

*Status: Point in time view as at 26/10/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 14. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 14

Section 152.

#### CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

##### Modifications etc. (not altering text)

- C1** Sch. 14 applied (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 190\(5\)](#), 302 (with [ss. 283-286](#)).
- C2** Sch. 14 applied (with modifications) (30.8.1993) by [1992 c. 52, s. 158\(7\)](#) (as inserted (30.8.1993) by [1993 c. 19, s. 49\(1\)](#), [Sch. 7 para.21](#); [S.I. 1993/1908, art. 2\(1\)](#), [Sch. 1](#))

### PART I

#### NORMAL WORKING HOURS

##### Modifications etc. (not altering text)

- C3** Sch. 14 Pt. I (paras. 1-2) applied (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 281\(6\)](#), 302.

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, 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.

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## PART II

### A WEEK'S PAY

**Modifications etc. (not altering text)**

**C4** Sch. 14 Pt. II (paras. 3–12) modified by S.I. 1986/151, arts. 2, 5, S.I. 1986/379, art. 3, S.I. 1989/1139, reg. 5 and Education Reform Act 1988 (c. 40, SIF 41:1), ss. 178(2)(b), 231(7), 235(6)

#### *Employments for which there are normal working hours*

- 3 (1) This paragraph and paragraph 4 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, 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, if sub-paragraph (2) 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 twelve 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) 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)) at the average hourly rate of remuneration (calculated in accordance with sub-paragraph (4)).
- (3) The average number of weekly hours shall be calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks—
- (a) where the calculation date is the last day of a week, ending with that week;

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- (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 twelve 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, 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 twelve 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 twelve.
  - (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) to a case falling within paragraph 2, 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”.

*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 twelve 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 twelve.

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### *The calculation date*

- 7 (1) For the purposes of this Part, the calculation date is,—
- (a) where the calculation is for the purpose of section 14, the day in respect of which the guarantee payment is payable, or, where an employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force;
  - (b) where the calculation is for the purposes of section 21, the day before that on which the suspension referred to in section 19(1) begins;
  - (c) where the calculation is for the purposes of section 31, the day on which the employer's notice was given;
  - [<sup>F1</sup>(cc) where the calculation is for the purposes of section 31A, the day of the appointment concerned;]
  - [<sup>F2</sup>(ccc) where the calculation is for the purposes of section 31A as it applies by virtue of section 31AA, the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken;]
  - (d) .....<sup>F3</sup>
  - (e) where the calculation is for the purposes of Schedule 3, the day immediately preceding the first day of the period of notice required by section 49(1) or, as the case may be, section 49(2);
  - [<sup>F4</sup>(ea) where the calculation is for the purposes of section 47, the day before the suspension referred to in section 45(1) begins or where that day falls within an employee's maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under section 39, the day before the beginning of the maternity leave period;]
  - (f) where the calculation is for the purposes of section 53 or 71(2)(b) and the dismissal was with notice, the date on which the employer's notice was given;
  - (g) where the calculation is for the purposes of section 53 or 71(2)(b) but sub-paragraph (f) does not apply, the effective date of termination;
  - (h) where the calculation is for the purposes of section 73 and by virtue of section 55(5) [<sup>F5</sup>or, as the case may be, (6)] a date is to be treated as the effective date of termination for the purposes of section 73(3) which is later than the effective date of termination as defined by section 55(4), the effective date of termination as defined by section 55(4);
  - (i) where the calculation is for the purposes of section 73 but [<sup>F6</sup>neither subsection (5) nor subsection (6) of section 55 applies] in relation to the date of termination, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not);
  - [<sup>F7</sup>(ia) where the calculation is for the purposes of section 75A and the dismissal was with notice, the date on which the employer's notice was given;
  - (ib) where the calculation is for the purposes of section 75A but sub-paragraph (ia) does not apply, the effective date of termination;]
  - (j) where the calculation is for the purposes of section 87(2), the day immediately preceding the first of the four or, as the case may be, the six weeks referred to in section 88(1);
  - (k) where the calculation is for the purposes of Schedule 4 and by virtue of section 90(3) a date is to be treated as the relevant date for the purposes of

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certain provisions of this Act which is later than the relevant date as defined by section 90(1), the relevant date as defined by section 90(1);

- (l) where the calculation is for the purposes of Schedule 4 but sub-paragraph (k) does not apply, the date on which notice would have been given had the conditions referred to in sub-paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not).
- (2) The conditions referred to in sub-paragraphs (1)(i) and (l) are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 49 and that the notice expired on the effective date of termination or on the relevant date, as the case may be.

#### Textual Amendments

- F1** Para. 7(1)(cc) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 33](#)
- F2** Sch. 14 para. 7(1)(ccc) inserted (26.10.1995) by S.I. 1995/2587, [reg. 13\(6\)](#)
- F3** Sch. 14 para. 7(1)(d) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F4** Sch. 14 para. 7(1)(ea) inserted (10.6.1994) by 1993 c. 19, s. 49(2), [Sch. 8 para. 32\(a\)](#); S.I. 1994/1365, art. 2, [Sch.](#)
- F5** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 30\(2\)\(a\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F6** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 30\(2\)\(b\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F7** Sch. 14 para. 7(1)(ia)(ib) inserted (30.8.1993) by 1993 c. 19, s. 49(2), [Sch. 8 para. 32\(b\)](#); S.I. 1993/1908, art. 2(1), [Sch. 1](#)

#### *Maximum amount of week's pay for certain purposes*

- 8 (1) Notwithstanding the preceding provisions of this Schedule, the amount of a week's pay for the purpose of calculating—
- (a) an additional award of compensation (within the meaning of section 71(2)(b)), shall not exceed [<sup>F8</sup>£210.00];
  - (b) a basic award of compensation (within the meaning of section 72) shall not exceed [<sup>F8</sup>£210.00];
  - (c) a redundancy payment shall not exceed [<sup>F8</sup>£210.00].
- (2) The Secretary of State may after a review under section 148 vary the limit referred to in sub-paragraph (1)(a) or (b) or (c) by an order made in accordance with that section.
- (3) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this sub-paragraph, as defined by section 55(5) [<sup>F9</sup>or, as the case may be, (6)], falls after the order comes into operation, notwithstanding that the effective date of termination, as defined by section 55(4), for the purposes of other provisions of this Act falls before the order comes into operation.
- (4) Without prejudice to the generality of the power to make transitional provision in an order under section 148, such an order may provide that it shall apply in the case of a dismissal in relation to which the relevant date for the purposes of this sub-paragraph falls after the order comes into operation, notwithstanding that the relevant

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date for the purposes of other provisions of this Act falls before the order comes into operation.

**Subordinate Legislation Made**

- P1** Sch. 14 para. 8 power exercised by 1989/526  
**P2** Sch. 14 para. 8(2)(3)(4): s. 148 (with ss. 15(5), 122(6), 154(3)(4), Sch. 14 para. 8(2)(3)(4)): power exercised (4.3.1991) by S.I. 1991/464

**Textual Amendments**

- F8** Figures in Sch. 14 para. 8(1)(a)(b)(c) substituted (27.9.1995) by S.I. 1995/1953, art. 3, Sch. (with art. 4)  
**F9** Words inserted by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 30(3) with saving in S.I. 1982/1656, Sch. 2

**Modifications etc. (not altering text)**

- C5** Sch. 14 para. 8(1)(b) applied (30.11.1993) by 1992 c. 52, s. 176(6) (as substituted (30.11.1993) by 1993 c. 19, s. 14; S.I. 1993/1908, art. 2(2), Sch. 2

*Supplemental*

- 9 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, 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;
- 10 In arriving at an average hourly rate or average weekly rate of remuneration under this Part 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 13, a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer.

**Modifications etc. (not altering text)**

- C6** Para. 10 modified by Civil Aviation Act 1982 (c. 16, SIF 9), Sch. 3 para. 6(3)(5)(6)

- 11 Where under this Part 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

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other payments are calculated, then the remuneration or other payments shall be apportioned in such manner as may be just.

- 12 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.

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