

SCHEDULES

SCHEDULE 3

Article 6.

EMPLOYMENT RIGHTS IN HEALTH AND SAFETY CASES

PART I

ARTICLES 13A TO 13D OF THE NO. 2 ORDER, AS INSERTED

Right not to suffer detriment in health and safety cases

Right not to suffer detriment in health and safety cases

13A.—(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 any statutory provision; 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 paragraph (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.

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(3) An employee shall not be regarded as having been subjected to any detriment on the ground specified in paragraph (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 Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal, this Article shall not apply where the detriment in question amounts to dismissal.

Proceedings for contravention of Article 13A

13B.—(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 Article 13A.

(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 Article 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 paragraph (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

13C.—(1) Where the industrial tribunal finds that a complaint under Article 13B 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.

(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 Northern Ireland.

(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.

Power to extend Articles 13A to 13C

13D. The Department may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, Articles 13A to 13C (and any other provisions in this Order or the No. 1 Order so far as relating to those Articles) 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).

PART II

ARTICLE 22B OF THE NO. 1 ORDER, AS INSERTED

Dismissal in health and safety cases

22B.—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Order 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 any statutory provision; 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.

(2) For the purposes of paragraph (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 paragraph (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.

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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 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

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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.

PART IV

ARTICLES 39 TO 41 OF THE NO. 1 ORDER, AS SUBSTITUTED

Interim relief

Interim relief pending determination of complaint of unfair dismissal

39.—(1) An employee who presents a complaint to an industrial tribunal under Article 29 alleging—

- (a) that the dismissal is unfair by virtue of Article 22A; or
- (b) that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in Article 22B(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) In a case where the employee relies on Article 22A(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

- (a) that on the date of the dismissal the employee was or proposed to become a member of the union; and
- (b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an

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authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be—

- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given; and
- (b) in any other case, the effective date of termination.

(7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

(8) The tribunal shall give to the employer (not later than seven days before the date of the hearing) a copy of the application and of any certificate together with notice of the date, time and place of the hearing.

(9) If a request under Article 38A is made three days or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(10) 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

39A.—(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—

- (a) that, by virtue of Article 22A, the employee has been unfairly dismissed; or
- (b) that the reason (or, if more than one, the principal reason) for the employee's dismissal was one of those specified in Article 22B(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

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- (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 paragraph (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

Orders for continuation of contract of employment

40.—(1) An order under Article 39A 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.

(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 paragraph (2); and, conversely, any payment under that paragraph 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 Article, 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

40A.—(1) At any time between the making of an order under Article 39A 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) Articles 39 and 39A apply in relation to such an application as in relation to an original application for interim relief, except that—

- (a) no certificate need be presented to the tribunal under Article 39(3); and
- (b) in the case of an application by the employer, Article 39(8) has effect with the substitution of a reference to the employee for the reference to the employer.

Consequence of failure to comply with order

41.—(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 Article 39A(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) Article 40 applies to an order under paragraph (1)(a) as in relation to an order under Article 39A.

(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.