

## SCHEDULE

### Employment rights and protections in connection with consultation

#### *Right to time off and remuneration*

**2.—**(1) An employee who—

- (a) is a representative falling within regulation 12(2)(a) or (3) or 13(2), and
- (b) is consulted under these Regulations about a listed change by a relevant employer,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a representative.

(2) In this Schedule “consulted representative” means an employee who satisfies the conditions specified in sub-paragraph (1)(a) and (b).

(3) For the purposes of this paragraph, the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**3.—**(1) An employee who is permitted to take time off under paragraph 2 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) Chapter 2 of Part 14 of the 1996 Act (a week's pay) shall apply in relation to this paragraph as it applies in relation to section 62 of the 1996 Act (right to remuneration of certain representatives).

(3) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken off.

(4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day when the time is taken off, or
- (b) where the employee has not been employed for a sufficient period to enable the calculations to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in sub-paragraph (5) as are appropriate in the circumstances.

(5) The considerations referred to in sub-paragraph (4)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under sub-paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(7) Any contractual remuneration paid to an employee in respect of a period of time off under paragraph 2 goes towards discharging any liability of the employer to pay remuneration under sub-paragraph (1) in respect of that period, and, conversely, any payment of remuneration under sub-paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

**4.—**(1) An employee may present a complaint to an employment tribunal that his employer—

- (a) has unreasonably refused to permit him to take time off as required by paragraph 2, or

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- (b) has failed to pay the whole or part of any amount to which the employee is entitled under paragraph 3.
  - (2) A tribunal shall not consider a complaint under this paragraph unless it is presented—
    - (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, 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 complaint to be presented before the end of that period of three months.
- [<sup>F1</sup>(2A) Paragraph 4A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraph (2).]
- (3) Where a tribunal finds a complaint under this paragraph well-founded, the tribunal shall make a declaration to that effect.
  - (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under paragraph 3 if the employer had not refused.
  - (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under paragraph 3, the tribunal shall also order the employer to pay to the employee the amount it finds due to him.

**F1** [Sch. para. 4\(2A\)](#) inserted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, [Sch. para. 41](#)

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