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SCHEDULES

SCHEDULE 4

Section 85.

CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

PART I

NORMAL WORKING HOURS

- 1 For the purposes of this Schedule the cases where there are normal working hours include cases where the employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, and, subject to paragraph 2 below, in those cases that fixed number of hours shall be the normal working hours.
- 2 If in such a case—
- (a) the contract of employment fixes the number, or the minimum number, of hours of employment in the said week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and
 - (b) that number or minimum number of hours exceeds the number of hours without overtime,
- that number or minimum number of hours (and not the number of hours without overtime) shall be the normal working hours.

PART II

A WEEK'S PAY

Employments for which there are normal working hours

- 3 (1) This paragraph and paragraph 4 below shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date.
- (2) Subject to paragraph 4 below, if an employee's remuneration for employment in normal working hours, whether by the hour or week or other period, does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.
- (3) Subject to paragraph 4 below, if sub-paragraph (2) above does not apply, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 12 weeks—

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- (a) where the calculation date is the last day of a week, ending with that week;
 - (b) in any other case, ending with the last complete week before the calculation date.
- (4) References in this paragraph to remuneration varying with the amount of work done include references to remuneration which may include any commission or similar payment which varies in amount.
- 4 (1) This paragraph shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date, and he is required under that contract to work during those hours on days of the week or at times of the day which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of the said days or times.
- (2) The amount of a week's pay shall be the amount of remuneration for the average weekly number of normal working hours (calculated in accordance with sub-paragraph (3) below) at the average hourly rate of remuneration (calculated in accordance with sub-paragraph (4) below).
- (3) The average number of weekly hours shall be calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks—
 - (a) where the calculation date is the last day of a week, ending with that week;
 - (b) in any other case, ending with the last complete week before the calculation date.
- (4) The average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 12 weeks—
 - (a) where the calculation date is the last day of a week, ending with that week ;
 - (b) in any other case, ending with the last complete week before the calculation date.
- 5 (1) For the purpose of paragraphs 3 and 4 above, in arriving at the average hourly rate of remuneration only the hours when the employee was working, and only the remuneration payable for, or apportionable to, those hours of work, shall be brought in; and if for any of the 12 weeks mentioned in either of those paragraphs no such remuneration was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring the number of weeks of which account is taken up to 12.
- (2) Where, in arriving at the said hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and the amount of that remuneration was greater than it would have been if the work had been done in normal working hours, account shall be taken of that remuneration as if—
 - (a) the work had been done in normal working hours ; and
 - (b) the amount of that remuneration had been reduced accordingly.
- (3) For the purpose of the application of sub-paragraph (2) above to a case falling within paragraph 2 above, sub-paragraph (2) shall be construed as if for the words " had been done in normal working hours ", in each place where those words occur, there were substituted the words " had been done in normal working hours falling within the number of hours without overtime ".

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Employments for which there are no normal working hours

- 6 (1) This paragraph shall apply if there are no normal working hours for an employee when employed under the contract of employment in force on the calculation date.
- (2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of 12 weeks—
- (a) where the calculation date is the last day of a week, ending with that week;
 - (b) in any other case, ending with the last complete week before the calculation date.
- (3) In arriving at the said average weekly rate of remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring the number of weeks of which account is taken up to 12.

Supplemental

- 7 In any case in which an employee has not been employed for a sufficient period to enable a calculation to be made under any of the foregoing provisions of this Part of this Schedule, the amount of a week's pay shall be an amount which fairly represents a week's pay; and in determining that amount the tribunal shall apply as nearly as may be such of the foregoing provisions of this Part as it considers appropriate, and may have regard to such of the following considerations as it thinks fit, that is to say—
- (a) any remuneration received by the employee in respect of the employment in question ;
 - (b) the amount offered to the employee as remuneration in respect of the employment in question ;
 - (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer ;
 - (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.
- 8 In arriving at an average hourly rate or average weekly rate of remuneration under this Part of this Schedule—
- (a) account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment) a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer, and
 - (b) " week" means, for an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and, for other employees, means a week ending with Saturday.
- 9 Where under this Part of this Schedule account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, then the remuneration or other payments shall be apportioned in such manner as may be just.
- 10 The Secretary of State may by regulations provide that in prescribed cases the amount of a week's pay shall be calculated in such manner as the regulations may prescribe.