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STATUTORY INSTRUMENTS

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**2002 No. 2866 (C. 91)**

**SOCIAL SECURITY  
TERMS AND CONDITIONS OF EMPLOYMENT**

The Employment Act 2002 (Commencement No. 3  
and Transitional and Saving Provisions) Order 2002

Made - - - - 18th November 2002

The Secretary of State, in exercise of the powers conferred on her by section 55(2) and (3) of the Employment Act 2002(1), hereby makes the following Order—

**Citation and interpretation**

1.—(1) This Order may be cited as the Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002.

(2) In this Order—

“the Act” means the Employment Act 2002;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(2).

**Commencement**

2.—(1) The provisions of the Act specified in Part 1 of Schedule 1 to this Order shall come into force on 24th November 2002.

(2) The provisions of the Act specified in Part 2 of Schedule 1 to the Order shall come into force on 8th December 2002.

(3) The provisions of the Act specified in Part 3 of Schedule 1 to this Order shall come into force on 6th April 2003.

(4) Section 54 of, and Schedule 8 to, the Act, to the extent that they repeal the provisions specified in Part 1 of Schedule 2 to this Order, shall come into force on 24th November 2002.

(5) Section 54 of, and Schedule 8 to, the Act, to the extent that they repeal the provisions specified in Part 2 of Schedule 2 to this Order and revoke the provision specified in Part 3 of that Schedule, shall come into force on 6th April 2003.

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(1) 2002 c. 22.

(2) 1992 c. 4.

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### **Transitional and saving provisions**

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

18th November 2002

*Alan Johnson,*  
Minister of State for Employment Relations,  
Industry and the Regions,  
Department of Trade and Industry

## SCHEDULE 1

Article 2(1) to (3)

## PART 1

## PROVISIONS COMING INTO FORCE ON 24TH NOVEMBER 2002

<i>Provisions</i>	<i>Subject Matter of Provisions</i>
Section 17.	Rights during and after maternity leave.
Section 18.	Maternity pay period.
Section 20.	Entitlement to statutory maternity pay.
Section 48(1)(b) and (2).	Rate of maternity allowance.
Section 53 so far as relating to the paragraphs of Schedule 7 specified below.	Minor and consequential amendments.
In Schedule 7—	
(i) paragraph 12, and paragraph 8 so far as it relates to that paragraph;	
(ii) paragraph 28, and paragraph 24 so far as it relates to that paragraph;	
(iii) paragraphs 52 and 53.	

## PART 2

## PROVISIONS COMING INTO FORCE ON 8TH DECEMBER 2002

<i>Provisions</i>	<i>Subject Matter of Provisions</i>
Chapter 1 of Part 1 of the Act.	Paternity and Adoption.
Schedule 1 to the Act.	Penalties: procedure and appeals.
Section 53 so far as relating to the paragraphs of Schedule 7 specified below.	Minor and consequential amendments.
In Schedule 7—	
(i) paragraph 1;	
(ii) paragraphs 3 and 7, and paragraph 2 so far as relating to those paragraphs;	
(iii) paragraphs 11 and 13, and paragraph 8 so far as relating to those paragraphs;	
(iv) paragraphs 25, 26, 29 to 31, 33, 35, 48, 49 except so far as it refers to section 80G of the Employment Rights Act 1996, and paragraph 24 so far as relating to those paragraphs.	

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## PART 3

### PROVISIONS COMING INTO FORCE ON 6TH APRIL 2003

<i>Provisions</i>	<i>Subject Matter of Provisions</i>
Section 19.	Rate of statutory maternity pay.
Section 21.	Funding of employers' liabilities: statutory maternity pay.
Section 41.	Power to confer rights on individuals: amendment.
Section 42.	Equal Pay: questionnaires.
Section 47.	Flexible Working.
Section 48(1)(a) and (c)	Rate of maternity allowance.
Section 53 so far as relating to the paragraphs of Schedule 7 specified below.	Minor and consequential amendments.
In Schedule 7—	
(i) paragraphs 4 to 6, and paragraph 2 so far as relating to those paragraphs;	
(ii) paragraph 14, and paragraph 8 so far as relating to that paragraph;	
(iii) paragraph 22, and paragraph 18 so far as relating to that paragraph;	
(iv) paragraphs 23(2)(b) and (c), and paragraph 23(1) so far as relating to those paragraphs;	
(v) paragraphs 27, 41 to 45, 47(1) and (2), and 49 so far as it relates to section 80G of the Employment Rights Act 1996, and paragraph 24 so far as relating to those paragraphs;	
(vi) paragraph 54.	

## SCHEDULE 2

Article 2(4) and (5)

## PART 1

### REPEALS COMING INTO FORCE ON 24TH NOVEMBER 2002

<i>Short Title and Chapter</i>	<i>Extent of repeal</i>
Social Security Contributions and Benefits Act 1992 (c. 4).	In section 164(2)(a), the words “, wholly or partly because of pregnancy or confinement”.
Social Security Administration Act 1992 (c. 5)	In section 2B(9), the words from “the following” to the first “and”.

## PART 2

### REPEALS COMING INTO FORCE ON 6TH APRIL 2003

<i>Short Title and Chapter</i>	<i>Extent of repeal</i>
Employment Tribunals Act 1996 (c. 17).	In section 19, paragraph (c) and the word “and” immediately before it.
Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).	In Schedule 1, paragraph 13.
Welfare Reform and Pensions Act 1999 (c. 30)	Section 53(2)(b).

## PART 3

### REVOCATION COMING INTO FORCE ON 6TH APRIL 2003

<i>Title and reference</i>	<i>Extent of revocation</i>
Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I.1999/671).	In Schedule 1, paragraph 15.

## SCHEDULE 3

Article 3

### TRANSITIONAL AND SAVING PROVISIONS

1. Part 12ZA of the 1992 Act, inserted by section 2 of the Act (statutory paternity pay), shall have effect only in relation to a person who satisfies the prescribed conditions of entitlement in respect of a child—

- (a) born on or after 6th April 2003, or whose expected week of birth begins on or after that date; or
- (b) matched for the purposes of adoption with a person who is notified of having been matched on or after 6th April 2003, or placed for adoption on or after that date.

2. Part 12ZB of the 1992 Act, inserted by section 4 of the Act (statutory adoption pay), shall have effect only in relation to a person with whom a child is, or is expected to be placed for adoption on or after 6th April 2003.

3. The amendments to Chapter 1 of Part 8 of the Employment Rights Act 1996(3) (maternity leave) made by section 17 of the Act (rights during and after maternity leave) shall have effect only in relation to employees whose expected week of childbirth begins on or after 6th April 2003.

4. The amendments to the 1992 Act made by sections 18, 20, 48(1)(b) and (2) and the first repeal specified in Part 1 of Schedule 2 to this Order, shall take effect only in relation to those women whose expected week of confinement commences on or after 6th April 2003.

5. The amendment to section 166 of the 1992 Act made by section 19 of the Act (rate of statutory maternity pay) shall not have effect in relation to a woman—

- (a) whose maternity pay period commences before 6th April 2003;

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(3) 1996 c. 18.

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- (b) who is entitled to statutory maternity pay at the rate of £75 a week immediately before that date; and
  - (c) who would be entitled to statutory maternity pay at a rate lower than £75 a week if the amendment had effect in relation to her.
6. The amendment made to section 35A of the 1992 Act made by section 48(1)(a) of the Act (rate of maternity allowance) shall not have effect in relation to a woman—
- (a) whose maternity allowance period commences before 6th April 2003;
  - (b) who is entitled to maternity allowance at the rate of £75 a week immediately before that date; and
  - (c) who would be entitled to maternity allowance at a rate lower than £75 a week if the amendment had effect in relation to her.
- 7.—(1) Section 47D of the Employment Rights Act 1996, inserted by section 47 of the Act (flexible working), shall have effect only in relation to an act or 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 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 24th November 2002, the provisions of the Employment Act 2002 (c. 22) specified in Part 1 of Schedule 1 to the Order, which relate principally to rights during and after maternity leave and rights to statutory maternity pay and maternity allowance, and are subject to the transitional and saving provisions in paragraphs 3 and 4 of Schedule 3 to the Order; also paragraphs 12 and 52 of Schedule 7 of the Employment Act 2002 which are consequential upon the coming into force of section 50 of, and Schedule 6 to, the Employment Act 2002 on 9th September 2002; and
- (b) on 8th December 2002, the provisions of the Employment Act 2002 specified in Part 2 of Schedule 1 to the Order, which include provisions conferring rights to paternity and adoption leave and, subject to transitional provisions in paragraphs 1 and 2 of Schedule 3, statutory paternity and adoption pay; also administration and enforcement provisions concerning statutory paternity pay and statutory adoption pay; and

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- (c) on 6th April 2003, the provisions of the Employment Act 2002 specified in Part 3 of Schedule 1 to the Order, which include provisions relating to the rate of statutory maternity pay, amendments concerning the funding of employers' liabilities in respect of statutory maternity pay, and provisions relating to equal pay questionnaires, flexible working and rate of maternity allowance; there are savings relating to maternity pay and maternity allowance in paragraphs 5 and 6 of Schedule 3.

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

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

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

<i>Provision</i>	<i>Date of Commencement</i>	<i>S. I. No.</i>
Section 53 (partially) and Schedule 7, paragraph 50	31.07.02	<a href="#">2002/1989</a>
Section 50 and Schedule 6, Section 53 (partially) and Schedule 7, paragraphs 8 (partially), 16 and 17 Section 54 and Schedule 8 (partially)	09.09.02	<a href="#">2002/2256</a>