SCHEDULE 2

Article 3

TRANSITIONAL AND SAVING PROVISIONS

1.—(1) Article 70D of the Employment Rights (Northern Ireland) Order 1996(**1**) inserted by Article 15(3) of the 2002 Order (Flexible working) shall have effect only in relation to an act or deliberate failure to act which takes place on or after 6th April 2003.

(2) For the purposes of sub-paragraph (1)–

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period; and

(b) a deliberate failure to act is to be treated as done when it was decided on.

(3) For the purposes of sub-paragraph (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a deliberate failure to act–

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

2.—(1) The amendments to Articles 70C and 71(1) of the Employment Rights (Northern Ireland) Order 1996 made by paragraph 4(6), (7) and (8) of Schedule 2 to the 2002 Order shall have effect only in relation to an act or deliberate failure to act which takes place on or after 6th April 2003.

(2) For the purposes of sub-paragraph (1)–

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period; and

(b) a deliberate failure to act is to be treated as done when it was decided on.

(3) For the purposes of sub-paragraph (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a deliberate failure to act–

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(**1**) S.I. 1996 No. 1919 (N.I. 16)