

SCHEDULES

SCHEDULE 3

EMPLOYMENT RIGHTS IN HEALTH AND SAFETY CASES

PART III

ARTICLES 33 TO 34 OF THE NO. 1 ORDER, AS SUBSTITUTED

Compensation for unfair dismissal

33.—(1) Subject to paragraph (2), where an industrial tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) the award shall consist of—

- (a) a basic award calculated in accordance with Article 34; and
- (b) a compensatory award calculated in accordance with Article 36.

(2) In a case 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 one of those specified in Article 22A(1) or 22B(1)(a) and (b), then, unless—

- (a) the complainant does not request the tribunal to make an order under Article 31; or
- (b) the case falls within Article 34(2),

the award shall include a special award calculated in accordance with Article 37A.

Matters to be disregarded in assessing contributory fault

33A.—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) in a case where the dismissal is unfair by virtue of Article 22A or 22C(1) (a), the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—

- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions;
- (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions; or
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this paragraph a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 22A(14)(a), or

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an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in Article 22A(14)(b).

Calculation of basic award

34.—(1) The amount of the basic award shall be the amount calculated in accordance with paragraphs (3) to (9), subject to—

- (a) paragraph (2) (which provides for an award of two weeks' pay in certain redundancy cases);
- (b) paragraph (10) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
- (c) paragraph (11) (which provides for the amount of the award to be reduced because of the employee's conduct);
- (d) paragraph (13) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
- (e) Article 38 (which prohibits double compensation where compensation in respect of the same matter is also awarded under certain other statutory provisions).

(2) The amount of the basic award shall be two weeks' pay where the industrial tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—

- (a) by virtue of section 12(5) or (6) of the Act of 1965 is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
- (b) by virtue of the operation of section 13(3) of that Act is not treated as dismissed for the purposes of Part II of that Act.

(3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the number of years of employment falling within that period, and allowing—

- (a) one and a half weeks' pay for each such year of employment in which the employee was not below the age of forty-one;
- (b) one week's pay for each such year of employment not falling within sub-paragraph (a) in which the employee was not below the age of twenty-two; and
- (c) half a week's pay for each such year of employment not falling within either of sub-paragraphs (a) and (b).

(4) In ascertaining for the purpose of paragraph (3) the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with Article 21(5) or, as the case may be, (6) a period falling within such an interval as is referred to in Article 68(2) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Act of 1965.

(5) Where, in reckoning the number of years of employment in accordance with paragraph (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.

(6) 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 one of those specified in Article 22A(1) or 22B(1)(a) and (b), the amount of the basic award (before any reduction under the following provisions of this Article) shall not be less than #2,700.

(7) The Department may by order increase the sum specified in paragraph (6).

(8) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with paragraphs (3) to (5) shall be reduced by the appropriate fraction.

(9) In paragraph (8) “the specified anniversary” in relation to an employee means the sixty-fourth anniversary of the date of his birth and “the appropriate fraction” means the fraction of which—

- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
- (b) the denominator is twelve.

(10) Where the industrial tribunal finds that the complainant has unreasonably refused an offer by the employer 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 basic award to such extent as it considers just and equitable having regard to that finding.

(11) Where the industrial 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 basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(12) Paragraph (11) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 22A(1) or 22B(1)(a) and (b); and, in that event, paragraph (11) shall apply only to so much of the basic award as is payable because of paragraph (6).

(13) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the industrial tribunal under the Act of 1965 in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the Act of 1965 or otherwise.