



Sunday Trading Act 1994

CHAPTER 20

ARRANGEMENT OF SECTIONS

Section

1. Reform of law relating to Sunday trading.
2. Loading and unloading at large shops on Sunday morning.
3. Construction of certain leases and agreements.
4. Rights of shop workers as respects Sunday working.
5. Exclusion of Part I of Shops Act 1950.
6. Consequential repeal or amendment of local Acts.
7. Expenses.
8. Meaning of “local authority”.
9. Short title, repeals, commencement and extent.

SCHEDULES:

- Schedule 1—Restrictions on Sunday opening of large shops.
- Schedule 2—Supplementary provisions.
 - Part I—General enforcement provisions.
 - Part II—Shops occupied by persons observing the Jewish Sabbath.
- Schedule 3—Loading and unloading at large shops on Sunday morning.
- Schedule 4—Rights of shop workers as respects Sunday working.
- Schedule 5—Repeals.



Sunday Trading Act 1994

1994 CHAPTER 20

An Act to reform the law of England and Wales relating to Sunday trading; to make provision as to the rights of shop workers under the law of England and Wales in relation to Sunday working; and for connected purposes. [5th July 1994]

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:—

1.—(1) Schedules 1 and 2 to this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint (in this section referred to as “the appointed day”).

Reform of law relating to Sunday trading.

(2) Sections 47 to 66 of, and Schedules 5, 6 and 7 to, the Shops Act 1950 shall cease to have effect on the appointed day.

1950 c. 28.

2.—(1) A local authority may by resolution designate their area as a loading control area for the purposes of this section with effect from a date specified in the resolution, which must be a date at least one month after the date on which the resolution is passed.

Loading and unloading at large shops on Sunday morning.

(2) A local authority may by resolution revoke any designation made by them under subsection (1) above.

(3) It shall be the duty of a local authority, before making or revoking any designation under subsection (1) above, to consult persons appearing to the local authority to be likely to be affected by the proposed designation or revocation (whether as the occupiers of shops or as local residents) or persons appearing to the local authority to represent such persons.

(4) Where a local authority make or revoke a designation under this section, they shall publish notice of the designation or revocation in such manner as they consider appropriate.

(5) Schedule 3 to this Act (which imposes restrictions on loading and unloading on Sunday before 9 a.m. at large shops in loading control areas) shall have effect.

Construction of certain leases and agreements.

3.—(1) Where any lease or agreement (however worded) entered into before the commencement of this section has the effect of requiring the occupier of a shop to keep the shop open for the serving of retail customers—

- (a) during normal business hours, or
- (b) during hours to be determined otherwise than by or with the consent of the occupier,

that lease or agreement shall not be regarded as requiring, or as enabling any person to require, the occupier to open the shop on Sunday for the serving of retail customers.

(2) Subsection (1) above shall not affect any lease or agreement—

- (a) to the extent that it relates specifically to Sunday and would (apart from this section) have the effect of requiring Sunday trading of a kind which before the commencement of this section would have been lawful by virtue of any provision of Part IV of the Shops Act 1950, or
- (b) to the extent that it is varied by agreement after the commencement of this section.

1950 c. 28.

(3) In this section “retail customer” and “shop” have the same meaning as in Schedule 1 to this Act.

Rights of shop workers as respects Sunday working.

4. Schedule 4 to this Act shall have effect.

Exclusion of Part I of Shops Act 1950.

5.—(1) Part I of the Shops Act 1950 (hours of closing) shall not apply on Sunday.

(2) In section 3 of that Act (by virtue of which Saturday is to be the late day unless the local authority by order fix some other day) for “some other day” there shall be substituted “some other week day”.

(3) In section 12 of that Act (trading elsewhere than in shops) after “at any time” there shall be inserted “on a week day”.

Consequential repeal or amendment of local Acts.

6.—(1) The Secretary of State may by order made by statutory instrument—

- (a) repeal any provision of a local Act passed before or in the same Session as this Act if it appears to him that the provision is inconsistent with or has become unnecessary in consequence of any provision of this Act, and
- (b) amend any provision of such a local Act if it appears to him that the provision requires amendment in consequence of any provision of this Act or any repeal made by virtue of paragraph (a) above.

(2) It shall be the duty of the Secretary of State, before he makes an order under subsection (1) above repealing or amending any provision of a local Act, to consult each local authority which he considers would be affected by the repeal or amendment of that provision.

(3) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7. There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of such money under any other Act. Expenses.

8.—(1) In this Act “local authority” means any unitary authority or any district council so far as they are not a unitary authority. Meaning of “local authority”.

- (2) In subsection (1) above “unitary authority” means—
- (a) the council of any county so far as they are the council for an area for which there are no district councils,
 - (b) the council of any district comprised in an area for which there is no county council,
 - (c) a county borough council,
 - (d) a London borough council,
 - (e) the Common Council of the City of London, or
 - (f) the Council of the Isles of Scilly.

(3) Until 1st April 1996, the definition of “unitary authority” in subsection (2) above shall have effect with the omission of paragraph (c).

9.—(1) This Act may be cited as the Sunday Trading Act 1994. Short title,

(2) The enactments mentioned in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule. repeals, commencement and extent.

- (3) The following provisions of this Act—
- sections 2 to 5,
 - subsection (2) of this section, and
 - Schedules 3, 4 and 5,

shall not come into force until the appointed day (as defined in section 1 above).

(4) This Act extends to England and Wales only.

SCHEDULES

Section 1(1).

SCHEDULE 1

RESTRICTIONS ON SUNDAY OPENING OF LARGE SHOPS

Interpretation

1. In this Schedule—

1964 c. 26.

“intoxicating liquor” has the same meaning as in the Licensing Act 1964,
 “large shop” means a shop which has a relevant floor area exceeding 280 square metres,

1968 c. 67.

“medicinal product” and “registered pharmacy” have the same meaning as in the Medicines Act 1968,

“relevant floor area”, in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building, but excluding any part of the shop which, throughout the week ending with the Sunday in question, is used neither for the serving of customers in connection with the sale of goods nor for the display of goods,

“retail customer” means a person who purchases goods retail,

“retail sale” means any sale other than a sale for use or resale in the course of a trade or business, and references to retail purchase shall be construed accordingly,

“sale of goods” does not include—

(a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold, or

(b) the sale of meals or refreshments prepared to order for immediate consumption off those premises,

“shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods, and

“stand”, in relation to an exhibition, means any platform, structure, space or other area provided for exhibition purposes.

Large shops not to open on Sunday except in accordance with notice to local authority

2.—(1) Subject to sub-paragraphs (2) and (3) below, a large shop shall not be open on Sunday for the serving of retail customers.

(2) Sub-paragraph (1) above does not apply in relation to—

(a) any of the shops mentioned in paragraph 3(1) below, or

(b) any shop in respect of which a notice under paragraph 8(1) of Schedule 2 to this Act (shops occupied by persons observing the Jewish Sabbath) has effect.

(3) Where a notice under paragraph 4 below has effect in relation to a shop, sub-paragraph (1) above does not apply in relation to the shop during the permitted Sunday opening hours specified in the notice, but this sub-paragraph has effect subject to sub-paragraph (4) below.

(4) The exemption conferred by sub-paragraph (3) above does not apply where the Sunday is Easter Day or Christmas Day.

Exemptions

3.—(1) The shops referred to in paragraph 2(2)(a) above are—

(a) any shop which is at a farm and where the trade or business carried on consists wholly or mainly of the sale of produce from that farm,

- (b) any shop where the trade or business carried on consists wholly or mainly of the sale of intoxicating liquor,
- (c) any shop where the trade or business carried on consists wholly or mainly of the sale of any one or more of the following—
 - (i) motor supplies and accessories, and
 - (ii) cycle supplies and accessories,
- (d) any shop which—
 - (i) is a registered pharmacy, and
 - (ii) is not open for the retail sale of any goods other than medicinal products and medical and surgical appliances,
- (e) any shop at a designated airport which is situated in a part of the airport to which sub-paragraph (3) below applies,
- (f) any shop in a railway station,
- (g) any shop at a service area within the meaning of the Highways Act 1980, 1980 c. 66.
- (h) any petrol filling station,
- (j) any shop which is not open for the retail sale of any goods other than food, stores or other necessities required by any person for a vessel or aircraft on its arrival at, or immediately before its departure from, a port, harbour or airport, and
- (k) any stand used for the retail sale of goods during the course of an exhibition.

(2) In determining whether a shop falls within sub-paragraph (1)(a), (b) or (c) above, regard shall be had to the nature of the trade or business carried on there on weekdays as well as to the nature of the trade or business carried on there on Sunday.

(3) This sub-paragraph applies to every part of a designated airport, except any part which is not ordinarily used by persons travelling by air to or from the airport.

(4) In this paragraph “designated airport” means an airport designated for the purposes of this paragraph by an order made by the Secretary of State, as being an airport at which there appears to him to be a substantial amount of international passenger traffic.

(5) The power to make an order under sub-paragraph (4) above shall be exercisable by statutory instrument.

(6) Any order made under section 1(2) of the Shops (Airports) Act 1962 and in force at the commencement of this Schedule shall, so far as it relates to England and Wales, have effect as if made also under sub-paragraph (4) above, and may be amended or revoked as it has effect for the purposes of this paragraph by an order under sub-paragraph (4) above. 1962 c. 35.

Notice of proposed Sunday opening

4.—(1) A person who is, or proposes to become, the occupier of a large shop may give notice to the local authority for the area in which the shop is situated—

- (a) stating that he proposes to open the shop on Sunday for the serving of retail customers, and
- (b) specifying a continuous period of six hours, beginning no earlier than 10 a.m. and ending no later than 6 p.m., as the permitted Sunday opening hours in relation to the shop.

SCH. 1

(2) The occupier of a shop in respect of which notice has been given under sub-paragraph (1) above may, by a subsequent notice—

- (a) specify permitted Sunday opening hours that could be specified under sub-paragraph (1)(b) above but are different from those specified in the earlier notice, or
- (b) cancel the earlier notice.

(3) A notice under this paragraph shall not take effect until the end of the period of 14 days beginning with the day on which it is given, unless the local authority agree that it is to take effect at the end of a shorter period.

(4) A notice under this paragraph shall cease to have effect when superseded by a subsequent notice or cancelled as mentioned in sub-paragraph (2)(b) above.

Register of shops

5.—(1) Every local authority shall keep a register of shops in respect of which a notice under paragraph 4 above has effect.

- (2) In relation to every such shop, the register shall contain particulars of—
 - (a) the name (if any) and address of the shop, and
 - (b) the permitted Sunday opening hours specified in the notice under paragraph 4 above.
- (3) Any register kept under this paragraph—
 - (a) shall be open to inspection by members of the public at all reasonable times, and
 - (b) may be kept by means of a computer.

Duty to display notice

6. At any time when—

- (a) a large shop is open on Sunday for the serving of retail customers, and
- (b) the prohibition in sub-paragraph (1) of paragraph 2 above is excluded only by sub-paragraph (3) of that paragraph,

a notice specifying the permitted Sunday opening hours specified in the notice under paragraph 4 above shall be displayed in a conspicuous position inside and outside the shop.

Offences

7.—(1) If paragraph 2(1) above is contravened in relation to a shop, the occupier of the shop shall be liable on summary conviction to a fine not exceeding £50,000.

(2) If paragraph 6 above is contravened in relation to a shop, the occupier of the shop shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

8. Where a person is charged with having contravened paragraph 2(1) above, in relation to a large shop which was permitted to be open for the serving of retail customers on the Sunday in question during the permitted Sunday opening hours specified in a notice under paragraph 4 above, by reason of his having served a retail customer after the end of those hours, it shall be a defence to prove that the customer was in the shop before that time and left not later than half an hour after that time.

Transitional provision

9. Any notice given for the purposes of paragraph 4(1) above after the passing of this Act but before the commencement of this Schedule shall, notwithstanding paragraph 4(3) above, take effect on that commencement.

SCHEDULE 2

Section 1(1).

SUPPLEMENTARY PROVISIONS

PART I

GENERAL ENFORCEMENT PROVISIONS

Duty to enforce Act

1. It shall be the duty of every local authority to enforce within their area the provisions of Schedules 1 and 3 to this Act and Part II of this Schedule.

Inspectors

2. For the purposes of their duties under paragraph 1 above it shall be the duty of every local authority to appoint inspectors.

Powers of entry

3. An inspector appointed by a local authority under paragraph 2 above shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours—

- (a) to enter any premises within the area of the local authority, with or without a constable, for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of Schedules 1 and 3 to this Act,
- (b) to require the production of, inspect and take copies of any records (in whatever form they are held) relating to any business carried on on the premises which appear to him to be relevant for the purpose mentioned in paragraph (a) above,
- (c) where those records are kept by means of a computer, to require the records to be produced in a form in which they may be taken away, and
- (d) to take such measurements and photographs as he considers necessary for the purpose mentioned in paragraph (a) above.

Obstruction of inspectors

4. Any person who intentionally obstructs an inspector appointed under paragraph 2 above acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences due to fault of other person

5. Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

SCH. 2

Offences by bodies corporate

6.—(1) Where an offence under this Act 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, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, sub-paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Defence of due diligence

7.—(1) In any proceedings for an offence under this Act it shall, subject to sub-paragraph (2) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by sub-paragraph (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, at least seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

PART II

SHOPS OCCUPIED BY PERSONS OBSERVING THE JEWISH SABBATH

Shops occupied by persons of the Jewish religion

8.—(1) A person of the Jewish religion who is the occupier of a large shop may give to the local authority for the area in which the shop is situated a notice signed by him stating—

- (a) that he is a person of the Jewish religion, and
- (b) that he intends to keep the shop closed for the serving of customers on the Jewish Sabbath.

(2) For the purposes of this paragraph, a shop occupied by a partnership or company shall be taken to be occupied by a person of the Jewish religion if, and only if, the majority of the partners or of the directors, as the case may be, are persons of that religion.

(3) A notice under sub-paragraph (1) above shall be accompanied by a certificate signed by an authorised person that the person giving the notice is a person of the Jewish religion.

(4) Where the occupier of the shop is a partnership or company—

- (a) any notice under sub-paragraph (1) above shall be given by the majority of the partners or directors and, if not given by all of them, shall specify the names of the other partners or directors, and
- (b) a certificate under sub-paragraph (3) above is required in relation to each of the persons by whom such a notice is given.

(5) Every local authority shall keep a register containing particulars of the name (if any) and address of every shop in respect of which a notice under sub-paragraph (1) above has effect.

(6) Any register kept under this paragraph—

- (a) shall be open to inspection by members of the public at all reasonable times, and
- (b) may be kept by means of a computer.

(7) If there is any change—

- (a) in the occupation of a shop in respect of which a notice under sub-paragraph (1) above has effect, or
- (b) in any partnership or among the directors of any company by which such a shop is occupied,

the notice shall be taken to be cancelled at the end of the period of 14 days beginning with the day on which the change occurred, unless during that period, or within such further time as may be allowed by the local authority, a fresh notice is given under sub-paragraph (1) above in respect of the shop.

(8) Where a fresh notice is given under sub-paragraph (1) above by reason of a change of the kind mentioned in sub-paragraph (7) above, the local authority may dispense with the certificate required by sub-paragraph (3) above in the case of any person in respect of whom such a certificate has been provided in connection with a former notice in respect of that shop or any other shop in the area of the local authority.

(9) A notice given under sub-paragraph (1) above in respect of any shop shall be cancelled on application in that behalf being made to the local authority by the occupier of the shop.

(10) A person who, in a notice or certificate given for the purposes of this paragraph, makes a statement which is false in a material respect and which he knows to be false or does not believe to be true shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) Where a person is convicted of an offence under sub-paragraph (10) above, the local authority may cancel any notice under sub-paragraph (1) above to which the offence relates.

(12) In this paragraph—

“authorised person”, in relation to a notice under sub-paragraph (1) above, means—

- (a) the Minister of the synagogue of which the person giving the notice is a member,
- (b) the secretary of that synagogue, or
- (c) any other person nominated for the purposes of this paragraph by the President of the London Committee of Deputies of the British Jews (otherwise known as the Board of Deputies of British Jews),

“large shop” and “shop” have the same meaning as in Schedule 1 to this Act, and

“secretary of a synagogue” has the same meaning as in Part IV of the Marriage Act 1949.

1949 c. 76.

Members of other religious bodies observing the Jewish Sabbath

9. Paragraph 8 above shall apply to persons who are members of any religious body regularly observing the Jewish Sabbath as it applies to persons of the Jewish religion, and accordingly—

- (a) references to persons of the Jewish religion shall be construed as including any person who is a member of such a body, and
- (b) in the application of that paragraph to such persons “authorised person” means a Minister of the religious body concerned.

SCH. 2

Transitional provisions

1950 c. 28.

10.—(1) Any shop which is registered under section 53 of the Shops Act 1950 at the commencement of this Schedule and is at that time a large shop within the meaning of Schedule 1 to this Act shall be taken to be a shop in respect of which a notice has been given under sub-paragraph (1) of paragraph 8 above by the person who was then registered as the occupier of the shop; and the provisions of that paragraph in relation to the cancellation of such a notice shall have effect accordingly.

(2) In paragraph 8(8) above, the reference to a certificate provided in connection with a former notice includes a reference to a statutory declaration provided under subsection (2) of section 53 of the Shops Act 1950 in connection with the registration of a shop under that section before the commencement of this Schedule.

Section 2.

SCHEDULE 3

LOADING AND UNLOADING AT LARGE SHOPS ON SUNDAY MORNING

Shops to which Schedule applies

1. This Schedule applies to any shop—
 - (a) which is a large shop, within the meaning of Schedule 1 to this Act, in respect of which a notice under paragraph 4 of that Schedule has effect, and
 - (b) which is situated in an area designated as a loading control area under section 2 of this Act.

Consent required for early Sunday loading and unloading

2. The occupier of a shop to which this Schedule applies shall not load or unload, or permit any other person to load or unload, goods from a vehicle at the shop before 9 a.m. on Sunday in connection with the trade or business carried on in the shop, unless the loading or unloading is carried on—

- (a) with the consent of the local authority for the area in which the shop is situated granted under this Schedule, and
- (b) in accordance with any conditions subject to which that consent is granted.

3.—(1) A consent under this Schedule may be granted subject to such conditions as the local authority consider appropriate.

(2) The local authority may at any time vary the conditions subject to which a consent is granted, and shall give notice of the variation to the person to whom the consent was granted.

Application for consent

4. An application for a consent under this Schedule shall be made in writing and shall contain such information as the local authority may reasonably require.

5. An applicant for a consent under this Schedule shall pay such reasonable fee in respect of his application as the local authority may determine.

SCH. 3

6.—(1) Where an application is duly made to the local authority for a consent under this Schedule, the authority shall grant the consent unless they are satisfied that the loading or unloading of goods from vehicles before 9 a.m. on Sunday at the shop to which the application relates, in connection with the trade or business carried on at the shop, has caused, or would be likely to cause, undue annoyance to local residents.

(2) The authority shall determine the application and notify the applicant in writing of their decision within the period of 21 days beginning with the day on which the application is received by the authority.

(3) In a case where a consent is granted, the notification under sub-paragraph (2) above shall specify the conditions, if any, subject to which the consent is granted.

Revocation of consent

7. Where—

- (a) the occupier of a shop in respect of which a consent under this Schedule is in force is convicted of an offence under paragraph 9 below by reason of his failure to comply with the conditions subject to which the consent was granted, or
- (b) the local authority are satisfied that the loading or unloading authorised by virtue of a consent under this Schedule has caused undue annoyance to local residents,

the local authority may revoke the consent.

Publication of consent

8. Where a local authority grant a consent under this Schedule, the authority may cause a notice giving details of that consent to be published in a local newspaper circulating in their area.

Offence

9. A person who contravenes paragraph 2 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE 4

Section 4.

RIGHTS OF SHOP WORKERS AS RESPECTS SUNDAY WORKING

Interpretation

1.—(1) In this Schedule, except where a contrary intention appears—

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978, 1978 c. 44.

“catering business” means—

- (a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold, or
- (b) the sale of meals or refreshments prepared to order for immediate consumption off the premises,

“the commencement date” means the day on which this Schedule comes into force,

“dismissal” has the same meaning as in Part V of the 1978 Act,

“intoxicating liquor” has the same meaning as in the Licensing Act 1964, 1964 c. 26.

“notice period”, in relation to an opting-out notice, has the meaning given by paragraph 6 below,

SCH. 4

“opted-out”, in relation to a shop worker, shall be construed in accordance with paragraph 5 below,

“opting-in notice” has the meaning given by paragraph 3(2) below,

“opting-out notice” has the meaning given by paragraph 4(3) below,

“protected”, in relation to a shop worker, shall be construed in accordance with paragraphs 2 and 3 below,

“retail trade or business” includes—

(a) the business of a barber or hairdresser,

(b) the business of hiring goods otherwise than for use in the course of a trade or business, and

(c) retail sales by auction,

but does not include catering business or the sale at theatres and places of amusement of programmes, catalogues and similar items,

“shop” includes, subject to sub-paragraph (2) below, any premises where any retail trade or business is carried on,

“shop work” means work in or about a shop in England or Wales on a day on which the shop is open for the serving of customers, and

“shop worker” means an employee who, under his contract of employment, is required to do shop work or may be required to do such work.

(2) Where premises are used mainly for purposes other than those of retail trade or business and would not apart from sub-paragraph (1) above be regarded as a shop, only such part of the premises as—

(a) is used wholly or mainly for the purposes of retail trade or business, or

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

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

(3) In sub-paragraph (2) above “wholesale trade” means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a business.

(4) Subject to sub-paragraph (5) below, the following provisions of the 1978 Act—

section 151(1) and (2) (computation of period of continuous employment), and

section 153 (general interpretation),

shall have effect for the purposes of this Schedule as they have effect for the purposes of that Act.

(5) For the purposes of this Schedule, section 151(2) of the 1978 Act shall have effect with the omission of the words from “but” onwards and Schedule 13 to that Act shall have effect with the following modifications—

(a) in paragraph 1 for the words “paragraphs 3 to 12” there shall be substituted “paragraph 4 or paragraphs 9 to 12”,

(b) paragraph 3 and paragraphs 5 to 8 shall be omitted, and

(c) in paragraph 4 the words “which normally involves employment for sixteen hours or more weekly” shall be omitted.

(6) Where section 56 of the 1978 Act (failure to permit woman to return to work after childbirth treated as dismissal) applies to an employee who was employed as a shop worker under her contract of employment on the last day of her maternity leave period, she shall be treated for the purposes of this Schedule as if she had been employed as a shop worker on the day with effect from which she is treated as dismissed under that section.

Meaning of "protected shop worker"

2.—(1) Subject to paragraph 3 below, a shop worker is to be regarded for the purposes of this Schedule as "protected" if, and only if, sub-paragraph (2) or (3) below applies to him.

(2) This sub-paragraph applies to a shop worker if—

- (a) on the day before the commencement date, he was employed as a shop worker,
- (b) on that day, he was not employed to work only on Sunday,
- (c) he has been continuously employed during the period beginning with that day and ending with the appropriate date, and
- (d) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(3) This sub-paragraph applies to any shop worker whose contract of employment is such that under it he—

- (a) is not, and may not be, required to work on Sunday, and
- (b) could not be so required even if the provisions of this Schedule were disregarded.

(4) In sub-paragraph (2)(c) above "the appropriate date" means—

- (a) in relation to paragraphs 7 and 8 below, the effective date of termination,
- (b) in relation to paragraph 10 below, the date of the act or failure to act,
- (c) in relation to sub-paragraph (2) or (3) of paragraph 12 below, the day on which the agreement is entered into,
- (d) in relation to sub-paragraph (4) of that paragraph, the day on which the employee returns to work,
- (e) in relation to paragraph 14 below, any time in relation to which the contract is to be enforced, and
- (f) in relation to paragraph 15 below, the end of the period in respect of which the remuneration is paid or the benefit accrues.

(5) For the purposes of sub-paragraph (4)(a) above, "the effective date of termination", in any case falling within paragraph 1(6) above, means the day with effect from which the employee is treated by section 56 of the 1978 Act as being dismissed.

(6) For the purposes of sub-paragraph (4)(b) above—

- (a) where an act extends over a period, the "date of the act" means the first day of the period, and
- (b) a deliberate failure to act shall be treated as done when it was decided on,

and in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(7) Where on the day before the commencement date an employee's relations with his employer have ceased to be governed by a contract of employment, he shall be regarded as satisfying the conditions in sub-paragraph (2)(a) and (b) above if—

SCH. 4

- (a) that day falls in a week which counts as a period of employment with that employer under paragraph 9 or 10 of Schedule 13 to the 1978 Act (absence from work because of sickness, pregnancy etc.) or under regulations made under paragraph 20 of that Schedule (reinstatement or re-engagement of dismissed employee), and
- (b) on the last day before the commencement date on which his relations with his employer were governed by a contract of employment, the employee was a shop worker and was not employed to work only on Sunday.

3.—(1) A shop worker is not a protected shop worker if—

- (a) on or after the commencement date, he has given his employer an opting-in notice, and
- (b) after giving that notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(2) In this Schedule “opting-in notice” means a written notice, signed and dated by the shop worker, in which the shop worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

Notice of objection to Sunday working

4.—(1) This paragraph applies to any shop worker who, under his contract of employment—

- (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but
- (b) is not employed to work only on Sunday.

(2) A shop worker to whom this paragraph applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that the shop worker objects to Sunday working.

(3) In this Schedule “opting-out notice” means a notice given under sub-paragraph (2) above by a shop worker to whom this paragraph applies.

Meaning of “opted-out shop worker”

5.—(1) Subject to sub-paragraph (5) below, a shop worker is to be regarded for the purposes of this Schedule as “opted-out” if, and only if—

- (a) he has given his employer an opting-out notice,
- (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the appropriate date, and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(2) In sub-paragraph (1) above “the appropriate date” means—

- (a) in relation to paragraphs 7 and 8 below, the effective date of termination,
- (b) in relation to paragraph 10 below, the date of the act or failure to act,
- (c) in relation to sub-paragraph (2) or (3) of paragraph 13 below, the day on which the agreement is entered into, and
- (d) in relation to sub-paragraph (4) of that paragraph, the day on which the employee returns to work.

(3) For the purposes of sub-paragraph (2)(a) above, “the effective date of termination”, in any case falling within paragraph 1(6) above, means the day with effect from which the employee is treated by section 56 of the 1978 Act as being dismissed.

(4) For the purposes of sub-paragraph (2)(b) above—

(a) where an act extends over a period, the “date of the act” means the first day of the period, and

(b) a deliberate failure to act shall be treated as done when it was decided on,

and in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(5) A shop worker is not an opted-out shop worker if—

(a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and

(b) after giving that opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

Meaning of “notice period”

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

Right not to be dismissed for refusing Sunday work

7.—(1) Subject to sub-paragraph (2) below, the dismissal of a protected or opted-out shop worker by his employer shall be regarded for the purposes of Part V of the 1978 Act as unfair if the reason for it (or, if more than one, the principal reason) was that the shop worker refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) above does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal was that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) The dismissal of a shop worker by his employer shall be regarded for the purposes of Part V of the 1978 Act as unfair if the reason for it (or, if more than one, the principal reason) was that the shop worker gave, or proposed to give, an opting-out notice to the employer.

(4) Section 142 of the 1978 Act (contracts for a fixed term) shall not exclude the application of section 54 of that Act (right of employee not to be unfairly dismissed) in relation to any dismissal which is unfair by virtue of sub-paragraph (1) or (3) above.

8.—(1) Where the reason or principal reason for the dismissal of a protected or opted-out shop worker was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph 7(1) above,

then, for the purposes of Part V of the 1978 Act, the dismissal shall be regarded as unfair.

SCH. 4

(2) Sub-paragraph (1) above does not apply in relation to an opted-out shop worker where the reason (or principal reason) for which he was selected for dismissal was that specified in paragraph 7(2) above.

(3) Where the reason or principal reason for the dismissal of a shop worker was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph 7(3) above,

then, for the purposes of Part V of the 1978 Act, the dismissal shall be regarded as unfair.

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

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

Right not to suffer detriment for refusing Sunday work

10.—(1) Subject to sub-paragraphs (2) and (4) below, a protected or opted-out shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the shop worker refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) above does not apply to anything done in relation to an opted-out shop worker on the ground that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) Subject to sub-paragraph (4) below, a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he gave, or proposed to give, an opting-out notice to his employer.

(4) Sub-paragraphs (1) and (3) above do not apply where the detriment in question amounts to dismissal.

(5) For the purposes of this paragraph a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

(a) any failure to pay remuneration in respect of shop work on a Sunday which he has not done,

(b) any failure to provide him with any other benefit, where that failure results from the application, in relation to a Sunday on which the employee has not done shop work, of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee, or

(c) any failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 14 or 15 below the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees who are protected or opted-out shop workers or who, under their contracts of employment, are not obliged to do shop work on Sunday, if they agree to do shop work on Sunday or on a particular Sunday—

- (a) an employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him that sum, and
- (b) an employee who does not accept the offer is not to be regarded for those purposes as having been subjected to any detriment by any failure to pay him that sum.

Employer's duty to give explanatory statement

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

(2) If—

- (a) an employer fails to comply with sub-paragraph (1) above in relation to any shop worker, and
- (b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker,

paragraph 6 above shall have effect, in relation to the shop worker, with the substitution for “three months” of “one month”.

(3) An employer shall not be regarded as failing to comply with sub-paragraph (1) above in any case where, before the end of the period referred to in that sub-paragraph, the shop worker has given him an opting-out notice.

(4) Subject to sub-paragraph (5) below, the prescribed form is as follows—

**“STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP
WORK**

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

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

Your notice must—

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

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

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

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

(5) The Secretary of State may by order amend the prescribed form set out in sub-paragraph (4) above.

SCH. 4

(6) An order under sub-paragraph (5) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Effect of rights on contracts of employment

12.—(1) Any contract of employment under which a shop worker who satisfies the conditions in paragraph 2(2)(a) and (b) above was employed on the day before the commencement date is unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday on or after the commencement date, or
- (b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

(2) Except as provided by sub-paragraph (3) below, any agreement entered into after the commencement date between a protected shop worker and his employer is unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday, or
- (b) requires the employer to provide the shop worker with shop work on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker expressly agrees as mentioned in paragraph 3(1)(b) above (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) The reference in sub-paragraph (2) above to a protected shop worker includes a reference to an employee who, although not a protected shop worker for the purposes of that sub-paragraph at the time when the agreement is entered into, is a protected shop worker on the day on which she returns to work as mentioned in paragraph 10 of Schedule 13 to the 1978 Act (maternity).

13.—(1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
- (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(2) Except as provided by sub-paragraph (3) below, any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
- (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees as mentioned in paragraph 5(5)(b) above (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) The reference in sub-paragraph (2) above to an opted-out shop worker includes a reference to an employee who, although not an opted-out shop worker for the purposes of that sub-paragraph at the time when the agreement is entered into, had given her employer an opting-out notice before that time and is an opted-out shop worker on the day on which she returns to work as mentioned in paragraph 10 of Schedule 13 to the 1978 Act (maternity).

14. If—

- (a) under the contract of employment under which a shop worker who satisfies the conditions in paragraph 2(2)(a) and (b) above was employed on the day before the commencement date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week,
- (b) under that contract, the shop worker was or might have been required to work on Sunday before the commencement date, and
- (c) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after the commencement date, ceased to do so,

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

15.—(1) If—

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

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

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

Proceedings for contravention of paragraph 10

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

Restrictions on contracting out of Schedule

17.—(1) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Schedule, or
- (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Schedule.

SCH. 4

(2) Sub-paragraph (1) above does not apply to an agreement to refrain from presenting or continuing with a complaint where—

- (a) a conciliation officer has taken action under section 133(2) or (3) of the 1978 Act (general provisions as to conciliation) or under section 134(1), (2) or (3) (conciliation in case of unfair dismissal) of that Act, or
- (b) the conditions regulating compromise agreements under the 1978 Act (as set out in section 140(3) of that Act) are satisfied in relation to the agreement.

Transitional modifications relating to maternity cases

1993 c. 19.

18.—(1) Where an employee exercises a right to return to work under Part III of the 1978 Act (maternity) and, because amendments of that Part made by the Trade Union Reform and Employment Rights Act 1993 (in this paragraph referred to as “the 1993 Act”) do not have effect in her case, her right is a right to return to work in the job in which she was employed under the original contract of employment—

- (a) the preceding provisions of this Schedule shall have effect subject to the modifications in sub-paragraphs (2) and (3) below, and
- (b) sub-paragraph (4) below shall have effect.

(2) In paragraph 1(6), for “her contract of employment on the last day of her maternity leave period” there shall be substituted “her original contract of employment”.

(3) In paragraph 2(7), for paragraph (b) there shall be substituted—

“(b) under her original contract of employment, she was a shop worker and was not employed to work only on Sunday”.

(4) If the employee was employed as a shop worker under her original contract of employment, she shall not be regarded as failing to satisfy the condition in paragraph 2(2)(a) or (d) or 5(1)(c) above merely because during her pregnancy she was employed under a different contract of employment by virtue of section 60(2) of the 1978 Act (as it has effect before the commencement of section 24 of the 1993 Act) or otherwise by reason of her pregnancy.

(5) In this paragraph and in paragraphs 1 and 2 above as modified by sub-paragraphs (2) and (3) above “original contract of employment” has the meaning given by section 153(1) of the 1978 Act as originally enacted.

Dismissal on grounds of assertion of statutory right

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

(iii) Schedule 4 to the Sunday Trading Act 1994”.

Dismissal procedures agreements

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

Conciliation

21. In section 133 of the 1978 Act (general provisions as to conciliation officers) at the end of subsection (1) there shall be added—

“(ee) arising out of a contravention, or alleged contravention, of paragraph 10 of Schedule 4 to the Sunday Trading Act 1994.”

Application of certain other provisions of 1978 Act

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

Keeping of records relating to Sunday employment

23. In section 22 of the Shops Act 1950 (Sunday employment), in subsection 1950 c. 28.
(3) (keeping of records) for “by virtue of any provision of Part IV of this Act,
other than section sixty-two, is” there shall be substituted “is lawfully”.

Employment of children in street trading on Sunday

24. In section 20 of the Children and Young Persons Act 1933, subsection (3) 1933 c. 12.
(which provides that byelaws under that section may not authorise a child to
engage, or be employed, on a Sunday in street trading of a description to which
certain provisions of Part IV of the Shops Act 1950 do not apply) shall cease to
have effect.

SCH. 5

Section 9(2).

SCHEDULE 5

REPEALS

Chapter	Short title	Extent of repeal
1933 c. 12.	The Children and Young Persons Act 1933.	Section 20(3).
1950 c. 28.	The Shops Act 1950.	Sections 47 to 66. In section 71(7)(b), the words "or Part IV". Schedules 5, 6 and 7.
1962 c. 35.	The Shops (Airports) Act 1962.	In section 1(1) the words from "and of" to "Sunday trading)".
1963 c. 33.	The London Government Act 1963.	Section 51(3).
1963 c. 37.	The Children and Young Persons Act 1963.	Section 35(3).
1965 c. 35.	The Shops (Early Closing Days) Act 1965	In section 4(2), the words from "and, notwithstanding" to the end.
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, in paragraph 51, the words from "and Schedule 5" to "on Sunday)".
1986 c. 31.	The Airports Act 1986.	Section 70. In Schedule 5, paragraph 15.
1989 c. 38.	The Employment Act 1989.	In Schedule 3, in Part III, paragraph 2(c).

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