

SCHEDULES

SCHEDULE 3

EMPLOYMENT RIGHTS IN HEALTH AND SAFETY CASES

PART IV

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

Interim relief

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

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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.