall be inserted—

"(2A) Subject to the following provisions of this section, proceedings before an industrial tribunal shall be heard by—

(a) the person who, in accordance with regulations made under subsection (1), is the chairman, and

(b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

(2B) Subject to subsection (2F), the proceedings to which subsection (2C) applies shall be heard by the person specified in subsection (2A)(a) alone.

(2C) This subsection applies to—

(a) proceedings on an application under section 77, 78A or 79 of this Act or under section 161, 165 or 166 of the Trade Union and Labour Relations (Consolidation) Act 1992,

1992 c. 52.

(b) proceedings on a complaint under section 124 of this Act or under section 5 of the Wages Act 1986,

(c) proceedings in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 131,

(d) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with subsection (2B) (whether or not they have subsequently withdrawn it),

(e) proceedings in which the person bringing the proceedings has given written notice withdrawing the case, and

(f) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(2D) The Secretary of State may by order amend the provisions of subsection (2C).

(2E) No order shall be made under subsection (2D) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

PART III

(2F) Proceedings to which subsection (2C) applies shall be heard in accordance with subsection (2A) if a person who, in accordance with regulations made under subsection (1), may be the chairman of an industrial tribunal, having regard to—

(a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (2A),

(b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2B),

(c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and

(d) whether there are other proceedings which might be heard concurrently but which are not proceedings to which subsection (2C) applies,

decides (at any stage of the proceedings) that the proceedings are to be heard in accordance with subsection (2A).".

(3) After subsection (4) there shall be inserted—

"(5) Regulations made under Schedule 9 may provide that in such circumstances as the regulations may specify any act required or authorised by the regulations to be done by an industrial tribunal may be done by the person specified in subsection (2A)(a) alone.

(6) Where a Minister of the Crown so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard and determined, and any act required or authorised by regulations made under Schedule 9 to be done by an industrial tribunal in relation to the proceedings shall be done, by the President of Industrial Tribunals (England and Wales) appointed in accordance with regulations made under subsection (1), or the President of Industrial Tribunals (Scotland) so appointed, alone.".

Constitution of Employment Appeal Tribunal.

37. In Schedule 11 to the 1978 Act (Employment Appeal Tribunal), for paragraph 16 (Appeal Tribunal to consist of judge and two or four other members or, if parties consent, judge and one other member) there shall be substituted—

"16.—(1) Subject to sub-paragraphs (2) to (4), proceedings before the Appeal Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there is an equal number of persons whose knowledge or experience of industrial relations is as representatives of employers and whose knowledge or experience of industrial relations is as representatives of workers.

(2) With the consent of the parties proceedings before the Appeal Tribunal may be heard by a judge and one appointed member or by a judge and three appointed members.

(3) Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an industrial tribunal consisting of the person specified in section 128(2A)(a) alone shall be heard by a judge alone unless a judge directs that the proceedings shall be heard in accordance with sub-paragraphs (1) and (2).

(4) Where a Minister of the Crown so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard by the President of the Appeal Tribunal alone.".

Extension of power to confer on industrial tribunals jurisdiction in respect of contracts of employment etc.

38. In section 131 of the 1978 Act (power to confer on industrial tribunals jurisdiction in respect of claims for damages for breach of contract of employment and similar claims)—

(a) for subsection (1) (appropriate Minister to have power to make order in respect of claims satisfying certain conditions) there shall be substituted—

"(1) The appropriate Minister may by order provide that proceedings in respect of—

(a) any claim to which this section applies, or

(b) any such claim of a description specified in the order,

may, subject to such exceptions (if any) as may be specified in the order, be brought before an industrial tribunal.",

(b) for subsection (3) there shall be substituted—

"(3) This section does not apply to a claim for damages, or for a sum due, in respect of personal injuries.",

(c) after subsection (4) (tribunal to order payment of amount which it finds due) there shall be inserted—

"(4A) An order under this section may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the maximum amount which a tribunal may order to be paid in relation to a claim or in relation to a contract.",

(d) after subsection (5) there shall be inserted—

"(5A) An order under this section may make different provision in relation to proceedings in respect of different descriptions of claims.", and

(e) in subsection (7), in the definition of "appropriate Minister", for the words "Secretary of State" there shall be substituted the words "Lord Advocate".

Agreements not to take proceedings before industrial tribunal.

39.—(1) In section 140 of the 1978 Act (restrictions on contracting out)—

(a) in subsection (2) (exceptions), after the paragraph (fa) inserted by paragraph 21 of Schedule 8 to this Act, there shall be inserted—

"(fb) to any agreement to refrain from instituting or continuing any proceedings specified in section 133(1) (except (c)) or 134(1) before an industrial tribunal if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.";

(b) after subsection (2), there shall be inserted—

"(3) The conditions regulating compromise agreements under this Act are that—

(a) the agreement must be in writing;

PART III

(b) the agreement must relate to the particular complaint;

(c) the employee must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.

(4) In subsection (3)—

"independent", in relation to legal advice to the employee, means that it is given by a lawyer who is not acting in the matter for the employer or an associated employer; and

"qualified lawyer" means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.".

1975 c. 65.
1976 c. 74.
1986 c. 48.
1992 c. 52.

(2) Schedule 6 to this Act shall have effect for making corresponding amendments in the Sex Discrimination Act 1975, the Race Relations Act 1976, the Wages Act 1986 and the Trade Union and Labour Relations (Consolidation) Act 1992.

Restriction of publicity in cases involving sexual misconduct: industrial tribunals.

40.—(1) Schedule 9 to the 1978 Act (regulations for industrial tribunals) shall be amended by the insertion in paragraph 1 of the following.

(2) After sub-paragraph (5) there shall be inserted—

"(5A) The regulations may include provision—

(a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation;

(b) for cases involving allegations of sexual misconduct, enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

In this sub-paragraph—

"identifying matter", in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

"restricted reporting order" means an order prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain;

"sexual misconduct" means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

"sexual offence" means any offence to which section 141A(2) of the Criminal Procedure (Scotland) Act 1975, section 4 of the Sexual Offences (Amendment) Act 1976 or the Sexual Offences (Amendment) Act 1992 applies (offences under the Sexual Offences Act 1956, the Sexual Offences (Scotland) Act 1976 and certain other enactments);

1975 c. 21.
1976 c. 82.
1992 c. 34.
1956 c. 69.
1976 c. 67.

and "written publication" and "relevant programme" have the same meaning as in that Act of 1992.".

(3) In sub-paragraph (6), after the word "send" there shall be inserted the words "(subject to any regulations under sub-paragraph (5A)(a))".

(4) After sub-paragraph (7) there shall be inserted—

"(8) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of publication in any other form, the person publishing the matter; and

(c) in the case of matter included in a relevant programme—

(i) any body corporate engaged in providing the service in which the programme is included; and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Expressions used in this sub-paragraph and in sub-paragraph (5A) have the same meaning in this sub-paragraph as in that sub-paragraph.

(9) Where a person is charged with an offence under sub-paragraph (8) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

PART III

(10) Where an offence under sub-paragraph (8) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(11) In relation to a body corporate whose affairs are managed by its members "director", in sub-paragraph (10), means a member of the body corporate.".

Restriction of publicity in cases involving sexual misconduct: Employment Appeal Tribunal.

41.—(1) Schedule 11 to the 1978 Act (Employment Appeal Tribunal) shall be amended by the insertion after paragraph 18 (rules) of the following—

"18A.—(1) Without prejudice to the generality of paragraph 17 the rules may, as respects proceedings to which this paragraph applies, include provision—

(a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation; and

(b) for cases involving allegations of sexual misconduct, enabling the Appeal Tribunal, on the application of any party to the proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the Appeal Tribunal.

(2) This paragraph applies to—

(a) proceedings on an appeal against a decision of an industrial tribunal to make, or not to make, a restricted reporting order; and

(b) proceedings on an appeal against any interlocutory decision of an industrial tribunal in proceedings in which the industrial tribunal has made a restricted reporting order which it has not revoked.

(3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of publication in any other form, the person publishing the matter; and

(c) in the case of matter included in a relevant programme—

(i) any body corporate engaged in providing the service in which the programme is included; and

PART III

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(4) Where a person is charged with an offence under sub-paragraph (3) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

(5) Where an offence under sub-paragraph (3) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In relation to a body corporate whose affairs are managed by its members "director", in sub-paragraph (5), means a member of the body corporate.

(7) In this paragraph—

"identifying matter", in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

"restricted reporting order" means an order prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain;

"sexual misconduct" means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

"sexual offence" means any offence to which section 141A(2) of the Criminal Procedure (Scotland) Act 1975, section 4 of the Sexual Offences (Amendment) Act 1976 or the Sexual Offences (Amendment) Act 1992 applies (offences under the Sexual Offences Act 1956, the Sexual Offences (Scotland) Act 1976 and certain other enactments);

1975 c. 21
1976 c. 82.
1992 c. 34.
1956 c. 69.
1976 c. 67.

and "written publication" and "relevant programme" have the same meaning as in that Act of 1992.".

Restriction of vexatious proceedings.

42. After section 136 of the 1978 Act there shall be inserted—

"Restriction of vexatious proceedings.

136A.—(1) If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that any person has habitually and persistently and without any reasonable ground—

PART III

(a) instituted vexatious proceedings, whether in an industrial tribunal or before the Appeal Tribunal, and whether against the same person or against different persons; or

(b) made vexatious applications in any proceedings, whether in an industrial tribunal or before the Appeal Tribunal,

the Appeal Tribunal may, after hearing that person or giving him an opportunity of being heard, make a restriction of proceedings order.

(2) A "restriction of proceedings order" is an order that—

(a) no proceedings shall without the leave of the Appeal Tribunal be instituted in any industrial tribunal or before the Appeal Tribunal by the person against whom the order is made;

(b) any proceedings instituted by him in any industrial tribunal or before the Appeal Tribunal before the making of the order shall not be continued by him without the leave of the Appeal Tribunal; and

(c) no application (other than one for leave under this section) shall be made by him in any proceedings in any industrial tribunal or in the Appeal Tribunal without the leave of the Appeal Tribunal.

(3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) Leave for the institution or continuance of, or for the making of an application in, any proceedings in an industrial tribunal or before the Appeal Tribunal by a person who is the subject of a restricted proceedings order shall not be given unless the Appeal Tribunal is satisfied that the proceedings or application are not an abuse of the process of the tribunal in question and that there are reasonable grounds for the proceedings or application.

(5) No appeal shall lie from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order.

(6) A copy of a restriction of proceedings order shall be published in the London Gazette and in the Edinburgh Gazette.".

ACAS

PART III

Functions of ACAS.

43.—(1) In section 209 of the 1992 Act (general duty of ACAS to promote improvement of industrial relations), for the words following "industrial relations" there shall be substituted ", in particular, by exercising its functions in relation to the settlement of trade disputes under sections 210 and 212.".

(2) For section 213 of the 1992 Act (powers of ACAS to give advice) there shall be substituted—

"Advice.

213.—(1) ACAS may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.

(2) ACAS may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.".

(3) In section 249(2) of the 1992 Act (chairman to be full time, but other members full or part time), the first sentence shall be omitted, and, in the second sentence, after the word "as", in the first place where it occurs, there shall be inserted the words "chairman, or as".

Fees for exercise of functions by ACAS.

44. After section 251 of the 1992 Act there shall be inserted the following section—

"Fees for exercise of functions by ACAS.

251A.—(1) ACAS may, in any case in which it thinks it appropriate to do so, but subject to any directions under subsection (2) below, charge a fee for exercising a function in relation to any person.

(2) The Secretary of State may direct ACAS to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Secretary of State shall not give a direction under this subsection without consulting ACAS.

(3) A direction under subsection (2) above may require ACAS to charge fees in respect of the exercise of a function only in specified descriptions of case.

(4) A direction under subsection (2) above shall specify whether fees are to be charged in respect of the exercise of any specified function—

(a) at the full economic cost level, or

(b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.

(5) Where a direction requires fees to be charged at the full economic cost level ACAS shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of ACAS of exercising the function including an appropriate sum in respect of general staff costs and overheads.

117474 C

PART III

(6) Where a direction requires fees to be charged at a level less than the full economic cost ACAS shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under subsection (4)(b) above, as it thinks appropriate (computing that cost in the same way as under subsection (5) above).

(7) No liability to pay a fee charged under this section shall arise on the part of any person unless ACAS has notified that person that a fee may or will be charged.

(8) For the purposes of this section—

(a) a function is exercised "in relation to" a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and

(b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as ACAS thinks appropriate.".

Careers services

Careers services. 1973 c. 50.

45. For sections 8 to 10 of the Employment and Training Act 1973 (careers services of education authorities) and the heading immediately preceding them there shall be substituted—

"Careers services

Duty of Secretary of State to ensure provision of careers services for school and college students.

8.—(1) It shall be the duty of the Secretary of State to secure the provision of relevant services for assisting persons undergoing relevant education to decide—

(a) what employments, having regard to their capabilities, will be suitable for and available to them when they cease undergoing such education, and

(b) what training or education is or will be required by and available to them in order to fit them for those employments,

and for assisting persons ceasing to undergo relevant education to obtain such employments, training and education.

(2) In subsection (1) of this section and section 9 of this Act "relevant services" means—

(a) giving of assistance by collecting, or disseminating or otherwise providing, information about persons seeking, obtaining or offering employment, training and education,

(b) offering advice and guidance, and

(c) other services calculated to facilitate the provision of any services specified in paragraphs (a) and (b) of this subsection.

(3) In this section and section 9 of this Act "relevant education" means—

(a) education involving full-time attendance at any educational institution in Great Britain, other than an educational institution within the higher education sector, and

(b) education involving part-time attendance at any educational institution in Great Britain, other than an educational institution within the higher education sector, which is education of a description commonly undergone by persons in order to fit them for employment.

(4) The references in subsection (3) of this section to an educational institution within the higher education sector shall be construed—

(a) as respects England and Wales, in accordance with section 91(5) of the Further and Higher Education Act 1992 or, if this section is in force at any time before section 65 of that Act comes into force, in accordance with section 61(3)(a) of that Act until that section comes into force, and

1992 c. 13.

(b) as respects Scotland, in accordance with section 56(2) of the Further and Higher Education (Scotland) Act 1992.

1992 c. 37.

Power of Secretary of State to arrange for provision of careers services for others.

9. The Secretary of State shall have power to secure the provision of relevant services, or any description of relevant services, for assisting persons other than those undergoing relevant education, or any description of such persons, to decide—

(a) what employments, having regard to their capabilities, are or will be suitable for and available to them, and

(b) what training or education is or will be required by and available to them in order to fit them for those employments,

and for assisting those persons to obtain such employments, training and education.

Provision of services.

10.—(1) The Secretary of State may perform the duty imposed on him by section 8 of this Act, and exercise the power conferred on him by section 9 of this Act, by making arrangements with—

(a) local education authorities or (in Scotland) education authorities,

(b) persons of any other description, or

PART III

(c) local education authorities or education authorities and persons of any other description acting jointly,

under which they undertake to provide, or arrange for the provision of, services in accordance with the arrangements; and in doing so the Secretary of State shall have regard to the requirements of disabled persons.

(2) The Secretary of State may also perform the duty imposed on him by section 8 of this Act, and exercise the power conferred on him by section 9 of this Act, by giving directions to local education authorities or education authorities requiring them to provide, or arrange for the provision of, services in accordance with the directions; and in doing so the Secretary of State shall have regard to the requirements of disabled persons.

(3) Directions given under this section may require local education authorities and education authorities—

(a) to provide services themselves or jointly with other authorities or persons,

(b) to arrange for the provision of services by other authorities or persons, or

(c) to consult and co-ordinate in the provision, or in arranging for the provision, of services with other authorities or persons.

(4) Arrangements made, and directions given, under this section may include provision for the making of payments by the Secretary of State, whether by way of grant or loan or otherwise, to the persons with whom they are made or to whom they are given.

(5) Arrangements made, and directions given, under this section in exercise of the power conferred by section 9 of this Act may include provision permitting the making of charges for the provision of the services to which they relate.

(6) Arrangements made, and directions given, under this section shall require the person with whom they are made or to whom they are given—

(a) to provide, or arrange for the provision, of services in accordance with such guidance of a general character as the Secretary of State may give, and

(b) to furnish the Secretary of State, in such manner and at such times as he may specify in the arrangements or directions or in guidance given under paragraph (a) of this subsection, with such information and facilities for obtaining information as he may so specify.

(7) The Secretary of State may give directions to local education authorities and education authorities requiring them to transfer (on such terms as may be specified in the directions) to any persons who are providing, or are to

PART III

provide, services in accordance with arrangements made, or directions given, under this section any records of the authorities which may be relevant in the provision of the services.

(8) Local education authorities and education authorities shall have power—

(a) to provide services or arrange for the provision of services in accordance with arrangements made, or directions given, under this section (including services provided outside their areas) by any such means (including by the formation of companies for the purpose) as they consider appropriate, and

(b) to employ officers and provide facilities for and in connection with the provision of the services or arranging for the provision of the services;

but, where directions are given to local education authorities and education authorities, the power conferred on them by this subsection shall be exercised in accordance with the directions.

(9) Where services are being provided in pursuance of arrangements made, or directions given, under this section, the authority with whom the arrangements are made or to whom the directions have been given shall have power, with the consent of the Secretary of State, to provide, or arrange for the provision of, more extensive (relevant) services than the arrangements authorise or the directions require and to employ more officers and provide more facilities accordingly.

(10) Nothing in sections 8 and 9 and this section shall make it unlawful for a local education authority or education authority to defray the cost of exercising their powers under this section from resources other than payments of the Secretary of State.

(11) A direction given under this section may be revoked or varied by another direction so given.

(12) Nothing in this section shall be taken to limit the arrangements which may be made under section 2 of this Act.".

Careers services: ancillary services. 1973 c. 50.

46. After section 10 of the Employment and Training Act 1973 (which is inserted by section 45 above) there shall be inserted—

"Provision of ancillary goods and services.

10A.—(1) The functions of a local education authority or education authority shall include power to enter into agreements for the supply of goods or services authorised by this section with any person (other than an authority) who provides, or arranges for the provision of, relevant services and is a person with whom this section authorises such arrangements to be made.

PART III

(2) This section authorises the making of such arrangements with any person—

(a) who, under arrangements (or joint arrangements) made with that person under section 10(1) or (3) of this Act provides, or arranges for the provision of, the services;

(b) who provides the services jointly with an authority under section 10(3) of this Act;

(c) who is the means by which, under section 10(8), an authority provides, or arranges for the provision of, the services.

(3) Subject to subsections (4), (5) and (6) below, this section authorises—

(a) the supply by the authority to the person of any goods;

(b) the provision by the authority for the person of any administrative, professional or technical services;

(c) the use by the person of any vehicle, plant or apparatus belonging to the authority and, without prejudice to paragraph (b) above, the placing at the disposal of the person of the services of any person employed in connection with the vehicle or other property in question;

(d) the carrying out by the authority of works of maintenance in connection with land or buildings for the maintenance of which the person is responsible;

and the authority may purchase and store any goods which in their opinion they may require for the purposes of paragraph (a) above.

(4) The supply by an authority of goods or services to any person is authorised by this section only for the purpose of the provision by that person of relevant services.

(5) The supply by an authority of goods or services to any person is authorised by this section only during the period of two years beginning with the day on which that person first provides relevant services in the area of that authority.

(6) Goods and services shall be supplied on such terms as can reasonably be expected to secure that the full cost of making the supply is recovered by the authority.

(7) The supply by an authority of goods or services to any person is authorised outside as well as within the area of that authority.

(8) This section is without prejudice to the generality of any other enactment conferring functions on local education authorities or education authorities.

(9) In this section—

"goods" includes materials; and

"relevant services" has the meaning given in section 8(2) of this Act.".

Training etc. in Scotland

Employment and training functions of Scottish Enterprise and Highlands and Islands Enterprise. 1973 c. 50.

47.—(1) In section 2 of the Employment and Training Act 1973 (functions of the Secretary of State), after subsection (3) there shall be inserted—

"(3A) Without prejudice to subsection (2)(f) of this section, the Secretary of State may wholly or partly perform his duty under subsection (1) of this section in relation to Scotland by authorising or directing Scottish Enterprise or Highlands and Islands Enterprise to act on his behalf—

(a) in the making of arrangements under this section in such cases or for such purposes as may be specified in or determined under the authorisation or direction;

(b) in the taking of such steps for the purposes of, or in connection with, the carrying out of any arrangements under this section (including any made otherwise than by Scottish Enterprise or Highlands and Islands Enterprise) as may be so specified or determined,

and the power under this subsection to give authorisations or directions shall include power to revoke or vary any authorisation or direction so given.

(3B) Where Scottish Enterprise or Highlands and Islands Enterprise make arrangements under this section in pursuance of an authorisation or direction made by the Secretary of State under subsection (3A)(a) above, they shall, at such times as the Secretary of State may require, report to him what provision, if any, they have included in those arrangements in relation to disabled persons.".

1990 c. 35.

(2) The Enterprise and New Towns (Scotland) Act 1990 shall be amended in accordance with the following provisions of this section.

(3) In paragraphs (a)(ii) and (b)(ii) of section 1 (Scottish Enterprise and Highlands and Islands Enterprise), after the word "Act," there shall be inserted the words "maintaining and".

(4) In section 2 (functions in relation to training for employment etc.)—

(a) in subsection (3), after paragraph (c) there shall be inserted "; and

(d) providing temporary employment for persons who are without employment.", and

(b) in subsection (4), for the word "training", in both places where it occurs, there shall be substituted the words "employment and training".

(5) After section 14 there shall be inserted—

"Power of Ministers to confer or impose

14A.—(1) Without prejudice to the foregoing provisions of this Act, the functions of each of Scottish

PART III

functions.

Enterprise and Highlands and Islands Enterprise shall include—

(a) a power to do anything in connection with unemployment, training for employment or employment which it is authorised to do by a Minister of the Crown; and

(b) a duty to do anything in connection with unemployment, training for employment or employment which it is required to do by or under a direction given to it by a Minister of the Crown.

(2) Scottish Enterprise and Highlands and Islands Enterprise shall each—

(a) from time to time submit to the Secretary of State particulars of what it proposes to do for the purpose of carrying out the functions conferred or imposed upon it by or under subsection (1) above; and

(b) ensure that all its activities in relation to those functions are in accordance with such proposals submitted by it to the Secretary of State as have been approved by him and with such modifications (if any) of those proposals as are notified to the body in question by him.

1978 c. 30.

(3) The power of a Minister of the Crown by virtue of subsection (1) above to authorise or direct Scottish Enterprise or Highlands and Islands Enterprise to do anything shall include the power to delegate powers conferred on him by any enactment; but nothing in this section shall authorise any Minister of the Crown to delegate a power to make subordinate legislation (within the meaning of the Interpretation Act 1978).".

PART IV

SUPPLEMENTARY

Interpretation.

48. In this Act—

1978 c. 44.

"the 1978 Act" means the Employment Protection (Consolidation) Act 1978, and

1992 c. 52.

"the 1992 Act" means the Trade Union and Labour Relations (Consolidation) Act 1992.

Miscellaneous and consequential amendments.

49.—(1) The enactments specified in Schedule 7 to this Act shall have effect subject to the amendments there specified (which are miscellaneous amendments).

(2) The enactments specified in Schedule 8 to this Act shall have effect subject to the amendments there specified (which are consequential amendments).

Transitional provisions and savings.

50. The transitional provisions and savings set out in Schedule 9 to this Act shall have effect.

PART IV

Repeals and revocations.

51. The enactments mentioned in Schedule 10 to this Act (which include enactments which are unnecessary) are repealed, and the instruments mentioned in that Schedule are revoked, to the extent specified in the third column of that Schedule.

Commencement.

52. Subject to any other commencement provision, the preceding sections of, and the Schedules to, this Act shall not come into force until such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different provisions and different purposes.

Financial provision.

53. There shall be paid out of money provided by Parliament—

(a) any expenditure of the Secretary of State under this Act, and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Northern Ireland. 1974 c. 28.

54.—(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes to which this subsection applies—

(a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) The purposes to which subsection (1) above applies are purposes corresponding to those of—

(a) sections 23 to 25 and Schedules 2 and 3,

(b) section 26 and Schedule 4,

(c) section 27,

(d) section 28 and Schedule 5,

(e) sections 29, 30 and 31,

(f) section 32,

(g) section 34,

(h) section 35,

(i) sections 36, 38 and 39 and Schedule 6,

(j) section 40, and

(k) this Part (including Schedules 7, 8, 9 and 10).

(3) The following provisions of this Act (and no others) extend to Northern Ireland—

(a) section 3 and Schedule 1 (but only for the purposes of their application to trade unions and unincorporated employers' associations having their head or main office outside Northern Ireland),

(b) sections 33, 48, 49, 50, 51, 52 and 55 and this section,

(c) paragraphs 2, 6 and 7 of Schedule 8,

(d) paragraphs 1 and 4 of Schedule 9, and

(e) Schedule 10 so far as it relates to enactments or instruments which extend there.

PART IV
Short title.

55. This Act may be cited as the Trade Union Reform and Employment Rights Act 1993.

SCHEDULES

SCHEDULE 1

Section 3.

POLITICAL FUND BALLOTS

1. In section 74(3) of the 1992 Act (requirements which Certification Officer must be satisfied would be met in relation to political fund ballot held by trade union in accordance with its rules), after the entry relating to section 77 there shall be inserted—

"section 77A (counting of votes etc. by independent person), and".

2. In section 75 of that Act (appointment of independent scrutineer for political fund ballot)—

(a) in paragraph (a) (scrutineer to supervise certain matters) of subsection (3) (terms of appointment of scrutineer), for the words "and distribution of the voting papers" there shall be substituted the words "of the voting papers and (unless he is appointed under section 77A to undertake the distribution of the voting papers) their distribution",

(b) after that paragraph there shall be inserted—

"(aa) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;",

(c) in paragraph (d) (scrutineer to retain custody of voting papers) of that subsection—

(i) after the words "purposes of the ballot" there shall be inserted the words "and the copy of the register supplied to him in accordance with subsection (5A)(a)", and

(ii) after the words "of the papers" there shall be inserted the words "or copy",

(d) after that subsection there shall be inserted—

"(3A) The conditions referred to in subsection (3)(aa) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member's suspicion is ill-founded.

(3B) In subsection (3A) "the appropriate period" means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.",

(e) after subsection (5) there shall be inserted—

SCH. 1

"(5A) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.", and

(f) after subsection (7) there shall be inserted—

"(8) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.".

3. After section 77 of that Act there shall be inserted—

"Counting of votes etc. by independent person.

77A.—(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to a ballot if—

(a) he is the scrutineer, or

(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.".

4. In section 78 of that Act (scrutineer's report on ballot)—

(a) in subsection (1), after paragraph (d) there shall be inserted "and

(e) the name of the person (or of each of the persons) appointed under section 77A or, if no person was so appointed, that fact.",

(b) in subsection (2)(b), after the word "made" there shall be inserted "(whether by him or any other person)", and

(c) after that subsection there shall be inserted—

"(2A) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 75(5A)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,

(c) whether he declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(2B) Where one or more persons other than the scrutineer are appointed under section 77A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.".

SCHEDULE 2

Section 23.

MATERNITY: THE RIGHT TO RETURN TO WORK

Right to return to work

Right to return to work.

39.—(1) An employee who—

(a) has the right conferred by section 33, and

SCH. 2

(b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this section is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

(a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period,

(b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases)), and

1989 c. 24.

(c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

(3) The Secretary of State may by order vary the period of two years specified in subsection (1) or that period as so varied.

(4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Requirement to give notice of return to employer.

40.—(1) An employee shall not have the right to return to work under section 39 unless she includes with the information required by section 37(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with subsection (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under section 39, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under subsection (2) shall be—

(a) made in writing, and

(b) accompanied by a written statement of the effect of that subsection.

Special provision where redundancies occur before return to work.

41.—(1) Where an employee has the right to return to work under section 39, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is

a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (2).

(2) The new contract of employment must be such that—

(a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and

(b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work pursuant to her right to return.

Exercise of right to return to work.

42.—(1) An employee shall exercise the right to return to work under section 39 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the "notified day of return").

(2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

(3) Subject to subsection (4), an employee may—

(a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and

(b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks;

if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).

(4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.

(5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(6) If—

(a) no day of return has been notified,

SCH. 2

(b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and

(c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

(a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or

(b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

Supplementary.

43.—(1) Schedule 2 shall have effect for the purpose of supplementing the preceding sections in relation to an employee's right to return to work under section 39.

(2) Sections 56 and 86 also have effect for that purpose.

(3) Subject to subsection (4), in sections 56 and 86 and Schedule 2 "notified day of return" has the same meaning as in section 42.

(4) Where—

(a) an employee's return is postponed under subsection (2) or (3)(a) of section 42, or

(b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) of that section,

then, subject to subsection (4) of that section, references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

Contractual rights.

44.—(1) An employee who has the right to return to work under section 39 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of sections 39, 41 to 43, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return to work under section 39.

SCHEDULE 3

Section 25.

SUSPENSION FROM WORK ON MATERNITY GROUNDS

Suspension from work on maternity grounds

Suspension from work on maternity grounds.

45.—(1) For the purposes of sections 46 and 47 an employee is suspended on maternity grounds where, in consequence of—

(a) any requirement imposed by or under any relevant provision of any enactment or of any instrument made under any enactment, or

(b) any recommendation in any relevant provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,

1974 c. 37.

she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) For the purposes of this section, sections 46 and 47 and section 61 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of section 46) does not perform the work she normally performed before the suspension.

(3) For the purposes of subsection (1) a provision is a "relevant provision" if it is for the time being specified as a relevant provision in an order made by the Secretary of State under this subsection.

Right to offer of alternative work.

46.—(1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this section—

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and

(b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of subsection (1).

(4) An industrial tribunal shall not entertain a complaint under subsection (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.

(6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under subsection (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

SCH. 3

Right to remuneration on suspension.

47.—(1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee shall not be entitled to remuneration under this section in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of section 46 and the employee has unreasonably refused to perform that work.

(3) The amount of remuneration payable by an employer to an employee under this section shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(4) Subject to subsection (5), a right to remuneration under this section shall not affect any right of an employee in relation to remuneration under her contract of employment (in subsection (5) referred to as "contractual remuneration").

(5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this section in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this section in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this section.

(7) An industrial tribunal shall not entertain a complaint relating to remuneration under this section in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(8) Where an industrial tribunal finds a complaint under subsection (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

Section 26.

SCHEDULE 4

PROVISIONS SUBSTITUTED FOR SECTIONS 1 TO 6 OF 1978 ACT

PART I

EMPLOYMENT PARTICULARS

Written particulars of employment

Employer's duty to give statement of employment particulars.

1.—(1) Not later than two months after the beginning of an employee's employment with an employer, the employer shall give to the employee a written statement which may, subject to subsection (4) of section 2, be given in instalments before the end of that period.

(2) The statement shall contain particulars of—

(a) the names of the employer and employee,

(b) the date when the employment began, and

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(3) The statement shall also contain particulars, as at a specified date not more than seven days before the statement or instalment of the statement containing them is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, and

(iii) pensions and pension schemes,

(e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,

(f) the title of the job which the employee is employed to do or a brief description of the work for which the employee is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and

(k) where the employee is required to work outside the United Kingdom for a period of more than one month—

(i) the period for which he is to work outside the United Kingdom,

(ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,

(iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and

(iv) any terms and conditions relating to his return to the United Kingdom.

(4) Subsection (3)(d)(iii) shall not apply to the employees of any body or authority if—

(a) the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act of Parliament, and

(b) the body or authority are required by any such provision to give to new employees information concerning their pension rights or the determination of questions affecting their pension rights.

Section 1: supplementary.

2.—(1) If, in the case of a statement under section 1, there are no particulars to be entered under any of the heads of paragraph (d) or (k) of subsection (3) of that section, or under any of the other paragraphs of subsection (2) or (3) of that section, that fact shall be stated.

SCH. 4

(2) A statement under section 1—

(a) may refer the employee to the provisions of some other document which—

(i) the employee has reasonable opportunities of reading in the course of his employment, or

(ii) is made reasonably accessible to him in some other way,

for particulars of any of the matters specified in heads (ii) and (iii) of paragraph (d) of subsection (3) of section 1, and

(b) may refer the employee to the law, or, subject to subsection (3), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for particulars of either of the matters specified in paragraph (e) of that subsection.

(3) A statement under section 1 may refer the employee to the provisions of a collective agreement under subsection (2)(b) if, and only if, it is an agreement which—

(a) the employee has reasonable opportunities of reading in the course of his employment, or

(b) is made reasonably accessible to him in some other way.

(4) The particulars required by section 1(2) and the following provisions of subsection (3)—

(a) paragraphs (a) to (c),

(b) head (i) of paragraph (d),

(c) paragraph (f), and

(d) paragraph (h),

shall be included in a single document (in this Part referred to as the "principal statement").

(5) Where before the end of the period of two months after the beginning of his employment an employee is to begin to work outside the United Kingdom for a period of more than one month, the statement under section 1 shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.

(6) A statement shall be given to a person under section 1 notwithstanding that his employment ends before the end of the period within which the statement is required to be given.

Statement to include note about disciplinary procedures.

3.—(1) A statement under section 1 shall include a note—

(a) specifying any disciplinary rules applicable to the employee or referring the employee to the provisions of a document which—

(i) the employee has reasonable opportunities of reading in the course of his employment, or

(ii) is made reasonably accessible to him in some other way,

and which specifies such rules,

(b) specifying, by description or otherwise—

(i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him, and

(ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,

and the manner in which any such application should be made,

(c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document which—

(i) the employee has reasonable opportunities of reading in the course of his employment, or

(ii) is made reasonably accessible to him in some other way,

and which explains them, and

(d) stating whether a contracting-out certificate is in force for the employment.

(2) Subsection (1)(a) to (c) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.

(3) The note need not comply with the following provisions of subsection (1)—

(a) paragraph (a),

(b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i), and

(c) paragraph (c),

if on the date when the employee's employment began the relevant number of employees was less than twenty.

(4) In subsection (3) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.

Employer's duty to give statement of changes.

4.—(1) If, after the date to which a statement given under section 1 relates, or, where no such statement is given, after the end of the period within which a statement under section 1 is required to be given, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall at the earliest opportunity and, in any event, not later than—

(a) one month after the change, or

(b) where the change results from the employee being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier,

give to the employee a written statement containing particulars of the change.

(2) In a case where the statement under section 1 is given in instalments, subsection (1) applies—

(a) in relation to—

(i) matters particulars of which are required to be (whether they are or not) included in the instalment comprising the principal statement, and

(ii) other matters particulars of which are included or referred to in that instalment;

(b) in relation to matters particulars of which are included or referred to in any other instalment; and

(c) in relation to any change occurring after the end of the two-month period within which a statement under section 1 is required to be given in matters particulars of which were required to be included in the statement given under section 1 but which were not included in any instalment;

as it applies in relation to matters particulars of which are required to be included or referred to in a statement under section 1 not given in instalments.

(3) A statement under subsection (1)—

(a) may refer the employee to the provisions of some other document which—

SCH. 4

(i) the employee has reasonable opportunities of reading in the course of his employment, or

(ii) is made reasonably accessible to him in some other way,

for a change in any of the matters specified in sections 1(3)(d) (ii) and (iii) and 3(1)(a) and (c), and

(b) may refer the employee to the law, or, subject to subsection (4), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for a change in either of the matters specified in section 1(3)(e).

(4) A statement under subsection (1) may refer the employee to the provisions of a collective agreement under subsection (3)(b) if, and only if, it is an agreement which—

(a) the employee has reasonable opportunities of reading in the course of his employment, or

(b) is made reasonably accessible to him in some other way.

(5) Where after an employer has given to an employee a statement under section 1—

(a) either—

(i) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer, or

(ii) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken, and

(b) the change does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by sections 1 to 3 to be included in the statement,

the person who immediately after the change is the employer shall not be required to give to the employee a statement under section 1 but the change shall be treated as a change falling within subsection (1) of this section.

(6) A statement under subsection (1) which informs an employee of a change such as is referred to in subsection (5)(a)(ii) shall specify the date on which the employee's period of continuous employment began.

Exclusion of sections 1 to 4 in case of certain employees.

5.—(1) Sections 1 to 4 shall not apply to an employee if—

(a) his employment continues for less than one month, or

(b) he is employed under a contract which normally involves employment for less than eight hours weekly.

(2) Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by subsection (1)(b) and sections 141 and 144, and under section 149, as if his employment with his employer terminated or began at that time.

(3) The fact that section 1 is directed by subsection (2) to apply to an employee as if his employment began on his ceasing to come within the exceptions referred to in that subsection shall not affect the obligation under section 1(2)(b) to specify the date on which his employment actually began.

Power of Secretary of State to require particulars of further matters.

6. The Secretary of State may by order provide that section 1 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that section; and, for that purpose, the order may include such provisions amending that section as appear to the Secretary of State to be expedient.

SCHEDULE 5

Section 28.

Employment protection in health and safety cases

1. After section 22 of the 1978 Act there shall be inserted—

"Right not to suffer detriment in health and safety cases

Right not to suffer detriment in health and safety cases.

22A.—(1) An employee 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—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out, or proposed to carry out, any such activities,

(b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

he performed, or proposed to perform, any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which he reasonably believed to be serious and imminent, he took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

SCH. 5

(3) An employee shall not be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have treated him as the employer did.

(4) Except where an employee is dismissed in circumstances in which, by virtue of section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.

Proceedings for contravention of section 22A.

22B.—(1) An employee may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of section 22A.

(2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An industrial tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that 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.

Remedies.

22C.—(1) Where the industrial tribunal finds that a complaint under section 22B is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

Sch. 5

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or Scotland.

(5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.".

2. In subsection (3) of section 57 of that Act (general provisions as to fairness of dismissal), for the words "sections 59 to 61" there shall be substituted the words "sections 57A to 61".

3. After that section there shall be inserted—

"Dismissal in health and safety cases.

57A.—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,

(b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

performed, or proposed to perform, any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

SCH. 5

(2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.".

4. In section 59 of the 1978 Act (dismissal on ground of redundancy), in subsection (2) (inserted by section 24(2) of this Act), between the words "section" and "60" there shall be inserted the words "57A(1) (read with (2) and (3))".

5. In section 64 of the 1978 Act (qualifying period etc for right not to be unfairly dismissed), in subsection (4) (inserted by section 24(3) of this Act), between the words "section" and "60" there shall be inserted the words "57A(1) (read with (2) and (3))".

6. In section 71 of the 1978 Act (compensation for failure to comply with section 69)—

(a) in subsection (2)(b) (additional award), after the word "unless" there shall be inserted the words "the case is one where this paragraph is excluded or"; and

(b) after that subsection there shall be inserted—

"(2A) Subsection (2)(b) is excluded where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.

(2B) For the purposes of subsection (2A) a reason is "inadmissible" if it is one of those specified in section 57A(1)(a) and (b).".

7. In section 72 of the 1978 Act (compensation for unfair dismissal) there shall be inserted at the end the following—

"(2) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason, then, unless—

(a) the complainant does not request the tribunal to make an order under section 69, or

(b) the case falls within section 73(2),

the award shall include a special award calculated in accordance with section 75A.

(3) For the purposes of subsection (2) a reason is "inadmissible" if it is one of those specified in section 57A(1)(a) and (b)."

and the preceding words shall become subsection (1) of section 72.

8. In section 73 of the 1978 Act (calculation of basic award)—

(a) in subsection (1), for "(6)" there shall be substituted "(6A)";

(b) after subsection (6) there shall be inserted—

SCH. 5

"(6A) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,700.

(6B) For the purposes of this section a reason is "inadmissible" if it is one of those specified in section 57A(1)(a) and (b).

(6C) The Secretary of State may by order increase the sum specified in subsection (6A).

(6D) No order shall be made under subsection (6C) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament."; and

(c) in subsection (7C), for the words following "apply" there shall be substituted the words "in a redundancy case unless the reason for selecting the employee for dismissal was an inadmissible reason; and, in that event, subsection (7B) shall apply only to so much of the basic award as is payable because of subsection (6A)".

9. After section 75 of that Act there shall be inserted—

"Calculation of special award.

75A.—(1) Subject to the following provisions of this section, the amount of the special award shall be—

(a) one week's pay multiplied by 104, or

(b) £13,400,

whichever is the greater, but shall not exceed £26,800.

(2) Where the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—

(a) one week's pay multiplied by 156, or

(b) £20,100,

whichever is the greater, but subject to the following provisions of this section.

(3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—

(a) prevented an order under section 69 from being complied with, or

SCH. 5

(b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed,

the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Secretary of State may by order increase any of the sums specified in subsections (1) and (2).

(8) No order shall be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.".

10. After section 76 of that Act there shall be inserted—

"Interim relief

Interim relief pending determination of complaint of unfair dismissal.

77.—(1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in section 57A(1)(a) and (b) may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer (not later than seven days before the date of the hearing) a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Procedure on hearing of application and making of order.

77A.—(1) If on hearing an employee's application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal was one of those specified in section 57A(1)(a) and (b) the following provisions shall apply.

(2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(3) For this purpose "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

(4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—

(a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and

(b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order.

(6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

Orders for continuation of contract of employment.

78.—(1) An order under section 77A for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or of any other benefit derived from the employment, seniority, pension rights and other similar matters, and

(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

SCH. 5

(3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, shall go towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Application for variation or revocation of order.

78A.—(1) At any time between the making of an order under section 77A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Sections 77 and 77A apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 77(4) has effect with the substitution of a reference to the employee for the reference to the employer.

Consequence of failure to comply with order.

79.—(1) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 77A(4) or (5), the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment, and

(b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—

(i) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and

(ii) to any loss suffered by the employee in consequence of the non-compliance.

(2) Section 78 applies to an order under subsection (1)(a) as in relation to an order under section 77A.

(3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.

(4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.

(5) If on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.".

SCHEDULE 6

Section 39(2).

Compromise Contracts

Sex Discrimination Act 1975 (c.65)

1. In section 77 of the Sex Discrimination Act 1975 (validity, etc. of contracts)—

(a) in subsection (4), after paragraph (a), there shall be inserted—

"(aa) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the Equal Pay Act 1970 applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;"; and

1970 c. 41.

(b) after subsection (4) there shall be inserted—

"(4A) The conditions regulating compromise contracts under this Act are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the contract must identify the adviser; and

(f) the contract must state that the conditions regulating compromise contracts under this Act are satisfied.

(4B) In subsection (4A)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) as respects proceedings in England and Wales—

SCH. 6

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(4C) For the purposes of subsection (4B) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

Race Relations Act 1976 (c. 74)

2. In section 72 of the Race Relations Act 1976 (validity, etc. of contracts)—

(a) in subsection (4), after paragraph (a) there shall be inserted—

"(aa) to a contract settling a complaint to which section 54(1) applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;"; and

(b) after subsection (4) there shall be inserted—

"(4A) The conditions regulating compromise contracts under this Act are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the contract must identify the adviser; and

(f) the contract must state that the conditions regulating compromise contracts under this Act are satisfied.

(4B) In subsection (4A)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate.

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate. SCH. 6

(4C) For the purposes of subsection (4B) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

Wages Act 1986 (c.48)

3. In section 6 of the Wages Act 1986 (remedies for Part I contraventions and restriction on contracting out)—

(a) in subsection (3) after the words "apply to" there shall be inserted "(a)" and at the end of the words so constituted paragraph (a) there shall be inserted the words "; or

(b) an agreement to refrain from presenting or continuing with a complaint if the conditions regulating compromise agreements under this Part of this Act are satisfied in relation to the agreement"; and

(b) after subsection (3) there shall be inserted—

"(4) The conditions regulating compromise agreements under this Part of this Act are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular complaint;

(c) the worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the worker in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Part of this Act are satisfied.

(5) In subsection (4)—

"independent", in relation to legal advice to the worker, means that it is given by a lawyer who is not acting in the matter for the employer or for a person who is connected with the employer; and

"qualified lawyer" means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(6) For the purposes of subsection (5) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

SCH. 6

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

4. In section 288 of the 1992 Act (restrictions on contracting out)—

(a) after subsection (2) there shall be inserted—

"(2A) Subsection (1) does not apply to an agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in section 290 before an industrial tribunal if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

(2B) The conditions regulating compromise agreements under this Act are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.

(2C) The proceedings excepted from subsection (2A) are proceedings on a complaint of non-compliance with section 188."; and

(b) after subsection (3) there shall be inserted—

"(4) In subsection (2B)—

"independent", in relation to legal advice to the complainant means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(5) For the purposes of subsection (4) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

SCHEDULE 7

Section 49(1).

MISCELLANEOUS AMENDMENTS

Unfair selection for dismissal in redundancy cases: exclusion of qualifying conditions

1. In section 154 of the 1992 Act (exclusion of requirement for qualifying period of employment, etc where reason for dismissal related to trade union membership or activities)—

(a) for the words "was one of those specified in section 152(1)" there shall be substituted the words "or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.", and

(b) there shall be inserted after those words, as subsection (2), the following—

"(2) For the purposes of this section—

"inadmissible", in relation to a reason, means that it is one of those specified in section 152(1); and

"a redundancy case" means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees required by section 153(a) is also shown.",

and the words preceding that subsection (2) shall become subsection (1).

Qualifying period for unfair dismissal protection: small businesses

2. Section 64A of the 1978 Act (extended qualifying period for right not to be unfairly dismissed where no more than twenty employees) shall be omitted.

Application of 1978 Act to Crown Employment and House of Commons Staff

3. In section 138 of the 1978 Act (application to Crown)—

(a) in subsection (1) (which applies Part I to Crown employees only so far as it relates to itemised pay statements), the words "(so far as it relates to itemised pay statements)" shall be omitted, and

(b) in subsection (4) (disapplication of any provision which would otherwise apply to Crown employment where national security certificate in force), for the words "For the purposes of this section, Crown employment does not include any employment" there shall be substituted the words "Part I (so far as it relates to itemised pay statements), Part II (except sections 22A to 22C and 31A), section 53 (apart from subsection (2A)), Part V (except so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60) and Part VIII and this Part (so far as relating to any of those provisions) shall not have effect in relation to any Crown employment".

4. In section 139(1) of the 1978 Act (application of Part I to House of Commons staff only so far as it relates to itemised pay statements), the words "(so far as it relates to itemised pay statements)" shall be omitted.

Restrictions on disclosure of information, etc on grounds of national security

5. After section 146 of the 1978 Act there shall be inserted—

"National Security.

146A.—(1) Where in the opinion of any Minister of the Crown the disclosure of any information would be contrary to the interests of national security—

SCH. 7

(a) nothing in any of the provisions to which this section applies shall require any person to disclose the information, and

(b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

(2) This section applies to—

(a) Part I so far as it relates to employment particulars,

(b) sections 22A to 22C and section 31A,

(c) Part III,

(d) section 53(2A),

(e) Part V so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60, and

(f) Part VIII and this Part so far as relating to any of the provisions in paragraphs (a) to (e).".

6. In Schedule 9 of the 1978 Act (industrial tribunals)—

(a) in paragraph 1 (regulations as to procedure), after sub-paragraph (4), there shall be inserted—

"(4A) Without prejudice to sub-paragraph (5) or paragraph 2, a Minister of the Crown may on grounds of national security direct an industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.", and

(b) in paragraph 2 (national security), in sub-paragraph (2), for the words "A certificate" there shall be substituted the words "Except where the complaint is that a dismissal is unfair by reason of section 57A, 59(1)(a) or 60, a certificate".

7. In paragraph 18 of Schedule 11 to the 1978 Act (Employment Appeal Tribunal Rules), for sub-paragraph (c) (power for rules to enable private hearings) there shall be substituted—

"(c) for requiring or enabling the Appeal Tribunal to sit in private in circumstances in which an industrial tribunal is required or empowered to sit in private by virtue of paragraph 1 of Schedule 9;".

Extension of employment protection provisions and related legislation to House of Lords Staff

1970 c. 41.

8. In section 1 of the Equal Pay Act 1970 (requirement of equal treatment for men and women), after subsection (10A) there shall be inserted—

"(10B) This section applies in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.

In this subsection "relevant member of the House of Lords staff" has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.".

1978 c. 44.

1975 c. 65.

9. After section 85A of the Sex Discrimination Act 1975 (application to House of Commons staff) there shall be inserted—

"Application to House of Lords staff.

85B.—(1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) In this section "relevant member of the House of Lords staff" has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.".

SCH. 7

1978 c. 44.

10. After section 75A of the Race Relations Act 1976 (application to House of Commons staff) there shall be inserted—

1976 c. 74.

"Application to House of Lords staff.

75B.—(1) Parts II and IV apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) In this section "relevant member of the House of Lords staff" has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.".

11. After section 139 of the 1978 Act there shall be inserted—

"House of Lords staff

Provisions as to House of Lords staff.

139A.—(1) The provisions of Parts I, II, III, V and VIII, and this Part and section 53 shall apply in relation to employment as a relevant member of the House of Lords staff as they apply to other employment.

(2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Lords staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by a person who is not such a member.

(3) For the purposes of the application of the enactments applied by subsection (1) in relation to a relevant member of the House of Lords staff—

(a) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and

(b) any other reference to an undertaking shall be construed as a reference to the House of Lords.

(4) Where the terms of his contract of employment restrict the right of a relevant member of the House of Lords staff to take part in—

(a) certain political activities, or

(b) activities which may conflict with his official functions,

nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.

(5) In this section—

"relevant member of the House of Lords staff" means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

SCH. 7

"civil employment claim" means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

"the court" means the High Court or the county court.

(6) For the purposes of the application of the enactments applied by subsection (1) and of any civil employment claim in relation to a person continuously employed in or for the purposes of the House of Lords up to the time when he became so employed under a contract of employment with the Corporate Officer of the House of Lords, his employment shall not be treated as having been terminated by reason only of a change in his employer before or at that time.".

12. In section 277 of the 1992 Act (House of Lords staff)—

(a) in subsection (1), for the words "Sections 137 to 143 (rights in relation to trade union membership: access to employment)" there shall be substituted the words "The provisions of this Act (except those specified below)",

(b) after that subsection there shall be inserted—

"(1A) The following provisions are excepted from subsection (1)—

sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information),

Chapter II of Part IV (procedure for handling redundancies).",

(c) in subsection (2), after the word "bringing" there shall be inserted the words "a civil employment claim before the court or from bringing",

(d) after that subsection there shall be inserted—

"(2A) For the purposes of the application of the other provisions of this Act as they apply by virtue of this section—

(a) the reference in section 182(1)(e) (disclosure of information for collective bargaining: restrictions) to a person's undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and

(b) any other reference to an undertaking shall be construed as a reference to the House of Lords.", and

(e) for subsections (3) to (6) there shall be substituted—

"(3) In this section—

"relevant member of the House of Lords staff" means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

"civil employment claim" means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

"the court" means the High Court or a county court.".

Power to extend 1978 Act in certain health and safety cases

13. In section 149 of the 1978 Act (general power to amend Act), after subsection (2) there shall be inserted—

"(2A) The Secretary of State may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, sections 22A to 22C (and any other provisions of this Act so far as relating to those sections) shall apply to such descriptions of persons other than employees as may be prescribed in the order as they apply to employees (but as if references to their employer were references to such person as may be so prescribed).".

Power to provide for continuity of employment following reinstatement or re-engagement

14. In Schedule 13 to the 1978 Act (computation of period of employment), in paragraph 20 (re-instatement or re-engagement of dismissed employee)—

(a) in sub-paragraph (2)(a), for the words "complaint under section 67" there shall be substituted the words "relevant complaint of dismissal";

(b) in sub-paragraph (2)(c), for the words "section 134(3)" there shall be substituted the words "his relevant conciliation powers or";

(c) after sub-paragraph (2)(c), there shall be inserted—

"(d) of the making of a relevant compromise contract.";

and

(d) after sub-paragraph (2) there shall be inserted—

"(3) In sub-paragraph (2)—

"relevant complaint of dismissal" means a complaint under section 67 of this Act, a complaint under section 63 of the Sex Discrimination Act 1975 arising out of a dismissal or a complaint under section 54 of the Race Relations Act 1976 arising out of a dismissal;

1975 c. 65.
1976 c. 74.

"relevant conciliation powers" means section 134(3) of this Act, section 64(2) of the Sex Discrimination Act 1975 or section 55(2) of the Race Relations Act 1976; and

"relevant compromise contract" means an agreement or contract authorised by section 140(2)(fa) or (fb) of this Act, section 77(4)(aa) of the Sex Discrimination Act 1975 or section 72(4)(aa) of the Race Relations Act 1976.".

Codes of practice on employment : use in proceedings

15. In section 56A of the Sex Discrimination Act 1975 (codes of practice in the field of employment), in subsection (10) (relevance of codes in proceedings under that Act before industrial tribunals), after the words "under this Act" there shall be inserted the words "or the Equal Pay Act 1970".

1970 c. 41.

Parliamentary procedure: orders modifying application of redundancy provisions

16. In section 149 of the 1978 Act (general power to amend Act)—

(a) in subsection (4) (orders to be subject to affirmative procedure), for the words "subsection (1)" there shall be inserted the words "this section, other than one to which subsection (5) applies,", and

(b) after subsection (4) there shall be inserted—

"(5) This subsection applies to an order under subsection (1)(b) which specifies only provisions contained in Part VI.".

Miscellaneous minor corrections and amendments

17. In section 21(6) of the 1992 Act (repudiation by trade union of certain acts) for the words "six months" there shall be substituted the words "three months".

SCH. 7

18. In section 34(5) of the 1992 Act (eligibility for appointment as auditor), the second sentence shall be omitted.

19. In section 35(5) of the 1992 Act (appointment and removal of auditors)—

(a) for the words "subsections (1) to (6)" there shall be substituted the words "subsections (1) to (4)", and

(b) for the words "subsection (7)" there shall be substituted the words "subsection (5)".

20. In section 110(3) of the 1992 Act (consideration by Commissioner of application for assistance for certain legal proceedings) for the word "(f)" there shall be substituted the word "(e)" and for the words "or ballot" there shall be substituted the words "or political ballot".

21. In section 158 of the 1992 Act (special award in cases of dismissal on grounds related to union membership or activities) after subsection (6) there shall be inserted—

1978 c. 44.

"(7) Schedule 14 to the Employment Protection (Consolidation) Act 1978 (calculation of a week's pay) shall apply for the purposes of this section with the substitution, for paragraph 7, of the following:—

1992 c. 52.

For the purposes of this Part in its application to section 158 of the Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is—

(a) where the dismissal was with notice, the date on which the employer's notice was given;

(b) where paragraph (a) does not apply, the effective date of termination.".

22. In section 166(1) of the 1992 Act (consequences of failure to comply with order of reinstatement or re-engagement), for "(5)(a)" there shall be substituted "(5)".

23. In section 187(2) of the 1992 Act (meaning of refusal to deal where refusal on grounds of union exclusion), paragraph (c) shall become subparagraph (iii) of paragraph (b) and there shall be inserted as paragraph (c) the following, preceded by "or", namely—

"(c) he terminates a contract with that person for the supply of goods or services.".

24. In section 228 of the 1992 Act (separate workplace ballots before action by trade union) after subsection (3) there shall be inserted—

"(4) In this section "place of work", in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection.".

25. In section 229(3) of the 1992 Act (voting paper for industrial action ballot) for the word "20(3)" there shall be substituted the word "20(2)".

26. In section 246 of the 1992 Act (minor definitions relating to industrial action provisions) the definition of "place of work" shall be omitted.

27. In section 278(4)(c) of the 1992 Act (House of Commons staff), after the word "in" there shall be inserted the word "section".

SCHEDULE 8

Section 49(2).

CONSEQUENTIAL AMENDMENTS

The Factories Act 1961 (c. 34)

1. In section 119A of the Factories Act 1961 (notice of employment of a young person to be sent to local careers office), in subsection (2)(a) (definition of "local careers office"), for the words from ", under" to "the arrangements)" there shall be substituted the words "services are provided in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 in the area".

1973 c. 50.

The Parliamentary Commissioner Act 1967 (c. 13)

2. In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) there shall be inserted at the appropriate place—

"Office of the Commissioner for Protection Against Unlawful Industrial Action.".

The Chronically Sick and Disabled Persons Act 1970 (c. 44)

3. In section 13(2) of the Chronically Sick and Disabled Persons Act 1970 (youth employment service), for the words "section 10(1)" there shall be substituted the words "section 10(6)".

The Employment Agencies Act 1973 (c. 35)

4. In section 13(7) of the Employment Agencies Act 1973 (exclusions from provisions of that Act), after paragraph (g) there shall be inserted—

"(ga) services provided in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973;".

The Employment and Training Act 1973 (c. 50)

5. In section 5(2)(a) of the Employment and Training Act 1973 (power to appoint advisers with respect to performance of certain functions), for the words from "on him" to the end there shall be substituted the words "or imposed on him by sections 2, 8 to 10 and 12 of this Act; and".

The House of Commons Disqualification Act 1975 (c. 24)

6. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted at the appropriate place—

"Commissioner for Protection Against Unlawful Industrial Action.".

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

7. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted at the appropriate place—

"Commissioner for Protection Against Unlawful Industrial Action.".

SCH. 8

The Sex Discrimination Act 1975 (c. 65)

8. In section 15 of the Sex Discrimination Act 1975 (employment agencies etc.)—

(a) for subsection (2) there shall be substituted—

"(2) It is unlawful for a local education authority or education authority or any other person to do any act in providing services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 which constitutes discrimination.", and

1973 c. 50.

(b) in subsection (5), for the words "or an education authority" there shall be substituted the words ", education authority or other person".

The Race Relations Act 1976 (c. 74)

9. In section 14 of the Race Relations Act 1976 (employment agencies etc.)—

(a) for subsection (2) there shall be substituted—

"(2) It is unlawful for a local education authority or education authority or any other person to do any act in providing services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 which constitutes discrimination.", and

(b) in subsection (5), for the words "or an education authority" there shall be substituted the words ", education authority or other person".

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

10. In section 11 of the 1978 Act (enforcement of right to employment particulars)—

(a) in subsection (1) (references to determine what statement an employer ought to have given the employee), after the words "as required by section 1 or 4(1) or 8" there shall be inserted the words "(that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements)";

(b) in subsection (4)(b) (questions as to particulars which ought to have been included in a note about disciplinary procedures), for the words "a note under section 1(4)" there shall be substituted the words "the note required by section 3 to be included in the statement under section 1"; and

(c) in subsection (9) (time limit of three months for applications to industrial tribunals), at the end, there shall be inserted the words—

"or—

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months";

and after the word "made" (in the second place where it occurs) there shall be inserted "(a)".

11. In section 53 of the 1978 Act (written statement of reasons for dismissal), in subsection (4) (complaint on ground of unreasonable refusal to provide written statement under subsection (1))—

(a) for the words "refused to provide a written statement under subsection (1)" there shall be substituted the words "failed to provide a written statement under this section", and

(b) for the words "that subsection" there shall be substituted the words "this section".

12. In section 56 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of unfair dismissal provisions), for the words "is entitled to return to work and has exercised her right to return in accordance with section 47" there shall be substituted the words "has the right to return to work under section 39 and has exercised it in accordance with section 42".

13. In section 56A of the 1978 Act (exclusion of section 56)—

(a) in subsection (1)(a), for the words "her absence began" there shall be substituted the words "the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal)", and

(b) in subsections (1)(b), (2)(a) and (3)(b), for the words "section 45(1)" there shall be substituted the words "section 39".

14. In section 59 of the 1978 Act (dismissal on ground of redundancy)—

(a) for the word "he", in both places where it occurs, and the word "him" there shall be substituted the words "the employee",

(b) for the words "in his case" there shall be substituted the words "in the case of the employee", and

(c) at the end, there shall be inserted as subsection (3)—

"(3) For the purposes of this Part "a redundancy case" means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.".

15. In section 61 of the 1978 Act (dismissal of replacement)—

(a) in subsection (1)(a) (dismissal of employee on return to work of employee absent because of pregnancy or confinement)—

(i) for the words "return to work of" there shall be substituted the words "resumption of work by", and

(ii) for the word "confinement" there shall be substituted the word "childbirth", and

(b) in subsection (2) (dismissal of employee on resumption of work by employee suspended as mentioned in section 19)—

(i) after the word "19" there shall be inserted the words "or 45", and

(ii) for the words "other employee to resume his original work" there shall be substituted the words "resumption of work by the other employee".

16. In section 65 of the 1978 Act (exclusion in respect of dismissal procedures agreement), in subsection (4) (disapplication of subsection (3) in case of right not to be dismissed for any reason mentioned in section 60(1) or (2)), for the words from "right" to the end there shall be substituted the words "right conferred by section 60 or 60A(1).".

17. In section 86 of the 1978 Act (failure to permit woman to return to work under section 47 treated as dismissal for purposes of redundancy provisions), for the words "is entitled to return to work and has exercised her right to return in accordance with section 47" there shall be substituted the words "has the right to return to work under section 39 and has exercised it in accordance with section 42".

SCH. 8

18. In section 122 of the 1978 Act (employee's rights on insolvency of employer), in subsection (4) (amounts treated as arrears of pay), after paragraph (c) there shall be inserted—

"(ca) remuneration on suspension on maternity grounds under section 47;".

19. In section 132 of the 1978 Act (recoupment of benefits), in subsection (1)(b) (payments from which provision for recoupment may be made), after the words "or section" there shall be inserted the words "47 or".

20. In section 133(1)(a) of the 1978 Act (conciliation)—

(a) after the word "19", there shall be inserted the word "22A,", and

(b) after the word "31A," there shall be inserted the words "46, 47,".

21. In section 140 of the 1978 Act (restrictions on contracting-out), in subsection (2) (exceptions), after paragraph (f) there shall be inserted—

"(fa) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under section 131;".

22. In section 141(1) of the 1978 Act (disapplication of sections 1 to 4 in case of employees engaged in work wholly or mainly outside Great Britain), for the words "unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer" there shall be substituted the words "unless—

(a) the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer, or

(b) the law which governs his contract of employment is the law of England and Wales or of Scotland".

23. In section 144 of the 1978 Act (mariners), for subsection (1) there shall be substituted—

"(1) Sections 1 to 4 and 49 to 51 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.".

24. In section 149(2) of the 1978 Act (provisions to which power to make orders amending that Act does not apply)—

(a) after the word "57," there shall be inserted the word "57A,",

(b) after the word "67," there shall be inserted the words "73(6C) and (6D),", and

(c) after the word "75," there shall be inserted the words "75A(7) and (8),".

25. In section 153 of the 1978 Act (interpretation)—

(a) in subsection (1) (definitions)—

(i) after the definition of "business" there shall be inserted—

""childbirth" means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy;",

(ii) for the definition of "expected week of confinement" there shall be substituted—

""expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;",

(iii) after the definition of "job" there shall be inserted—

""maternity leave period" shall be construed in accordance with sections 34 and 35;",

(iv) in the definition of "notified day of return", for the words "has the meaning given by section 47(1) and (8)" there shall be substituted the words "shall be construed in accordance with section 43(3) and (4)", and

(v) after that definition there shall be inserted—

""notified leave date" shall be construed in accordance with section 36;", and

(b) in subsection (5) (irrelevance of what law governs a person's employment), for the word "For" there shall be substituted the words "Subject to section 141(1)(b), for".

26. In Schedule 2 to the 1978 Act (maternity)—

(a) in paragraph 2—

(i) in sub-paragraph (1), in the substituted subsection (3), for the words "sections 59 to 61" there shall be substituted the words "sections 57A to 61",

(ii) in sub-paragraph (2), for the words "section 45(3)" there shall be substituted the words "section 41(1)", and

(iii) in sub-paragraph (5), for the words "the original contract of employment" there shall be substituted the words "her contract of employment immediately before the beginning of her maternity leave period",

(b) in paragraph 4—

(i) in sub-paragraph (1), for paragraph (c) there shall be substituted—

"(c) the reference in section 84(3) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.", and

(ii) in sub-paragraph (4), for the words "the original contract of employment" there shall be substituted the words "her contract of employment immediately before the beginning of her maternity leave period",

(c) in paragraph 5—

(i) after the words "return to work" there shall be inserted the words "in accordance with section 42", and

(ii) for the words from "during her absence" to "confinement" there shall be substituted the words "on a day falling after the commencement of her maternity leave period and before the notified day of return",

(d) in paragraph 6—

(i) for sub-paragraph (1) there shall be substituted—

"(1) This paragraph applies where an employee has the right to return to work under section 39 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.", and

(ii) in sub-paragraph (2), for the words "during the period of her absence" there shall be substituted the words "after her maternity leave period" and for the words "section 48" there shall be substituted the words "section 44", and

(e) in paragraph 7(1), for the words "section 48" there shall be substituted the words "section 44".

27. In Schedule 3 to the 1978 Act (rights of employees in period of notice)—

(a) in paragraph 2—

(i) in sub-paragraph (1), after paragraph (b) there shall be inserted—

"(ba) the employee is absent from work wholly or partly because of pregnancy or childbirth; or",

(ii) in sub-paragraph (1), after the words "paragraphs (a), (b)" there shall be inserted ", (ba)", and

(iii) in sub-paragraph (2), after the words "statutory sick pay," there shall be inserted the words "maternity pay, statutory maternity pay,", and

(b) in paragraph 3(3)—

(i) after paragraph (a) there shall be inserted—

"(aa) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth, or", and

(ii) after the words "statutory sick pay," there shall be inserted the words "maternity pay, statutory maternity pay,".

28. In Schedule 9 to the 1978 Act (industrial tribunals)—

(a) in paragraph 1(4)(b) (regulations as to procedure), for the word "confinement" there shall be substituted the word "childbirth",

(b) in sub-paragraph (1) of paragraph 1A (power to authorise pre-hearing reviews), for paragraph (a) there shall be substituted—

"(a) for authorising the carrying out by an industrial tribunal of a preliminary consideration of any proceedings before it ("a pre-hearing review"); and", and

(c) after that paragraph there shall be inserted—

"1B. The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.".

29. In paragraph 18(aa) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to regulate certain applications), for the words from "an application" to the end there shall be substituted the words "any application to the Appeal Tribunal may be made;".

30. In paragraph 18(e) of Schedule 11 to the 1978 Act (power for Employment Appeal Tribunal rules to provide for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16), for the word "proceedings" there shall be substituted the words "matters arising on any appeal or application to the Appeal Tribunal".

SCH. 8

31. In Schedule 13 to the 1978 Act (computation of period of employment)—

(a) in paragraph 9(1)(d), for the word "confinement" there shall be substituted the word "childbirth", and

(b) in paragraph 10—

(i) for the words "section 45(1)" there shall be substituted the words "section 39", and

(ii) for the word "confinement" there shall be substituted the word "childbirth".

32. In Schedule 14 to the 1978 Act (calculation of week's pay), in paragraph 7(1) (the calculation date)—

(a) after paragraph (e) there shall be inserted—

"(ea) where the calculation is for the purposes of section 47, the day before the suspension referred to in section 45(1) begins or where that day falls within an employee's maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under section 39, the day before the beginning of the maternity leave period;", and

(b) after paragraph (i) there shall be inserted—

"(ia) where the calculation is for the purposes of section 75A and the dismissal was with notice, the date on which the employer's notice was given;

(ib) where the calculation is for the purposes of section 75A but sub-paragraph (ia) does not apply, the effective date of termination;".

The Agricultural Training Board Act 1982 (c. 9)

33. In section 4(1)(f) of the Agricultural Training Board Act 1982 (functions of the Agricultural Training Board), at the end there shall be inserted the words "and may provide services or arrange for the provision of services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 (careers services)".

1973 c. 50.

The Industrial Training Act 1982 (c. 10)

34. In section 5(3)(e) of the Industrial Training Act 1982 (functions of industrial training boards), at the end there shall be inserted the words "and may provide services or arrange for the provision of services in pursuance of arrangements made, or a direction given, under section 10 of the Employment and Training Act 1973 (careers services)".

The Insolvency Act 1986 (c. 45)

35. In paragraph 13(2) of Schedule 6 to the Insolvency Act 1986 (amounts treated as remuneration), in paragraph (b), after the word "Act" there shall be inserted the words "or remuneration on suspension on maternity grounds under section 47 of that Act".

The Wages Act 1986 (c. 48)

36. In section 30(1) and (3) of the Wages Act 1986 (excluded employments), for the words "Parts I and II do" there shall be substituted the words "Part I does".

37. In section 33(4) of that Act (commencement), for the words "paragraphs 4 to 7" there shall be substituted the words "paragraph 4".

SCH. 8

The Employment Act 1988 (c. 19)

38. In subsection (1) of section 26 (status of trainees etc.) of the Employment Act 1988—

(a) after the words "under section 2(3)" there shall be inserted the words "or section 14A"; and

(b) for the words "the said section 2, or as the case may be the said section 2(3)" there shall be substituted the words "any of those three sections".

The Legal Aid Act 1988 (c. 34)

39. In Part II of Schedule 2 to the Legal Aid Act 1988 (excepted proceedings), after paragraph 5A there shall be inserted—

1992 c. 52.

"5B. Proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A of the Trade Union and Labour Relations (Consolidation) Act 1992.".

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

40. In section 25 of the 1992 Act (application to Certification Officer as respects failures in relation to the register of members)—

(a) in subsection (1), after the words "section 24" there shall be inserted the words "or 24A"; and

(b) after subsection (7), there shall be inserted—

"(8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.".

41. In section 26 of the 1992 Act (application to court as respects failures in relation to the register of members)—

(a) in subsection (1), after the words "section 24" there shall be inserted the words "or 24A"; and

(b) after subsection (6) there shall be inserted—

"(7) The court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.".

42. In section 32 of the 1992 Act (annual return), after subsection (6) there shall be inserted—

"(7) For the purposes of this section and section 32A "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.".

43. In section 43(1) (provisions not to apply in case of newly-formed trade unions)—

(a) in paragraph (b) (disapplication of sections 32 to 37), after the words "annual return," there shall be inserted the words "statement for members,", and

(b) after that paragraph there shall be inserted—

"(ba) sections 37A to 37E (investigation of financial affairs), and".

44. In section 44 of the 1992 Act (discharge of duties in case of union having branches or sections)—

(a) in subsections (2) and (4), for the words "sections 32 to 37" there shall be substituted the words "sections 32 and 33 to 37", and

(b) after subsection (4) there shall be inserted—

"(5) Where the duty falling on a trade union under section 32 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of subsection (2) or (4) of this section, the duties imposed by section 32A in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.".

45. In section 45(1) of the 1992 Act (offences for breach of duty under sections 32 to 37 etc.), after the words "annual return," there shall be inserted the words "statement for members,".

46. In section 49(3)(a) of the 1992 Act (election scrutineer to supervise certain matters), for the words "and distribution of the voting papers" there shall be substituted the words "of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution".

47. In section 62 of the 1992 Act (right of trade union members to obtain order to prevent inducement to take part in industrial action not having support of a ballot)—

(a) at the end of subsection (1) (stating the right) there shall be inserted the following paragraph—

"In this section "the relevant time" means the time when the application is made."; and

(b) in subsection (2) (circumstances in which action has such support), for paragraphs (a) to (c) there shall be substituted—

"(a) the union has held a ballot in respect of the action—

(i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,

(ii) in relation to which the requirements of sections 227 to 231 were satisfied, and

(iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;

(b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—

(i) section 226B so far as applicable after the holding of the ballot, and

(ii) section 231B; and

(c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.".

117474 E

SCH. 8

48. In section 64 of the 1992 Act (right not to be unjustifiably disciplined), in subsection (5) (enforcement provisions not to affect remedy for infringement of other rights), for the words "and nothing" there shall be substituted the words "and, subject to section 66(4), nothing".

49. In section 65(7) of the 1992 Act (definitions related to unjustifiable discipline)—

(a) in the definition of "contract of employment", at the end, there shall be inserted the words ", "employer" includes such a person and related expressions shall be construed accordingly;"; and

(b) at the end, there shall be inserted the following definition, preceded by the word "and"—

""wages" shall be construed in accordance with the definitions of "contract of employment", "employer" and related expressions.".

50. In section 66 of the 1992 Act (complaint of infringement of right not to be unjustifiably disciplined), for subsection (4) there shall be substituted—

"(4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).".

51. In section 67 of the 1992 Act (compensation for right not to be unjustifiably disciplined)—

(a) in subsection (8) (application of maximum and minimum limits of compensation)—

(i) for the words "awarded against a trade union on an application under this section" there shall be substituted the words "calculated in accordance with subsections (5) to (7)", and

(ii) for the words "156(1) of this Act (minimum basic award in certain cases of unfair dismissal)" there shall be substituted the words "176(6) of this Act (minimum award by Employment Appeal Tribunal in cases of exclusion or expulsion from union)", and

(b) subsection (9) (limits to be applied before reduction for failure to mitigate etc.) shall cease to have effect.

52. In section 97(1)(b) and (2)(b) of the 1992 Act (amalgamation or transfer of engagements), for the words "sections 99 and 100 (notice to members and passing of resolution)" there shall be substituted the words "section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)".

53. In section 98(1) of the 1992 Act (instrument of amalgamation or transfer to be submitted for approval of Certification Officer before resolution to approve it is voted on by members), for the words from "the resolution" to the end there shall be substituted the words "a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.".

54. In section 99(1) of the 1992 Act (notice of instrument to be supplied to members), for the words from "that, not less" to "supplied with" there shall be substituted the words "that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by".

SCH. 8

55. In section 101 of the 1992 Act (registration of instrument of amalgamation or transfer), after subsection (2) there shall be inserted—

"(3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until section 100E(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.".

56. In section 103 of the 1992 Act (complaints about passing of resolution approving instrument of amalgamation or transfer), for subsection (1) there shall be substituted—

"(1) A member of a trade union who claims that the union—

(a) has failed to comply with any of the requirements of sections 99 to 100E, or

(b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.".

57. In section 106 of the 1992 Act (amalgamation or transfer involving Northern Ireland union)—

(a) in subsection (2), for the words "98 to 100 (approval of instrument; notice to members; passing of resolution)" there shall be substituted the words "98 to 100E and 101(3) (approval of instrument, notice to members and ballot on resolution)", and

(b) in subsection (4), for the words "section 103" there shall be substituted the words "sections 103 and 104".

58. In section 109 of the 1992 Act (proceedings in relation to which assistance may be provided by Commissioner)—

(a) in subsection (1)—

(i) in paragraph (c) after the word "members" there shall be inserted the words "or secure confidentiality"; and

(ii) after paragraph (d) there shall be inserted—

"(da) an application to the court under section 45C (remedy for failure to comply with duty to secure positions not held by certain offenders);", and

(b) in subsection (2), for the words from "in the High Court" to "arise out of" there shall be substituted the words "to the extent that they consist in, or arise out of, proceedings in the High Court or the Court of Session with respect to".

59. In section 110(1) of the 1992 Act (application for assistance from Commissioner for the Rights of Trade Union Members for certain legal proceedings), for the words "to the Commissioner" there shall be substituted the words "to the Commissioner for the Rights of Trade Union Members (in this Chapter referred to as "the Commissioner")".

60. In section 111 of the 1992 Act (provision of assistance by that Commissioner), for subsection (3) there shall be substituted—

SCH. 8

"(3) Where assistance is provided with respect to the conduct of proceedings—

(a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the court in the proceedings,

(b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in order to avoid the proceedings or bring the proceedings to an end, and

(c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief (in Scotland, an interim order) to the applicant.".

61. In section 117(5) of the 1992 Act (provisions operating only in relation to certain positions in case of special register bodies), for the words "Chapter IV (elections for certain union positions) only applies" there shall be substituted the words "Sections 45B and 45C (disqualification) and Chapter IV (elections) apply only".

62. In section 118(4) of the 1992 Act (provisions not to apply in case of federated trade unions consisting wholly or mainly of representatives of constituent or affiliated organisations)—

(a) in paragraph (c) (disapplication of sections 32 to 37), after the words "annual return," there shall be inserted the words "statement for members,", and

(b) after that paragraph there shall be inserted—

"(ca) sections 37A to 37E (investigation of financial affairs), and".

63. In section 119 of the 1992 Act (expressions relating to trade unions)—

(a) before the definition of "branch or section" there shall be inserted—

""agent" means a banker or solicitor of, or any person employed as an auditor by, the union or any branch or section of the union;", and

(b) after the definition of "executive" there shall be inserted—

""financial affairs" means affairs of the union relating to any fund which is applicable for the purposes of the union (including any fund of a branch or section of the union which is so applicable);".

64. In section 131(1) of the 1992 Act (administrative provisions applying to employers' associations)—

(a) for the words "sections 32 to 37" there shall be substituted the words "section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37",

(b) after the word "audit)," there shall be inserted—

"sections 37A to 37E (investigation of financial affairs),", and

(c) for the words "section 45" there shall be substituted the words "sections 45 and 45A".

65. For section 133 of the 1992 Act (employers' associations: amalgamations etc.) there shall be substituted—

"Amalgamations and transfers of engagements.

133.—(1) Subject to subsection (2), the provisions of Chapter VII of Part I of this Act (amalgamations and similar matters) apply to unincorporated employers' associations as in relation to trade unions.

(2) In its application to such associations that Chapter shall have effect—

(a) as if in section 99(1) for the words from "that every" to "accompanied by" there were substituted the words "that, not less than seven days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with",

(b) as if the requirements imposed by sections 100A to 100E consisted only of those specified in sections 100B and 100C(1) and (3)(a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting, and

(c) with the omission of sections 101(3) and 107.".

66. In section 135(3) of the 1992 Act (provisions not to apply in case of federated employers' associations consisting wholly or mainly of representatives of constituent or affiliated organisations)—

(a) in paragraph (c) (disapplication of sections 32 to 37), for the words "sections 32 to 37" there shall be substituted the words "section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37", and

(b) after that paragraph there shall be inserted—

"(ca) sections 37A to 37E (investigation of financial affairs), and".

67. In section 154 of the 1992 Act (exclusion of requirement of qualifying period), the words "and 64A" shall be omitted and for the words "Sections" and "do" there shall be substituted the words "Section" and "does".

68. In section 158(2) of the 1992 Act (minimum amount of special award in certain cases), the words ", but subject to the following provisions of this section." shall be inserted at the end.

69. In section 164(1)(a) of the 1992 Act (order in such a case for continuation of contract for purposes of pay or any benefit derived from the employment), for the words "any benefit" there shall be substituted the words "any other benefit".

70. In section 191(1)(a) of the 1992 Act (no remuneration under protective award for period after fair dismissal for a reason other than redundancy), for the words "for a reason other than redundancy" there shall be substituted the words "otherwise than as redundant".

71. In section 198(1)(b) of the 1992 Act (power to adapt provisions in case of collective agreement establishing arrangements for the handling of redundancies), for the words "the handling of redundancies" there shall be substituted the words "handling the dismissal of employees as redundant".

SCH. 8

72. In section 219 of the 1992 Act (protection of acts in contemplation or furtherance of trade dispute from certain tort liabilities), in subsection (4) for the words from "to section 226" to the end there shall be substituted the words "to sections 226 (requirement of ballot before action by trade union) and 234A (requirement of notice to employer of industrial action); and in those sections "not protected" means excluded from the protection afforded by this section or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.".

73. In section 226 of the 1992 Act (act of trade union not protected unless industrial action has support of a ballot)—

(a) at the end of subsection (1) (requiring the ballot) there shall be inserted the following paragraph —

"In this section "the relevant time", in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.";

(b) in subsection (2) (circumstances in which action has such support) for paragraphs (a) to (c) there shall be substituted—

"(a) the union has held a ballot in respect of the action—

(i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,

(ii) in relation to which the requirements of sections 227 to 231A were satisfied, and

(iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;

(b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—

(i) section 226B so far as applicable after the holding of the ballot, and

(ii) section 231B; and

(c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section."; and

(c) in subsection (3) (separate workplace ballots), for the words from "section 228(1)," to "in relation" there shall be substituted the words "section 228(1)—

(a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and

(b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with,

in relation".

74. In section 232 of the 1992 Act (balloting of overseas members)—

(a) in subsection (1) (sections 227 to 230 not to apply), for the words "227 to 230" there shall be substituted the words "226B to 230 and 231B", and

(b) for subsection (2) (operation of section 231) there shall be substituted—

"(2) Where overseas members have voted in the ballot—

(a) the references in sections 231 and 231A to persons entitled to vote in the ballot do not include overseas members, and

(b) those sections shall be read as requiring the information mentioned in section 231 to distinguish between overseas members and other members.".

75. In section 235 of the 1992 Act (meaning of "contract of employment" and related expressions)—

(a) for "234" there shall be substituted "234A"; and

(b) for the words "and related expressions" there shall be substituted the words "and "employer" and other related expressions".

76. In section 237 of the 1992 Act (no right to complain of unfair dismissal in case of employee taking part in unofficial industrial action), after subsection (1) there shall be inserted—

"(1A) Subsection (1) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in section 57A or 60 of the Employment Protection (Consolidation) Act 1978 (dismissal in health and safety cases and maternity cases).

1978 c. 44.

In this subsection "redundancy case" has the meaning given in section 59 of that Act.".

77. In section 238 of the 1992 Act (tribunal not to determine whether or not dismissal is fair where there is a lock-out or industrial action), after subsection (2) there shall be inserted—

"(2A) Subsection (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in section 57A or 60 of the Employment Protection (Consolidation) Act 1978 (dismissal in health and safety cases and maternity cases).

In this subsection "redundancy case" has the meaning given in section 59 of that Act.".

78. In section 254 of the 1992 Act (Certification Officer), after subsection (5) there shall be inserted—

"(5A) Subject to subsection (6), ACAS shall pay to the Certification Officer such sums as he may require for the performance of any of his functions.".

79. For section 266 of the 1992 Act (Commissioner for the Rights of Trade Union Members) and the heading immediately preceding it there shall be substituted—

"The Commissioner for the Rights of Trade Union Members and the Commissioner for Protection Against Unlawful Industrial Action

The Commissioners.

266.—(1) There—

(a) shall continue to be an officer called the Commissioner for the Rights of Trade Union Members whose function is to provide assistance in accordance with Chapter VIII of Part I of this Act in connection with certain legal proceedings, and

SCH. 8

(b) shall be an officer called the Commissioner for Protection Against Unlawful Industrial Action whose function is to provide assistance in accordance with sections 235B and 235C of this Act in connection with proceedings brought by virtue of section 235A.

(2) Each of the Commissioners shall be appointed by the Secretary of State.

(3) Each of the Commissioners shall have an official seal for the authentication of documents required for the purposes of his functions.

(4) Anything authorised or required by or under this Act to be done by either of the Commissioners may be done by a member of his staff authorised by him for that purpose, whether generally or specifically.

An authorisation given for the purposes of this subsection continues to have effect during a vacancy in the office of the Commissioner concerned.

(5) Neither of the Commissioners nor any member of the staff of either of the Commissioners shall, in that capacity, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.".

80. In section 267 of the 1992 Act (terms of appointment of Commissioner for the Rights of Trade Union Members)—

(a) in subsection (1), for the words "The Commissioner" there shall be substituted the words "Each of the Commissioners",

(b) in subsection (2), for the words "the Commissioner" there shall be substituted the words "one of the Commissioners", and

(c) in subsection (3)—

(i) for the words "that office" there shall be substituted the words "office as one of the Commissioners", and

(ii) for the words "his functions as the Commissioner" there shall be substituted the words "the functions of the office".

81. In section 268 of the 1992 Act (remuneration, pension etc. of Commissioner)—

(a) in subsection (1), for the words "the Commissioner" there shall be substituted the words "each of the Commissioners",

(b) in subsection (2), for the words "any holder of the office of Commissioner" there shall be substituted the words "any person who holds office as one of the Commissioners", and

(c) in subsection (3), for the words "the Commissioner" there shall be substituted the words "one of the Commissioners".

82. In section 269 of the 1992 Act (staff of Commissioner)—

(a) in subsection (1), for the words "The Commissioner" there shall be substituted the words "Each of the Commissioners",

(b) in subsection (2), for the words "the Commissioner" there shall be substituted the words "one of the Commissioners",

(c) in subsection (3)—

(i) for the words "the Commissioner becomes the Commissioner" there shall be substituted the words "one of the Commissioners becomes one of the Commissioners", and

(ii) for the words "the Commissioner shall be treated for the purposes of the scheme as service as an employee of the Commissioner" there shall be substituted the words "Commissioner shall be treated for the purposes of the scheme as service as an employee", and

(d) in subsection (4), for the words "The Commissioner is not" there shall be substituted the words "Neither of the Commissioners is".

83. In section 270 of the 1992 Act (financial provisions relating to Commissioner)-

(a) in subsection (1), for the words "The Commissioner" there shall be substituted the words "Each of the Commissioners", and

(b) in subsection (2)—

(i) for the words "to the Commissioner" there shall be substituted the words "to each of the Commissioners", and

(ii) for the words "by the Commissioner" there shall be substituted the words "by him".

84. In section 271 of the 1992 Act (annual report and accounts of Commissioner)—

(a) in subsection (1), for the words "the Commissioner" there shall be substituted the words "each of the Commissioners", and

(b) in subsections (2) and (3), for the words "The Commissioner" there shall be substituted the words "Each of the Commissioners".

85. In section 278 of the 1992 Act (House of Commons staff)—

(a) after subsection (2) there shall be inserted—

"(2A) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.", and

(b) in subsection (3) at the end there shall be inserted—

""civil employment claim" means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

"the court" means the High Court or the county court.".

86. In section 290 of the 1992 Act (functions of conciliation officers in relation to certain proceedings), after paragraph (a) there shall be inserted—

"(aa) section 68 (right not to suffer deduction of unauthorised or excessive union subscriptions);".

87. In section 291 of the 1992 Act (right of appeal from industrial tribunal)—

(a) subsection (1) (appeal on question of law or fact in the case of section 174), and

(b) in subsection (2) (appeal on question of law in the case of any other provision of 1992 Act) the words "any other provision of",

shall cease to have effect.

88. In section 296 of the 1992 Act (meaning of "worker" and "employer"), after subsection (2) there shall be inserted—

SCH. 8

"(3) This section has effect subject to section 68(11).".

89. In section 299 of the 1992 Act (index of defined expressions)—

(a) after the entry relating to "advertisement" there shall be inserted—

"agent (of trade union) section 119",

(b) after the entry relating to "dismiss and dismissal" there shall be inserted—

"the duty of confidentiality" section 24A(3)", and

(c) after the entry relating to "executive" there shall be inserted—

"financial affairs (of trade union) section 119".

Section 50.

SCHEDULE 9

TRANSITIONAL PROVISIONS AND SAVINGS

General

1.—(1) An order under section 52 of this Act may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate.

(2) Nothing in the following provisions of this Schedule prejudices the generality of sub-paragraph (1) above.

1978 c. 30.

(3) Nothing in this Schedule prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

Deduction of trade union subscriptions

2. For the purposes of section 68 of the 1992 Act (as substituted by section 15 of this Act) a deduction representing a payment to a trade union in respect of a worker's membership which is made in accordance with arrangements existing between his employer and the union immediately before the day on which section 15 comes into force under which deductions were made in his case before that day shall be treated as an authorised deduction where—

(a) the day on which the deduction is made falls before the end of the period of one year beginning with the day on which section 15 comes into force, and

(b) written notice from the worker stating that he does not wish such deductions to be made has not been received by the employer in time for it to be reasonably practicable for him to secure that the deduction is not made.

Employment particulars

3.—(1) In this paragraph "existing employee" means an employee whose employment with his employer has begun before the day on which section 26 of this Act comes into force (whether or not the provisions of sections 1 to 6 of the 1978 Act applied to him before that day).

(2) Subject to the following provisions of this paragraph, the provisions substituted for sections 1 to 4 and 6 of the 1978 Act by section 26 of this Act shall not apply to any existing employee.

(3) Where an existing employee, at any time—

(a) on or after the day on which section 26 of this Act comes into force, and

SCH. 9

(b) either before the end of his employment or within the period of three months beginning with the day on which his employment ends,

requests from his employer a statement under section 1 of the 1978 Act (as substituted by section 26), the employer shall (subject to section 5 and any other provision disapplying or having the effect of disapplying section 1) be treated as being required by section 1 to give him a written statement under that section, in accordance with the provisions of the 1978 Act as so substituted, not later than two months after the request is made; and section 4 of that Act (as so substituted) shall, subject as aforesaid, apply in relation to the existing employee after he makes the request.

(4) An employer shall not be required to give a statement under section 1 by virtue of sub-paragraph (3) above to an existing employee on more than one occasion by virtue of that sub-paragraph.

(5) Where—

(a) on or after the day on which section 26 of this Act comes into force there is in the case of any existing employee a change in any of the matters particulars of which would, had he been given a statement of particulars as at that day under section 1 of the 1978 Act (as substituted by that section), have been included or referred to in the statement, and

(b) he has not previously requested a statement under sub-paragraph (3) above,

subsections (1) and (5) of section 4 of the 1978 Act (as substituted by section 26 of this Act) shall be treated (subject to section 5 and any other provision disapplying or having the effect of disapplying section 4) as requiring his employer to give him a written statement containing particulars of the change at the time specified in subsection (1) of section 4; and subsections (3) and (6) of that section shall apply accordingly.

(6) Nothing in any enactment providing for the application of sections 1 to 4 of the 1978 Act to a person who comes or ceases to come within any of the exceptions from those sections specified in that Act shall have effect in relation to an existing employee by reason of his coming or ceasing to come within that exception by virtue of any of the amendments of the 1978 Act made by this Act.

Transfers of undertakings

S.I. 1981/1794.

4. The amendments of the Transfer of Undertakings (Protection of Employment) Regulations 1981 made by section 33 of this Act shall not have effect in relation to any transfer of an undertaking taking place before the date on which that section comes into force; and, accordingly, the repeal by this Act of—

(a) section 94 of the 1978 Act, and

(b) section 23 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965,

1965 c. 19 (N.I.).

shall have effect only in relation to any change in the ownership of a business occurring on or after that date.

Wages Councils

1986 c. 48.

5.—(1) Notwithstanding the repeal of Part II of the Wages Act 1986 by section 35 of this Act, the provisions of that Part specified or referred to below shall continue to have effect, on and after the day appointed for the repeal ("the appointed day"), in accordance with the following provisions.

(2) Section 16 (effect and enforcement of wages orders under section 14) shall have effect in relation to a failure occurring or continuing on or after the appointed day to pay, with respect to any period ending before that day, an amount equal to or exceeding the statutory minimum remuneration as it has

SCH. 9

effect in relation to such a failure before the appointed day; and, subject to the following provisions, the other sections of Part II which relate to section 16 shall continue to have effect accordingly.

(3) Section 19(1) and (4) (obligation to keep records etc) shall have effect on and after the appointed day as if—

(a) the reference to the provisions of Part II being complied with in relation to the payment of remuneration were a reference to their having been complied with in relation to payments of remuneration made—

(i) before the appointed day, or

(ii) on or after the appointed day with respect to any period ending before that day;

(b) the reference to deductions or payments made were references to deductions or payments so made; and

(c) in a case where the three-year retention period for records would end after the expiry of the period of six months beginning with the appointed day, the retention period were—

(i) that period of six months, or

(ii) if within that period of six months a court so orders, such longer period as is specified by the court;

and, subject to the following provisions, the other sections of Part II which relate to section 19 shall continue to have effect accordingly.

(4) Section 20 (wages inspectors) shall continue to have effect on and after the appointed day for the purposes of this paragraph; but—

(a) the powers conferred by subsections (3) and (4) shall not be exercisable after the end of the period of six months beginning with the appointed day, and

(b) subsection (6) shall not authorise the institution of proceedings by a wages inspector after the end of the period of six months beginning with the appointed day.

(5) Paragraph 4 of Schedule 3 shall continue to have effect on and after the appointed day in relation to orders under section 14 made before that day.

(6) In the operation of any provision of Part II by virtue of this paragraph, references to a wages order applying shall have effect as references to an order under section 14 having applied at any time before the appointed day.

SCHEDULE 10

Section 51.

REPEALS AND REVOCATIONS

Chapter or Number	Title	Extent of repeal or revocation
9 & 10 Eliz. 2 c. 34.	Factories Act 1961.	Section 117(5)(b).
1965 c. 19 (N.I.).	Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.	Sections 23 and 23A. In section 29(1), the words "(except section 23)". Section 32(4). Section 54(2). In Schedule 5, paragraph 2.
1968 c. 73.	Transport Act 1968.	Section 94(10).
1969 c. 32.	Finance Act 1969.	In section 58(4), in the Table, the entries relating to a local education authority in England and Wales and an education authority in Scotland.
1970 c. 44.	Chronically Sick and Disabled Persons Act 1970.	Section 13(1).
1973 c. 50.	Employment and Training Act 1973.	In section 4(3)(e)(ii), the words "a local education authority,". In section 4(5)(d), the words "a local education authority or" and "by section 8 of this Act or, as the case may be,".
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part III of Schedule 1, the first entry beginning "Member of a Wages Council".
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1, the first entry beginning "Member of a Wages Council".
S.I. 1976/1043 (N.I. 16).	Industrial Relations (Northern Ireland) Order 1976.	In Schedule 5, in Part II, paragraphs 19, 20 and 23(3).
1978 c. 44.	Employment Protection (Consolidation) Act 1978.	Section 11(3) and (7). In section 18, in subsection (1), the words "council or", subsection (2)(a), in subsection (3)(a), the words "(a) or", and in subsection (5), the words "council or". In section 53(4), the words "against his employer". In section 55(5) and (6), ", 64A". Section 64A. Section 93(4).

SCH. 10

Chapter or Number	Title	Extent of repeal or revocation
		Sections 94 and 95. In section 100(1), the words "(except section 94)". In section 123(4), the words ", maternity pay under Part III of this Act". In section 128(4), the words "paragraph 1 of". In section 133(1)(c), the words "or claims". In section 138, in subsection (1) the words "(so far as it relates to itemised pay statements)" and in subsection (2) the words ", subject to subsections (3) to (5),". In section 139(1), the words "(so far as it relates to itemised pay statements)". In section 146(4), the words "1, 4,". In section 149(1)(c), "64A(1),". In section 153, in subsection (1), the definitions of "confinement", "expected week of confinement" and "original contract of employment" and subsection (3). In Schedule 9, in paragraph 1A(2)(a) the words "person or" and paragraph 8. In Schedule 12, paragraph 13. In Schedule 13, in paragraph 11(1), ", 64A(1)". In Schedule 15, paragraph 10(2).
1979 c. 36.	Nurses, Midwives and Health Visitors Act 1979.	In Schedule 7, paragraph 31.
1980 c. 42.	Employment Act 1980.	Section 8(1). Section 11. In Schedule 1, paragraphs 10, 21(a) and 32.
1980 c. 44.	Education (Scotland) Act 1980.	Sections 126 to 128.
S.I. 1981/1794.	Transfer of Undertakings (Protection of Employment) Regulations 1981.	In Regulation 2(1), in the definition of "undertaking", the words from "but does not" to the end. Regulation 11(7).

SCH. 10

Chapter or Number	Title	Extent of repeal or revocation
1982 c. 9.	Agricultural Training Board Act 1982.	In section 4(1)(f), the words "or 8".
1982 c. 10.	Industrial Training Act 1982.	In section 5(3)(e), the words "or 8".
1982 c. 46.	Employment Act 1982.	In Schedule 2, paragraphs 8(1) to (4) and (5)(a).
1986 c. 48.	Wages Act 1986.	Section 9(3). Part II. Section 31(a) and (b). In section 33, in subsection (2) the entries relating to sections 24 and 25(1) to (3), in subsection (4) the words from "Part II (excluding" to "relating to Part II;" and in subsection (7) the words from "paragraphs 5" to "thereto,". Schedules 2 and 3. In Schedule 4, paragraphs 5 to 7. In Schedule 6, paragraphs 1 to 8.
1986 c. 50.	Social Security Act 1986.	In Schedule 10, paragraph 75.
1988 c. 1.	Income and Corporation Taxes Act 1988.	In section 175(4), the words "Part II of the Wages Act 1986,".
1989 c. 13.	Dock Work Act 1989.	Section 6(2).
1989 c. 24.	Social Security Act 1989.	In Schedule 5, paragraph 15.
1989 c. 38.	Employment Act 1989.	Section 13. In Schedule 6, paragraph 18.
1990 c. 35.	Enterprise and New Towns (Scotland) Act 1990.	In section 2(3), the word "and" at the end of paragraph (b).
1992 c. 24.	Offshore Safety (Protection Against Victimisation) Act 1992.	The whole Act.
1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	Section 24(4). In Section 32(3), the word "and" at the end of paragraph (b). In section 34(5), the second sentence. In section 43(1), the word "and" at the end of paragraph (b). In section 52(1), the word "and" at the end of paragraph (c). In section 65(2), the word "or" at the end of paragraph (d).

SCH. 10

Chapter or Number	Title	Extent of repeal or revocation
		In section 65(7), the word "and" following the definition of "contract of employment".
		Section 67(9).
		In section 74(3), the word "and" at the end of the entry relating to section 77.
		In section 78(1), the word "and" at the end of paragraph (c).
		Sections 115 and 116.
		In section 118(4), the word "and" at the end of paragraph (c).
		In section 135(3), the word "and" at the end of paragraph (c).
		In section 154, the words "and 64A".
		In section 188(4), the word "and" at the end of paragraph (d).
		Section 190(3).
		In section 209, the words from "and in particular" to the end.
		In section 246, the definition of "place of work".
		In section 249(2), the first sentence.
		Section 256(4).
		Section 273(4)(c).
		In section 277(2), the words "under those sections".
		Section 283.
		In section 288(1)(b), the word "unreasonable".
		In section 290(e), the word "unreasonable" and the words "where employment subject to union membership agreement".
		In section 291, subsection (1) and, in subsection (2), the words "any other provision of".

SCH. 10

Chapter or Number	Title	Extent of repeal or revocation
		In section 299, the entries relating to "the Commissioner" and "redundancy". In Schedule 2, paragraphs 15, 24(3) and 34(3).

© Crown copyright 1993

PRINTED IN THE UNITED KINGDOM BY MIKE LYNN
Controller and Chief Executive of Her Majesty's Stationery Office
and Queen's Printer of Acts of Parliament

Printed in the United Kingdom for HMSO
Dd 5064345 C10 1/96 1731/1 50423 O/N 341630

1st Impression July 1993
4th Impression January 1996

Published by HMSO and available from:

HMSO Publications Centre
(Mail, fax and telephone orders only)
PO Box 276, London SW8 5DT
Telephone orders 0171 873 9090
General Enquiries 0171 873 0011
(queuing system in operation for both numbers)
Fax orders 0171 873 8200

HMSO Bookshops
49 High Holborn, London WC1V 6HB
(counter service only)
0171 873 0011 Fax 0171 831 1326
68-69 Bull Street, Birmingham B4 6AD
0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
0117 9264306 Fax 0117 9294515
9-21 Princess Street, Manchester M60 8AS
0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
01232 238451 Fax 01232 235401
71 Lothian Road, Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 229 2734
The HMSO Oriel Bookshop
The Friary, Cardiff CF1 4AA
01222 395548 Fax 01222 384347

The Parliamentary Bookshop
12 Bridge Street, Parliament Square,
London SW1A 2JX
Telephone orders 0171 219 3890
General enquiries 0171 219 3890
Fax orders 0171 219 3866

HMSO's Accredited Agents
(see Yellow Pages)

and through good booksellers

ISBN 0-10-541993-1