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STATUTORY INSTRUMENTS

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**1999 No. 2830 (C. 72)**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The Employment Relations Act 1999 (Commencement  
No. 2 and Transitional and Saving Provisions) Order 1999

Made - - - - 14th October 1999

The Secretary of State in exercise of the powers conferred on him by section 45 of the Employment Relations Act 1999<sup>(1)</sup> hereby makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Employment Relations Act 1999 (Commencement No. 2 and Transitional and Saving Provisions) Order 1999.

(2) In this Order—

“the Act” means the Employment Relations Act 1999;

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(2)</sup>;

“the 1996 Act” means the Employment Rights Act 1996<sup>(3)</sup>;

“ACAS” means the Advisory, Conciliation and Arbitration Service.

**Commencement**

2.—(1) The provisions of the Act specified in Part I of Schedule 1 to this Order shall come into force on 25th October 1999.

(2) The provisions of the Act specified in Part II of Schedule 1 to this Order shall come into force on 15th December 1999.

(3) Section 44 and the repeals specified in column 3 of Schedule 9 to the Act shall come into force—

(a) to the extent specified in column 3 of Part 1 of Schedule 2 to this Order, on 25th October 1999; and

(b) to the extent specified in column 3 of Part II of Schedule 2 to this Order, on 15th December 1999.

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(1) 1999 c. 26.  
(2) 1992 c. 52.  
(3) 1996 c. 18.

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**Transitional and saving provisions**

3. The transitional and saving provisions in Schedule 3 to this Order shall have effect.

14th October 1999

*Alan Johnson*  
Parliamentary Under Secretary of State for  
Competitiveness  
Department of Trade and Industry

## SCHEDULE 1

Article 2(1) and (2)

## PART I

## PROVISIONS COMING INTO FORCE ON 25th OCTOBER 1999

<i>Provision(s)</i>	<i>Subject Matter of Provisions(s)</i>
Section 2 and Schedule 2	Detriment related to union membership
Section 3	Blacklists
Subsections (1) to (3) of section 13	Definitions for the purpose of the right to be accompanied
Subsections (1) to (5) of section 18	Agreement to exclude dismissal rights
Section 19 to 21	Part-time work
Section 22	National minimum wage: communities
Section 23	Power to confer rights on individuals
Section 26	ACAS: general duty
Section 27	ACAS: reports
Section 28	Abolition of Commissioners
Section 29 and Schedule 6	The Certification Officer
Section 30	Partnerships at work
Section 31 and in Schedule 7, paragraphs 1, 2, 5 (to the extent that it inserts section 11A into the Employment Agencies Act 1973(4)), 6 and 8	
Section 32	Employment outside Great Britain
Section 33	Unfair Dismissal: special and additional awards
Subsection (4) of section 34	Indexation of amounts &c
Section 35	Guarantee payments
In section 36, subsection (1), to the extent that it repeals (in paragraphs (b)) section 159(1)(b) of the 1992 Act	Sections 33 to 35: consequential
Section 37	Compensatory award etc: removal of limit in certain cases
Section 39	Minimum wage: information
Section 40	Dismissal of school staff
Section 43	Finance

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(4) 1973 c. 35.

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## PART II

### PROVISIONS COMING INTO FORCE ON 15th DECEMBER 1999

Section 7 and Part I of Schedule 4	Maternity and parental leave
Section 8 and Part II of Schedule 4	Time off for dependants
Section 9 and Part III of Schedule 4	Consequential amendments

## SCHEDULE 2

Article 2(3)

## PART I

### REPEALS COMING INTO FORCE ON 25th OCTOBER 1999

#### AGREEMENT TO EXCLUDE DISMISSAL RIGHTS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1996 c. 18.	Employment Rights Act 1996.	<p>In section 44(4), the word from the beginning to “the dismissal.”.</p> <p>In section 45A(4), the words from “, unless” to the end.</p> <p>In section 46(2), the words from the beginning to “the dismissal.”.</p> <p>In section 47(2), the words from the beginning to “the dismissal.”.</p> <p>In section 47A(2), the words from the beginning to “the dismissal.”.</p> <p>In section 47B(2), the words from the beginning to “the dismissal.”.</p> <p>Section 197(1) and (2).</p> <p>In section 197(4), the words “(1) or”.</p> <p>In section 203(2)(d), the words “(1) or”.</p> <p>In section 209(2)(g), the words “and 197(1)”.</p>

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1999 c. 26.	Employment Relations Act 1999.	Section 18(6).

POWER TO CONFER RIGHTS ON INDIVIDUALS

1996 c. 18	Employment Rights Act 1996.	Section 209(7).
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ACAS: GENERAL DUTY

1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	In section 209, the words from “, in particular” to the end.
1993 c. 19.	Trade Union Reform and Employment Rights Act 1993.	Section 43(1).

COMMISSIONERS

1967 c. 13.	Parliamentary Commissioner Act 1967.	In Schedule 2, the entries relating to—  the Office of the Commissioner for Protection Against Unlawful Industrial Action, and  the Office of the Commissioner for the Rights of Trade Union Members.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part III of Schedule 1, the entries relating to—  the Commissioner for Protection Against Unlawful Industrial Action, and  the Commissioner for the Rights of Trade Union Members.
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1, the entries relating to—  the Commissioner for Protection Against Unlawful Industrial Action, and  the Commissioner for the Rights of Trade Union Members.

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1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	<p>In section 65(3), the words “the Commissioner for the Rights of Trade Union Members or”.</p> <p>In Part 1, Chapter VIII.</p> <p>Sections 235B and 235C.</p> <p>Section 266 (and the heading immediately preceding it) and sections 267 to 271.</p> <p>In Schedule 2, paragraphs 1 and 4(4).</p>
1993 c. 19.	Trade Union Reform and Employment Rights Act 1993.	<p>In Schedule 7, paragraph 20.</p> <p>In Schedule 8, paragraphs 2, 6, 7, 58 to 60 and 79 to 84.</p>

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THE CERTIFICATION OFFICER

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1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	<p>In section 24(6), the second sentence.</p> <p>In section 24A(6), the second sentence.</p> <p>In section 25(2)(b), the words “where he considers it appropriate,”.</p> <p>Section 26(2).</p> <p>In section 45C(2)(a), the words “, where he considers it appropriate,” and section 45C(3) and (4).</p> <p>In section 54(1), the second sentence.</p> <p>In section 55(2)(b), the words “where he considers it appropriate,”.</p> <p>Section 56(2).</p> <p>In section 79(1), the second sentence.</p> <p>In section 80(2)(b), the words “where he considers it appropriate,”.</p> <p>Section 81(2).</p>
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EMPLOYMENT RIGHTS: EMPLOYMENT OUTSIDE GREAT BRITAIN

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1996 c. 18.	Employment Rights Act 1996.	Section 196.  In section 199(6), the words “Section 196(6) does not apply to an employee, and”.  In section 201(3)(g), the word “196”.  Section 204(2).  In section 209(2)(g), the words “196(1) and”.  In section 209(5), the words “, 196(2), (3) and (5)”.
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SECTIONS 33 TO 36

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1992 c. 52.	Trade Union and Labour Relations (Consolidation) Act 1992.	Section 157.  Section 158.  In section 159, subsection (1) (b).
1996 c. 18.	Employment Rights Act 1996.	In section 117, subsection (4) (b) and the word “or” before it, and subsections (5) and (6).  Section 118(2) and (3).  Section 125.
1998 c. 8.	Employment Rights (Dispute Resolution) Act 1998.	Section 14(1).

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COMPENSATORY AWARD: REMOVAL OF LIMIT IN CERTAIN CASES

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1996 c. 18.	Employment Rights Act 1996.	In section 112(4), the words “or in accordance with regulations under section 127B”.  In section 117(2) and (3), the words “and to regulations under section 127B”.  In section 118(1), the words “Subject to regulations under section 127B,”.  Section 127B.
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1998 c. 23.	Public Interest Disclosure Act 1998.	Section 8.  Section 18(4)(b).
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## PART II

### REPEALS COMING INTO FORCE ON 15th DECEMBER 1999

#### LEAVE FOR FAMILY REASONS ETC.

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1996 c. 17.	Employment Tribunals Act 1996.	In section 13(2)—  the word “or” after paragraph (a), paragraph (b), and the words “, or which she held before her absence,”.
1996 c. 18.	Employment Rights Act 1996.	In section 37, subsection (4), the word “and” after subsection (5)(a), and subsection (5)(b).  In section 43, subsection (4), the word “and” after subsection (5)(a), and subsection (5)(b).  Section 96. Section 97(6). Section 98(5). Section 105(2). Section 108(3)(a). Section 109(2)(a). Section 114(5). Section 115(4). In section 118(1)(b), the word “, 127”. Section 119(6). Section 127. Section 137. Section 145(7). Section 146(3). Section 156(2). Section 157(6).



Section 162(7).

In section 199, the words “(subject to subsection (3))” in subsection (2), and subsection (3).

In section 200(1), the words “and section 137”.

Section 209(6).

In section 212—  
subsection (2),

In subsection (3), the word “or” after paragraph (c), and paragraph (d),

In subsection (4), the words “or (subject to subsection (2)) subsection (3)(d)”.

Section 226(3)(a) and (5)(a).

In section 235(1), the definitions of “maternity leave period” and “notified date of return”.

S.I.1994/2479.

Maternity (Compulsory Leave) Regulations 1994. The whole instrument.

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## SCHEDULE 3

Article 3

### TRANSITIONAL AND SAVING PROVISIONS

#### **Detriment relating to trade union membership**

1.—(1) The amendments to sections 146 to 150 of the 1992 Act made by Schedule 2 to the Act (union membership: detriment) shall have effect only in relation to an act or failure to act which takes place on or after 25th October 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.

### **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 X of the 1996 Act where the dismissal consists only of the expiry of the term without its being renewed.

(2) The amendments to the 1996 Act, the National Minimum Wage Act 1998<sup>(5)</sup> and the Tax Credits Act 1999<sup>(6)</sup> made by subsections (1) to (5) of section 18 of the Act (agreement to exclude dismissal rights), and the repeals specified in Part 3 of Schedule 9 to the Act, shall have effect in relation to a dismissal to which this paragraph applies where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 25th October 1999, unless both the following conditions are satisfied—

- (a) that, where there has been no renewal of the contract, the contract was entered into before 25th October 1999 or, where there have been one or more renewals, the only or most recent renewal was agreed before 25th October 1999, and
- (b) that the agreement to exclude any claim in respect of rights under Part X of the 1996 Act was entered into before 25th October 1999.

(3) In this paragraph, “renewal” includes extension, and references to renewing a contract or a fixed term shall be construed accordingly.

### **ACAS reports for the period January 1999 to March 2000**

3.—(1) The amendments to sections 253 and 265 of the 1992 Act made by section 27 of the Act (ACAS: reports) have effect subject to sub-paragraph (2).

- (2) ACAS shall, as soon as practicable after 31st March 2000, make to the Secretary of State—
  - (a) a report on its activities during the period 1st January 1999 to 31st March 2000, and
  - (b) a report on the activities of the Central Arbitration Committee during that period.

### **Commissioners: continuing cases and final report and accounts**

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

- (a) section 28(1) of the Act (abolition of Commissioners),
- (b) the amendments of the 1992 Act made by section 28(2) and (3) of the Act (consequential provisions relating to abolition of Commissioners), and
- (c) the repeals specified in Part 6 of Schedule 9 to the Act.

(2) Sub-paragraph (3) shall apply where before 25th October 1999—

- (a) an individual has applied for assistance to the Commissioner for the Rights of Trade Union Members (“the Commissioner”) under section 110 of the 1992 Act, and
- (b) the Commissioner either—
  - (i) has decided to provide assistance under that section, or
  - (ii) has not decided whether to provide assistance.

(3) Where this sub-paragraph applies—

- (a) Chapter VIII of Part I of the 1992 Act (assistance for certain legal proceedings) shall remain in force 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

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<sup>(5)</sup> 1998 c. 39.

<sup>(6)</sup> 1999 c. 10.

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—
- (i) shall prepare a report on his activities from 1st April 1999 until the final date and shall send a copy of it to the Secretary of State, who shall lay a copy of it before both Houses of Parliament, and
  - (ii) shall prepare a statement of accounts in such form as the Secretary of State may, with the approval of the Treasury, direct and send copies of it to the Secretary of State and the Comptroller and Auditor General,
- and the Comptroller and Auditor General shall examine, verify and report on the statement of accounts and shall lay a copy of the statement and of his report before both Houses of Parliament;
- (c) the Commissioner shall remain in existence, and sections 266 to 270 of the 1992 Act and the provisions repealed by Part 6 of Schedule 9 to the Act shall remain in force as they apply to him, until the requirements of paragraph (b) have been satisfied.

(4) As soon as practicable after 25th October 1999, the Commissioner for Protection Against Unlawful Industrial Action (“CPAUIA”)—

- (a) shall prepare a report on his activities from 1st April 1999 until 25th October 1999 and send a copy of it to the Secretary of State, who shall lay a copy of it before both Houses of Parliament, and
- (b) shall prepare a statement of accounts in such form as the Secretary of State may, with the approval of the Treasury, direct and send copies of it to the Secretary of State and the Comptroller and Auditor General,

and the Comptroller and Auditor General shall examine, verify and report on the statement of accounts and shall lay a copy of the statement and of his report before both Houses of Parliament.

(5) CPAUIA shall remain in existence, and sections 266 to 270 of the 1992 Act and the provisions repealed by Part 6 of Schedule 9 to the Act shall remain in force as they apply to him, until the requirements of sub-paragraph (4) have been satisfied.

(6) The amendment to section 32A(6)(a) of the 1992 Act made by section 28(3) of the Act (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 25th October 1999.

### **The Certification Officer**

5.—(1) The following amendments of the 1992 Act made by the following provisions of Schedule 6 to the Act, and the repeals specified in Part 7 of Schedule 9 to the Act, shall have effect only in relation to applications (or as the case may be complaints) to the Certification Officer made on or after 25th October 1999.

<i>Paragraph of Schedule 6</i>	<i>Provision of the 1992 Act affected</i>	<i>Subject matter</i>
2 to 5	Sections 24 to 26	Register of union members.
7	Section 45C	Union positions not to be held by certain offenders.
8	New section 45D	Appeals from Certification Officer’s decision.

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<i>Paragraph of Schedule 6</i>	<i>Provision of the 1992 Act affected</i>	<i>Subject matter</i>
9 to 12	Sections 54 to 56 and new section 56A	Elections.
14 to 17	Sections 79 to 82	Political ballot and political fund rules.
18	Section 103	Procedure relating to amalgamation or transfer of engagements.
20 and 21	Sections 132 and 133	Unincorporated employers' associations.
22	Section 256	Procedure before the Certification Officer.
23	New section 256A	Power of Certification Officer to refuse to entertain application or complaint made by vexatious litigant.

(2) The amendments to section 31 (remedy for failure to comply with request for access to union's accounting records) of the 1992 Act made by paragraph 6 of Schedule 6 to the Act shall have effect only in relation to requests made on or after 27th July 1999.

(3) The following provisions of the 1992 Act (inserted by paragraphs 13 and 19 of Schedule 6 to the Act)—

- (a) section 72A (application to the Certification Officer where union has applied its funds in breach of section 71 of the 1992 Act), and
- (b) Chapter VIIA of Part I (Right to apply to the Certification Officer in case of 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 27th July 1999, and subject to sub-paragraph (4).

(4) If, before 25th October 1999, a person has applied to the court in relation to—

- (a) an alleged breach of section 71 of the 1992 Act, or
- (b) an alleged breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in section 108A(2) of the 1992 Act (inserted by paragraph 19 of Schedule 6 to the Act),

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

(5) The Certification Officer shall, as soon as practicable after 31st March 2000, make to the Secretary of State a report of his activities during the period beginning on 1st January 1999 and ending with 31st March 2000; and the amendment to section 258(1) of the 1992 Act made by paragraph 24 of Schedule 6 to the Act (annual report to the Secretary of State) has effect subject to this sub-paragraph.

### **Employment Agencies**

6. Section 11A of the Employment Agencies Act 1973 (inserted by paragraph 5 of Schedule 7 to the Act) (Offences: extension of time limit) shall have effect only in relation to offences committed on or after 25th October 1999.

### **Employment outside Great Britain**

7.—(1) The amendment to section 285 of the 1992 Act (employment outside Great Britain) made by section 32(1) of the Act 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 25th October 1999.

(2) The amendments to sections 5(1), 196 and 199 of the 1996 Act made by subsections (3) and (4) of section 32 of the Act, and the repeals specified in Part 9 of Schedule 9 to the Act, shall have effect—

- (a) in respect of the right to a statement of employment particulars under sections 1 to 4 of the 1996 Act, in relation only to employment which begins on or after 25th October 1999;
- (b) in respect of the maternity rights under Part VIII of the 1996 Act, in relation only to employees whose expected week of childbirth (as defined in section 235(1) of the 1996 Act) begins on or after 12th December 1999; and
- (c) in respect of the right to a payment from the Secretary of State under section 182 of the 1996 Act, only where the appropriate date (within the meaning of section 185 of that Act) is on or after 25th October 1999.

### **Sections 33 to 36**

8. The amendments to the 1992 Act, the 1996 Act and the Employment Rights (Dispute Resolution) Act 1998(7) made by sections 33, 34 and 36 of the Act and the repeals specified in Part 10 of Schedule 9 to the Act, to the extent that they are brought into force by this Order, shall have effect in relation to dismissals only where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 25th October 1999.

### **Dismissal of School Staff**

9. The amendments to paragraph 27(3)(b) of Schedule 16, and paragraph 24(4)(b) of Schedule 17, to the Schools Standards and Framework Act 1998(8) made by section 40 of the Act (dismissal of staff: representations and appeal) shall, to the extent that they apply to sub-paragraph (2) of either of those paragraphs, have effect only in relation to determinations or decisions taken on or after 25th October 1999.

### **Maternity leave**

10. The following provisions shall have effect only in relation to employees whose expected week of childbirth (as defined in section 235(1) of the 1996 Act) begins on or after 30th April 2000 and, in so far as they relate to dismissal, only where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 15th December 1999—

- (a) the amendments to Part VIII of the 1996 Act made by Part I of Schedule 4 to the Act, so far as they relate to maternity leave;
- (b) the amendments made by Part III of Schedule 4 to the Act, 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 VIII of the 1996 Act as in force on the date on which this Order is made; and
- (c) the repeals specified in Part 2 of Schedule 9 to the Act.

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(7) 1998 c. 8.

(8) 1998 c. 31.

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### **Detriment relating to leave for family reasons etc.**

**11.**—(1) The amendments to the 1996 Act made by Part III of Schedule 4 to the Act 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.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into force—

- (a) on 25th October 1999, the provisions of the Employment Relations Act 1999 specified in Part I of Schedule 1 to the Order, which include provisions relating to agreements to exclude unfair dismissal rights, amounts of awards for unfair dismissal, ACAS and the Certification Officer, subject to the transitional and saving provisions in paragraphs 1 to 9 of Schedule 3 to the Order;
- (b) on 15th December 1999, the provisions of the Act specified in Part II of Schedule 1 to the Order (provisions relating to leave for family reasons, etc.), subject to the transitional provisions in paragraphs 10 and 11 of Schedule 3 to the Order.

### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Act have been brought in to force by commencement order made before the date of this Order:

<i>Provisions</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 18(6)	30.9.1999	1999/2509
Sections 38 and 42	9.9.1999	1999/2509