

## SCHEDULES

### SCHEDULE 3

#### EMPLOYMENT RIGHTS IN HEALTH AND SAFETY CASES

#### PART III

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

##### **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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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.