

SCHEDULE 3

Article 3

Transitional and Saving Provisions

Detriment relating to Trade Union Membership

1.—(1) The amendments to Articles 73 to 77 of the 1996 Order made by Schedule 2 to the 1999 Order (union membership: detriment) shall have effect only in relation to an act or failure to act which takes place on or after 1st December 1999.

(2) For the purposes of 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 failure to act is to be treated as done when it was decided on.

(3) For the purposes of paragraph (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a 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.

Agreement to exclude dismissal rights

2.—(1) This paragraph applies to the dismissal of an employee employed under a contract for a fixed term of one year or more who has agreed in writing to exclude any claim in respect of rights under Part XI of the 1996 Order where—

- (a) the dismissal consists only of the expiry of the term within its being renewed; and
- (b) the effective date of termination (within the meaning of Article 129 of the 1996 Order) in relation to the dismissal falls on or after 1st December 1999.

(2) The amendments to the 1996 Order, the National Minimum Wage Act 1998⁽¹⁾, the Tax Credits Act 1999⁽²⁾ and the Shops (Sunday Trading, &c.) (Northern Ireland) Order 1997⁽³⁾ made by paragraph (1) to (5) of Article 20 of the 1999 Order (agreement to exclude dismissal rights), and the repeals specified in Part 3 of Schedule 9 to the 1999 Order, shall have effect in relation to a dismissal to which this paragraph applies unless both the following conditions are satisfied—

- (a) that, where there has been no renewal of the contract, the contract was entered into before 1st December 1999 or, where there have been one or more renewals, the only or most recent renewal was agreed before 1st December 1999; and
- (b) that the agreement to exclude any claim in respect of rights under Part XI of the 1996 Order was entered into before 1st December 1999.

Commissioners: continuing cases and final report and accounts

3.—(1) The following provisions have effect subject to sub-paragraphs (2) to (5)—

- (a) Article 27(1) of the 1999 Order (abolition of Commissioners);
- (b) the amendments of the 1995 Order made by Article 27(2) and (3) of the 1999 Order (consequential provisions relating to abolition of Commissioners); and
- (c) the repeals specified in Part 6 of Schedule 9 to the Order.

(1) 1998 c. 29
(2) 1999 c. 10
(3) 1997 c. 20

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- (2) Sub-paragraph (3) shall apply where before 15th December 1999—
- (a) an individual has applied for assistance to the Commissioner for the Rights of Trade Union Members (“the Commissioner”) under Article 92 of the 1995 Order; and
 - (b) the Commissioner either—
 - (i) has decided to provide assistance under that Article; or
 - (ii) has not decided whether to provide assistance.
- (3) Where this sub-paragraph applies—
- (a) Part VII of the 1995 Order (assistance for certain legal proceedings) shall remain in operation to the extent necessary to enable the Commissioner (if he has not already done so) to decide whether to provide assistance and to provide it, until the date (“the final date”) when all of the assistance which the Commissioner decides to provide has been given;
 - (b) as soon as practicable after the final date, the Commissioner shall prepare—
 - (i) a report on his activities from 1st April 1999 until the final date and shall send a copy of it to the Department, which shall lay a copy of it before the Assembly, and
 - (ii) a statement of accounts in such form as the Department may, with the approval of the Department of Finance and Personnel direct and send copies of it to the Department and the Comptroller and Auditor General,and the Comptroller and Auditor General shall examine, verify and report on the statement of accounts and shall send copies of his report to the Department;
 - (c) the Commissioner shall remain in existence, and Part IX of the 1995 Order and the provisions repealed by Part VI of Schedule 9 to the 1999 Order shall remain in operation as they apply to him, until the requirements of paragraph (b) have been satisfied.
- (4) As soon as practicable after 15th December 1999, the Commissioner for Protection Against Unlawful Industrial Action (“CPAUIA”) shall prepare—
- (a) a report on his activities from 1st April 1999 until 15th December and shall send a copy of it to the Department, which shall lay a copy of it before the Assembly, and
 - (b) a statement of accounts in such form as the Department may, with the approval of the Department of Finance and Personnel direct and send copies of it to the Department and the Comptroller and Auditor General,
- and the Comptroller and Auditor General shall examine, verify and report on the statement of accounts and shall send copies of his report to the Department.
- (5) CPAUIA shall remain in existence, and Part IX of the 1995 Order and the provisions repealed by Part VI of Schedule 9 to the 1999 Order shall remain in operation as they apply to him, until the requirements of sub-paragraph (4) have been satisfied.
- (6) The amendment to Article 11A of the 1992 Order made by Article 27(3) of the 1999 Order (statement to members of union following annual return) shall have effect in relation to a statement only where it is provided to all the members after 15th December 1999.

The Certification Officer

4.—(1) The following amendments to the 1992 Order and the 1995 Order made by the following provisions of Schedule 6 to the 1999 Order, and the repeals specified in Part VII of Schedule 9 to the 1999 Order, shall have effect only in relation to applications (or as the case may be complaints) to the Certification Officer made on or after 15th December 1999.

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Paragraph of Schedule 6	Provision of the 1992 Order affected	Provision of the 1995 Order affected	Subject Matter
2	Article 13C of the 1992 Order		Register of union members
5	New Article 70A of the 1992 Order		Power of Certification Officer to refuse to entertain application or complaint made by vexatious litigant
4		Article 70	Procedure before the Certification Officer
7 to 10		Articles 3 to 6	Register of union members
11 to 13		Articles 21 to 23	Elections
15 to 18		Articles 54 to 57	Political ballot and political fund rules
19		Article 72	Unincorporated employers' associations
20, 21		Articles 84, 90	Procedure relating to amalgamation or transfer of engagements

(2) The amendments to Article 37 (remedy for failure to comply with request for access to union's accounting records) or the Order made by paragraph 3 of Schedule 6 to the 1999 Order shall have effect only in relation to requests made on or after 12th October 1999.

(3) The following provisions of the 1995 Order (inserted by paragraphs 14 and 22 of Schedule 6 to the 1999 Order—

- (a) Article 46A (application to the Certification Officer where union has applied its funds in breach of Article 46 of the 1995 Order), and
- (b) Part VIA (Right to apply to the Certification Officer in case of a breach or threatened breach of certain union rules),

shall have effect only in relation to breaches which take place (or in the case of threatened breaches, are threatened) on or after 12th October 1999, and subject to sub-paragraph (4).

(4) If, before 15th December 1999, a person has applied to the court in relation to—

- (a) an alleged breach of Article 46 of the 1995 Order; or
- (b) an alleged breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in Article 90A of the 1995 Order (inserted by paragraph 22 of Schedule 6 to the 1999 Order),

he may not apply to the Certification Officer in relation to that breach or threatened breach.

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Employment Agencies

5. Article 9A of the Employment Miscellaneous Provisions (Northern Ireland) Order 1981 (inserted by paragraph 4 of Schedule 7 to the 1999 Order) (Offences: extension of time limit) shall have effect only in relation to offences committed on or after 1st December 1999.

Employment outside Northern Ireland

6.—(1) The substitution of Article 239 of the 1996 Order by a new Article 239 is contained in Article 31 of the 1999 Order. Paragraph (1) of that new Article shall have effect in relation to an employer who dismisses 20 or more employees at one establishment within a period of 90 days where 20 or more (or as the case may be 100 or more) dismissals take effect on or after 1st December 1999.

(2) The amendments to Article 242 of the 1996 Order made by paragraph (2) of Article 31 of the 1999 Order and the repeals specified in Part 9 of Schedule 9 of the Order, shall have effect—

- (a) in respect of the right to a statement of employment particulars under Article 33 to 36 of the 1996 Order, in relation only to employment which begins on or after 1st December 1999;
- (b) in respect of maternity rights under Part IX of the 1996 Order, in relation only to employees whose expected week of childbirth (as defined in Article 2(3) of the 1996 Order) begins on or after 12th December 1999;
- (c) in respect of the right to a payment from the Department under Article 227 of the 1996 Order, only when the appropriate date (within the meaning of Article 230 of that Order) is on or after 1st December 1999.

Articles 32 to 34: consequential

7. The amendments to the 1995 Order, the 1996 Order and the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 made by Articles 32, 33 and 35 of the 1999 Order and the repeals specified in Part X of Schedule 9 to the Order, to the extent that they are brought into operation by this Order, shall have effect in relation to dismissals only where the effective date of termination (within the meaning of Article 129 of the 1996 Order) falls on or after 1st December 1999.

Maternity leave

8. The following provisions shall have effect only in relation to employees whose expected week of childbirth (as defined in Article 2(3) of the 1996 Order) begins on or after 30th April 2000 and, insofar as they relate to dismissal, only where the effective date of termination (within the meaning of Article 129 of the 1996 Order) falls on or after 15th December 1999—

- (a) the amendments to Part IX of the 1996 Order made by Part I of Schedule 4 to the 1999 Order, so far as they relate to maternity leave;
- (b) the amendments made by Part III of Schedule 4 to the 1999 Order, other than those relating to protection from detriment, so far as they affect an employee who is pregnant, has given birth to a child or has a right under Part IX of the 1996 Order as in force on the date of this Order; and
- (c) the repeals specified in Part II of Schedule 9 to the 1999 Order.

Detriment relating to leave for family reasons etc

9.—(1) The amendments to the 1996 Order made by Part III of Schedule 4 to the 1999 Order relating to protection from detriment shall have effect only in relation to an act or failure to act which takes place on or after 15th December 1999.

- (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 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 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.