SCHEDULES

SCHEDULE 5

EMPLOYMENT PROTECTION IN HEALTH AND SAFETY CASES

9 After section 75 of that Act there shall be inserted—

"**75A Calculation of special award.**

(1) Subject to the following provisions of this section, the amount of the special award shall be—
   (a) one week's pay multiplied by 104, or
   (b) £13,400,
   whichever is the greater, but shall not exceed £26,800.

(2) Where the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—
   (a) one week's pay multiplied by 156, or
   (b) £20,100,
   whichever is the greater, but subject to the following provisions of this section.

(3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.

(4) Where the 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 special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—
   (a) prevented an order under section 69 from being complied with, or
   (b) refused an offer by the employer (made otherwise than in compliance with such an order) 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 special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order under section 69 unless the employer shows that it was not

practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Secretary of State may by order increase any of the sums specified in subsections (1) and (2).

(8) No order shall be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.".