
STATUTORY INSTRUMENTS

1990 No. 246 (N.I. 2)

NORTHERN IRELAND

**The Employment (Miscellaneous Provisions)
(Northern Ireland) Order 1990**

Made 14th February 1990

Laid before Parliament 26th February 1990

Coming into operation in accordance with Article 1(2) and (3)

ARRANGEMENT OF ORDER

Article

Introductory

1. Title and commencement.
2. Interpretation.

*Overriding of provisions requiring discrimination as respects
employment or training*

3. Overriding of statutory requirements which conflict with certain provisions of the 1976 Order.
4. Power to repeal statutory provisions requiring discrimination as respects employment or training.

*Circumstances where discrimination as respects employment or
training is permissible*

5. Restriction of exemption for discrimination required by or under statute.
6. Exemption for discrimination under certain provisions concerned with the protection of women at work.
7. Exemption for discrimination in connection with certain educational appointments.
8. Power to exempt particular acts of discrimination required by or under statute.

Discrimination as respects training

9. Prohibition of discrimination in connection with provision of training.

10. Power to exempt discrimination in favour of lone parents in connection with training.

Removal of restrictions and other requirements relating to employment

11. Repeal or modification of provisions requiring different treatment of different categories of employees.
12. Removal of restrictions relating to employment of young persons.
13. Exemption of Sikhs from requirements as to wearing of safety helmets on construction sites.

Redundancy

14. Redundancy payments: assimilation of age limits for men and women.
15. Abolition of redundancy rebates.

Insolvency

16. Quantification of amounts for purposes of insolvency payments.
17. Recovery of insolvency payments made in respect of preferential debts.

General

18. Orders.
19. Minor and consequential amendments, repeals etc.

SCHEDULES:

Schedule 1—Provisions concerned with protection of women at work.

Schedule 2—Revocation, etc. of instruments requiring different treatment of certain employees.

Part I—Provisions revoked.

Part II—Amendments.

Schedule 3—Removal of restrictions relating to employment of young persons.

Part I—Repeals relating to restrictions with respect to hours of employment and holidays.

Part II—Repeals relating to other requirements.

Part III—Amendment of certain age limits.

Schedule 4—Minor and consequential amendments.

Schedule 5—Repeals.

Part I—Repeals coming into operation two months after Order is made.

Part II—Repeals coming into operation on a day appointed under Article 1(3).

Schedule 6—Instruments revoked.

Schedule 7—Transitional provisions and savings.

At the Court of Saint James, the 14 day of February 1990

Present,

The Counsellors of State in Council

Whereas Her Majesty in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 18th day of January 1990, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas this Order is made only for purposes corresponding to those of sections 1 to 6, 7(1), 8 to 11 and 16 to 19 of the Employment Act 1989:

1989 c. 38

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 27(1) of the said Act of 1989) and of all other powers enabling Her Majesty, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:—

1974 c. 28

Introductory

Title and commencement

1.—(1) This Order may be cited as the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions shall come into operation on such day or days as the Head of the Department may by order appoint, namely—

(a) Article 11(5);

(b) Article 12(1) and Part II of Schedule 3 so far as they repeal section 117A of the Factories Act (Northern Ireland) 1965;

1965 c. 20 (N.I.)

(c) paragraph 5 of Schedule 4 and Article 19(1) so far as relating thereto;

(d) Part II of Schedule 5 and Article 19(2) so far as relating thereto.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“act” includes a deliberate omission;

“the Department” means the Department of Economic Development;

“enactment” includes an enactment contained in an Act of Parliament or in an Act of the Parliament of Northern Ireland or a Measure or an Order in Council having the same effect as such an Act or a Measure; and “enacted” in relation to such an Order in Council means made;

“instrument” has the meaning assigned to it by section 1(c) of the Interpretation Act (Northern Ireland) 1954;

“the 1976 Order” means the Sex Discrimination (Northern Ireland) Order 1976;

“vocational training” includes advanced vocational training and retraining.

(3) Any reference in this Order to vocational training shall be construed as including a reference to vocational guidance.

Overriding of provisions requiring discrimination as respects employment or training

Overriding of statutory requirements which conflict with certain provisions of the 1976 Order

3.—(1) Any provision of—

(a) an enactment enacted before the Sex Discrimination (Northern Ireland) Order 1976; or

(b) an instrument made or approved under such an enactment (including one made or approved after the making of the 1976 Order),

shall be of no effect in so far as it imposes a requirement to do an act which would be rendered unlawful by any of the provisions of that Order referred to in paragraph (2).

(2) Those provisions are—

(a) Part III (discrimination as respects employment);

(b) Part IV (discrimination as respects education, etc.) so far as it applies to vocational training; and

(c) Part V (other unlawful acts) so far as it has effect in relation to the provisions mentioned in sub-paragraphs (a) and (b).

(3) Where in any legal proceedings (of whatever nature) there falls to be determined the question whether paragraph (1) operates to negative the effect of any provision in so far as it requires the application by any person of a requirement or condition falling within paragraph (1)(b)(i) of Article 3 or 5 of the 1976 Order (indirect

1954 c. 33 (N.I.)
1976 NI 15

discrimination on grounds of sex or marital status)—

- (a) it shall be for any party to the proceedings who claims that paragraph (1) does not so operate in relation to that provision to show the requirement or condition in question to be justifiable as mentioned in paragraph (1)(b)(ii) of that Article; and
- (b) the said paragraph (1)(b)(ii) shall accordingly have effect in relation to the requirement or condition as if the reference to the person applying it were a reference to any such party to the proceedings.

(4) Where an enactment enacted after the 1976 Order, whether before or after this Order, re-enacts (with or without modification) a provision of an enactment enacted before the 1976 Order, that provision as re-enacted shall be treated for the purposes of paragraph (1) as if it continued to be contained in an enactment enacted before the 1976 Order.

Power to repeal statutory provisions requiring discrimination as respects employment or training

4.—(1) Where it appears to the Department that a relevant provision, namely any provision of—

- (a) an enactment enacted before this Order; or
- (b) an instrument made or approved under such an enactment (including one made or approved after the making of this Order),

requires the doing of an act which would (within the meaning of the 1976 Order) constitute an act of discrimination in circumstances relevant for the purposes of any of the provisions of that Order falling within Article 3(2), it may by order make such provision (whether by amending, repealing or revoking the relevant provision or otherwise) as it considers appropriate for removing any such requirement.

(2) Paragraph (1) shall have effect in relation to a provision to which Article 3(1) applies as if the reference to a relevant provision requiring the doing of an act were a reference to its so requiring but for the operation of Article 3(1).

(3) Any order under this Article which makes any amendment, repeal or revocation of a relevant provision within the meaning of paragraph (1) may (without prejudice to the generality of Article 18(4)) amend or repeal any provision of this Order by virtue of which acts done in pursuance of the relevant provision are not to be unlawful for the purposes of provisions of the 1976 Order.

(4) Where an enactment enacted after this Order re-enacts (with or without modification) a provision of an enactment enacted before this Order, that provision as re-enacted shall be treated for the purposes of paragraph (1) as if it continued to be contained in an enactment enacted before this Order.

Circumstances where discrimination as respects employment or training is permissible

Restriction of exemption for discrimination required by or under statute

5.—(1) The 1976 Order shall be amended as follows.

(2) Article 10(2)(f) (exception for jobs held by men because of statutory restrictions on employment of women) shall be omitted.

(3) The following Articles shall be substituted for Article 52—

“Acts done for purposes of protection of women

52.—(1) Nothing in the following provisions, namely—

- (a) Part III;
- (b) Part IV so far as it applies to vocational training; or
- (c) Part V so far as it has effect in relation to the provisions mentioned in sub-paragraphs (a) and (b),

shall render unlawful any act done by a person in relation to a woman if—

- (i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women; or
- (ii) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision (within the meaning of Part II of the Health and Safety at Work (Northern Ireland) Order 1978) and it was done by that person for the purpose of the protection of the woman in question (or of any class of women that included that woman).

(2) In paragraph (1)—

(a) the reference in sub-paragraph (i) to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards—

- (i) pregnancy or maternity; or
- (ii) other circumstances giving rise to risks specifically affecting women,

whether the provision relates only to such protection or to the protection of any other class of persons as well; and

(b) the reference in sub-paragraph (ii) to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within sub-paragraph (a)(i) or (ii) of this paragraph.

(3) In this Article “existing statutory provision” means (subject to paragraph (4)) any provision of—

- (a) an enactment enacted before this Order; or

(b) an instrument made or approved under such an enactment (including one made or approved after the making of this Order).

(4) Where an enactment enacted after this Order re-enacts (with or without modification) a provision of an enactment enacted before this Order, that provision as re-enacted shall be treated for the purposes of paragraph (3) as if it continued to be contained in an enactment enacted before this Order.

Acts done under statutory authority to be exempt from certain provisions of Part IV

52A.—(1) Nothing in—

(a) the relevant provisions of Part IV; or

(b) Part V so far as it has effect in relation to those provisions, shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision within the meaning of Article 52.

(2) In paragraph (1) “the relevant provisions of Part IV” means the provisions of that Part except so far as they apply to vocational training.”.

(4) The following Article shall be inserted after Article 53—

“Construction of references to vocational training

53A. In the following provisions, namely—

(a) Articles 52 and 52A; and

(b) the provisions of any Order in Council modifying the effect of Article 53,

“vocational training” includes advanced vocational training and retraining; and any reference to vocational training in those provisions shall be construed as including a reference to vocational guidance.”.

Exemption for discrimination under certain provisions concerned with the protection of women at work

6.—(1) Without prejudice to the operation of Article 52 of the 1976 Order (as substituted by Article 5(3)), nothing in—

(a) Part III of that Order;

(b) Part IV of that Order so far as it applies to vocational training; or

(c) Part V of that Order so far as it has effect in relation to the provisions mentioned in sub-paragraphs (a) and (b),

shall render unlawful any act done by a person in relation to a woman if it was necessary for that person to do that act in order to comply with any requirement of any of the provisions specified in Schedule 1 (which are concerned with the protection of women at

work).

(2) Each of the last two entries in that Schedule shall be construed as including a reference to any provision or provisions for the time being having effect in place of the provision or provisions specified in that entry.

(3) In this Article “woman” means a female person of any age.

Exemption for discrimination in connection with certain educational appointments

7.—(1) Nothing in Parts III to V of the 1976 Order shall render unlawful any act done by a person in connection with the employment of another person as the principal of any educational establishment if it was necessary for that person to do that act in order to comply with any requirement of any instrument relating to the establishment that its principal should be a member of a particular religious order.

(2) The Department may by order provide that paragraph (1) shall not have effect in relation to—

- (a) any educational establishment specified in the order; or
- (b) any class or description of educational establishments so specified.

(3) In this Article “educational establishment” means—

- (a) any school within the meaning of the Education and Libraries (Northern Ireland) Order 1986;
- (b) any institution providing further education within the meaning of that Order.

(4) Nothing in this Article shall be construed as prejudicing the operation of Article 21 of the 1976 Order (exemption for discrimination in relation to employment of ministers of religion).

Power to exempt particular acts of discrimination required by or under statute

8.—(1) The Department may by order make such provision as it considers appropriate—

- (a) for disapplying paragraph (1) of Article 3 in the case of any provision to which it appears to the Department that that paragraph would otherwise apply;
- (b) for rendering lawful under any of the provisions of the 1976 Order falling within Article 3(2) acts done in order to comply with any requirement—
 - (i) of a provision whose effect is preserved by virtue of sub-paragraph (a); or
 - (ii) of an instrument made or approved under an enactment enacted after the 1976 Order but before this Order (including one made or approved after the making of this

Order).

(2) Where an enactment enacted after this Order re-enacts (with or without modification) a provision of an enactment enacted as mentioned in head (ii) of paragraph (1)(b), that provision as re-enacted shall be treated for the purposes of that head as if it continued to be contained in an enactment enacted as mentioned in that head.

Discrimination as respects training

Prohibition of discrimination in connection with provision of training

9. The following Article shall be substituted for Article 17 of the 1976 Order—

“Persons concerned with provision of vocational training

17.—(1) It is unlawful, in the case of a woman seeking or undergoing training which would help fit her for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against her—

- (a) in the terms on which that person affords her access to any training course or other facilities concerned with such training; or
- (b) by refusing or deliberately omitting to afford her such access; or
- (c) by terminating her training; or
- (d) by subjecting her to any detriment during the course of her training.

(2) Paragraph (1) does not apply to—

- (a) discrimination which is rendered unlawful by Article 8(1) or (2) or Article 24 or 25; or
- (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Order.”.

Power to exempt discrimination in favour of lone parents in connection with training

10.—(1) The Department may by order provide with respect to—

- (a) any specified arrangements made under section 1 of the Employment and Training Act (Northern Ireland) 1950 (functions of the Department as respects employment and training); or 1950 c. 29 (N.I.)
- (b) any specified class or description of training for employment provided otherwise than in pursuance of that section; or
- (c) any specified scheme set up under section 1 of the Employment Subsidies Act 1978 (schemes for financing employment), 1978 c. 6

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

that this Article shall apply to such special treatment afforded to or in respect of lone parents in connection with their participation in those arrangements, or in that training or scheme, as is specified or referred to in the order.

(2) Where this Article applies to any treatment afforded to or in respect of lone parents, neither the treatment so afforded nor any act done in the implementation of any such treatment shall be regarded for the purposes of the 1976 Order as giving rise to any discrimination falling within Article 5 of that Order (discrimination against married persons for purposes of Part III of that Order).

(3) An order under paragraph (1) may specify or refer to special treatment afforded as mentioned in that paragraph—

(a) whether it is afforded by the making of any payment or by the fixing of special conditions for participation in the arrangements, training or scheme in question, or otherwise; and

(b) whether it is afforded by the Department or by some other person;

and, without prejudice to the generality of sub-paragraph (b) of that paragraph, any class or description of training for employment specified in such an order by virtue of that sub-paragraph may be framed by reference to the person, or the class or description of persons, by whom the training is provided.

(4) In this Article—

1984 NI 9

(a) “employment” has the same meaning as in the Industrial Training (Northern Ireland) Order 1984;

1986 NI 18

(b) “lone parent” has the same meaning as it has for the purposes of any regulations made in pursuance of Article 21(1)(a) of the Social Security (Northern Ireland) Order 1986 (income support);

(c) “training” includes any education with a view to employment.

Removal of restrictions and other requirements relating to employment

Repeal or modification of provisions requiring different treatment of different categories of employees

1965 c. 20 (N.I.)

11.—(1) In section 21 of the Factories Act (Northern Ireland) 1965 (prohibition on cleaning of machinery by any woman or young person), the words “woman or” shall be omitted in both places where they occur.

1966 c. 26 (N.I.)

(2) In section 17 of the Office and Shop Premises Act (Northern Ireland) 1966 (fencing of exposed parts of machinery)—

(a) subsection (3);

(b) in subsection (4), the words from “, except when any” onwards; and

(c) subsection (5),
shall cease to have effect.

(3) In sections 42(1), 43 and 44 of the Mines Act (Northern Ireland) 1969 (under which winding and rope haulage apparatus and conveyors are to be operated by or under the supervision of competent male persons who have attained the ages there specified), the word "male" shall be omitted wherever occurring. 1969 c. 6 (N.I.)

(4) In section 93 of that Act (prohibition on heavy work by any woman or young person), the words "woman or young" shall be omitted in both places where they occur.

(5) Section 106(1) of that Act (prohibition of employment of woman in job requiring a significant proportion of the employee's time to be spent underground) shall cease to have effect.

(6) In Schedule 2—

(a) the provisions of the instruments listed in Part I (which require different treatment of different categories of employees) shall cease to have effect; and

(b) the provisions of the instruments mentioned in Part II shall have effect subject to the amendments there specified (which assimilate the treatment of different categories of employees).

Removal of restrictions relating to employment of young persons

12.—(1) The following enactments, namely—

(a) the enactments listed in Part I of Schedule 3 (which impose prohibitions or requirements with respect to the hours of employment and holidays of young persons and with respect to related matters); and

(b) the enactments listed in Part II of that Schedule (which impose other prohibitions or requirements for, or in connection with, regulating the employment of young persons),

shall cease to have effect.

(2) The enactments mentioned in Part III of Schedule 3 shall have effect subject to the amendments there specified (which include amendments by virtue of which certain occupations, instead of being restricted to persons who are 16 or older, are restricted to persons over school-leaving age).

(3) If the Department considers it appropriate to do so, it may by order—

(a) repeal or amend any statutory provision in consequence of paragraph (1) or (2);

(b) repeal any statutory provision relating to the employment of persons, or any class of persons, who have not attained the age of 18 or (as the case may be) some specified lower age of not less than 16;

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

(c) amend any statutory provision falling within sub-paragraph (b) and framed by reference to a specified age expressed as a number of years so that it is instead framed by reference to school-leaving age;

(d) repeal any statutory provision appearing to the Department to be unnecessary in view of any other such provision, being a provision relating to the employment of persons under school-leaving age.

(4) Nothing in any order under paragraph (3) (apart from a repeal effected by virtue of sub-paragraph (d) of that paragraph) shall affect any statutory provision relating to the employment of persons under school-leaving age.

(5) Any reference in paragraph (3)(d) or (4) to a statutory provision relating to the employment of persons under school-leaving age shall be construed, in relation to a statutory provision which relates to both—

(a) the employment of such persons; and

(b) the employment of persons over that age,

as a reference to so much of that provision as relates to the employment of persons under that age.

(6) In this Article—

“school-leaving age” means the upper limit of compulsory school age for the purposes of the Education and Libraries (Northern Ireland) Order 1986; and

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

1986 NI 3

1954 c. 33 (N.I.)

Exemption of Sikhs from requirements as to wearing of safety helmets on construction sites

13.—(1) Any requirement to wear a safety helmet which (apart from this Article) would, by virtue of any statutory provision or rule of law, be imposed on a Sikh who is on a construction site shall not apply to him at any time when he is wearing a turban.

(2) Accordingly, where—

(a) a Sikh who is on a construction site is for the time being wearing a turban; and

(b) (apart from this Article) any associated requirement would, by virtue of any statutory provision or rule of law, be imposed—

(i) on the Sikh; or

(ii) on any other person,

in connection with the wearing by the Sikh of a safety helmet,

that requirement shall not apply to the Sikh or (as the case may be) to that other person.

(3) In paragraph (2) “associated requirement” means any requirement (other than one falling within paragraph (1)) which is related to or connected with the wearing, provision or maintenance of safety helmets.

(4) It is hereby declared that, where a person does not comply with any requirement, being a requirement which for the time being does not apply to him by virtue of paragraph (1) or (2), he shall not be liable in tort to any person in respect of any injury, loss or damage caused by his failure to comply with that requirement.

(5) If a Sikh who is on a construction site—

(a) does not comply with any requirement to wear a safety helmet, being a requirement which for the time being does not apply to him by virtue of paragraph (1); and

(b) in consequence of any act or omission of some other person sustains any injury, loss or damage which is to any extent attributable to the fact that he is not wearing a safety helmet in compliance with the requirement,

that other person shall, if liable to the Sikh in tort, be so liable only to the extent that injury, loss or damage would have been sustained by the Sikh even if he had been wearing a safety helmet in compliance with the requirement.

(6) Where—

(a) the act or omission referred to in paragraph (5) causes the death of the Sikh; and

(b) the Sikh would have sustained some injury (other than loss of life) in consequence of the act or omission even if he had been wearing a safety helmet in compliance with the requirement in question,

the amount of any damages which, by virtue of that paragraph, are recoverable in tort in respect of that injury shall not exceed the amount of any damages which would (apart from that paragraph) be so recoverable in respect of the Sikh’s death.

(7) In this Article—

“building operations” and “works of engineering construction” have the same meaning as in the Factories Act (Northern Ireland) 1965;

1965 c. 20 (N.I.)

“construction site” means any place where any building operations or works of engineering construction are being undertaken;

“injury” includes loss of life, any impairment of a person’s physical or mental condition and any disease;

“safety helmet” means any form of protective headgear;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

1954 c. 33 (N.I.)

(8) In this Article—

- (a) any reference to a Sikh is a reference to a follower of the Sikh religion; and
- (b) any reference to a Sikh being on a construction site is a reference to his being there whether while at work or otherwise.

Redundancy

Redundancy payments: assimilation of age limits for men and women

1965 c. 19 (N.I.) **14.—(1)** In section 12 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (general exclusions from right to redundancy payment), the following subsection shall be substituted for subsection (1)—

“(1) An employee shall not be entitled to a redundancy payment if he has before the relevant date attained the following age, that is to say—

(a) in a case where—

(i) in the business for the purposes of which he was employed there was a normal retiring age of less than sixty-five for an employee holding the position which he held; and

(ii) the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and

(b) in any other case, the age of sixty-five.”

(2) In paragraph 4(2) of Schedule 3 to that Act (calculation of redundancy payments), for the words from ““the specified anniversary”” to “her birth,” there shall be substituted ““the specified anniversary”, in relation to an employee, means the sixty-fourth anniversary of the day of his birth,”.

Abolition of redundancy rebates

15. The following provisions of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965, namely—

(a) sections 40 and 40A (payment by the Department of redundancy rebates to employers with less than ten employees); and

(b) Schedule 6 (calculation of amount of redundancy rebates), shall cease to have effect.

Insolvency

Quantification of amounts for purposes of insolvency payments

16.—(1) Articles 42 and 43 of the Industrial Relations (Northern Ireland) Order 1976 (payments by the Department on insolvency of employer) shall be amended as follows. 1976 NI 16

(2) In Article 42 (payment to employee of certain unpaid debts of employer), the following paragraph shall be substituted for paragraph (9)—

“(9) If the Department is satisfied that it does not require such a statement in order to determine the amount of the debt that was owed to the employee on the relevant date and remains unpaid, it may make a payment under this Article in respect of the debt without having received such a statement.”.

(3) In Article 43 (payment of unpaid contributions to occupational or personal pension scheme), the following paragraph shall be substituted for paragraph (9)—

“(9) If the Department is satisfied—

(a) that it does not require a statement under paragraph (7) in order to determine the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid; or

(b) that it does not require a certificate under paragraph (8) in order to determine the amounts payable, paid or deducted as mentioned in paragraphs (3)(a) and (c) and (5),

it may make a payment under this Article in respect of the contributions in question without having received such a statement or (as the case may be) such a certificate.”.

Recovery of insolvency payments made in respect of preferential debts

17.—(1) In Article 45 of the Industrial Relations (Northern Ireland) Order 1976 (transfer of rights and remedies relating to debt in respect of which payment made by the Department on insolvency of employer), the following paragraphs shall be substituted for paragraph (2)—

“(2) Where a debt or any part of a debt in respect of which the Department has made a payment in pursuance of Article 42 constitutes a preferential debt within the meaning of the Insolvency (Northern Ireland) Order 1989 for the purposes of any provision of that Order (including any such provision as applied by any order made under that Order) or any provision of the Companies (Northern Ireland) Order 1986 then, without prejudice to the generality of paragraph (1), there shall be included among the rights and remedies which become rights and remedies of the Department in accordance with that paragraph any right arising 1989 NI 19
1986 NI 6

under any such provision by reason of the status of the debt or that part of it as a preferential debt.

(2A) In computing for the purposes of any provision mentioned in paragraph (2) the aggregate amount payable in priority to other creditors of the employer in respect of—

- (a) any claim of the Department to be so paid by virtue of paragraph (2); and
- (b) any claim by the employee to be so paid made in his own right,

any claim falling within sub-paragraph (a) shall be treated as if it were a claim of the employee; but the Department shall be entitled, as against the employee, to be so paid in respect of any such claim of the Department (up to the full amount of the claim) before any payment is made to the employee in respect of any claim falling within sub-paragraph (b).”.

(2) The following paragraphs shall be inserted after paragraph (3) of that Article—

“(3A) Where the Department makes any such payment as is mentioned in paragraph (3) and the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes a preferential debt within the meaning of the Insolvency (Northern Ireland) Order 1989 for the purposes of any provision mentioned in paragraph (2) then, without prejudice to the generality of paragraph (3), there shall be included among the rights and remedies which become rights and remedies of the Department in accordance with that paragraph any right arising under any such provision by reason of the status of that sum (or that part of it) as a preferential debt.

1989 NI 19

(3B) In computing for the purposes of any provision referred to in paragraph (3A) the aggregate amount payable in priority to other creditors of the employer in respect of—

- (a) any claim of the Department to be so paid by virtue of paragraph (3A); and
- (b) any claim by the persons competent to act in respect of the scheme,

any claim falling within sub-paragraph (a) shall be treated as if it were a claim of those persons; but the Department shall be entitled, as against those persons, to be so paid in respect of any such claim of the Department (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within sub-paragraph (b).

(3C) Until the coming into operation of Article 346 of, and Schedule 4 to, the Insolvency (Northern Ireland) Order 1989 this Article shall have effect with the substitution of “—

- (a) Article 19 of the Bankruptcy Amendment (Northern Ireland) Order 1980; or 1980 NI 4
(b) Article 570 of, and Schedule 18 to, the Companies (Northern Ireland) Order 1986," 1986 NI 6

in—

- (a) paragraph (2) for the words from "the Insolvency (Northern Ireland) Order 1989 [1989 NI 19]" to "1986"; and
(b) paragraph (3A) for the words from "the Insolvency (Northern Ireland) Order 1989" to "paragraph (2)".

Orders

18.—(1) The Department shall consult the Equal Opportunities Commission for Northern Ireland before making—

- (a) an order under Article 4 which makes any amendment or repeal of any provision of an enactment; or
(b) an order under Article 8.

(2) An order of one of the following descriptions, namely—

- (a) such an order under Article 4 as is mentioned in paragraph (1)(a); or
(b) an order under Article 8(1)(a) which preserves the effect of any provision of an enactment,

shall not be made unless a draft of it has been laid before and approved by a resolution of the Assembly.

(3) Any order under this Order other than—

- (a) an order under Article 1(3); or
(b) an order to which paragraph (2) applies,

shall be subject to negative resolution.

(4) An order under this Order may contain such consequential or transitional provisions or savings as appear to the Department to be necessary or expedient.

Minor and consequential amendments, repeals, etc.

19.—(1) The enactments mentioned in Schedule 4 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The enactments mentioned in Schedule 5 are hereby repealed to the extent specified in the third column of that Schedule.

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

(3) The instruments mentioned in Schedule 6 are hereby revoked to the extent specified in the third column of that Schedule.

(4) The transitional provisions and savings contained in Schedule 7 shall have effect.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 6.

PROVISIONS CONCERNED WITH PROTECTION OF WOMEN AT WORK

Enactments

Sections 73, 85, 126 and 129 of the Factories Act (Northern Ireland) 1965. 1965 c. 20 (N.I.)

Statutory instruments

Regulation 3 of the Regulations dated 21st January 1907 (Manufacture of paints and colours). S.R. & O. 1907/17

Regulation 10 of the Regulations dated 12th August 1911 (Smelting of materials containing lead, the manufacture of red or orange lead, and the manufacture of flaked litharge). S.R. & O. 1911/752

Regulation 1(a)(i), (ii), (iv) and (vi) to (viii) of the Regulations dated 2nd January 1913 (Manufacture and decoration of pottery). S.R. & O. 1913/2

Regulation 1 of the Indiarubber Regulations 1922. S.R. & O. 1922/329

Regulation 5(2) of the Electric Accumulator Special Regulations (Northern Ireland) 1945. S.R. & O. (N.I.) 1945 No. 41

Parts IV and V of Schedule 1 to the Ionising Radiations Regulations (Northern Ireland) 1985. S.R. 1985 No. 273

Article 20(8) of the Air Navigation Order 1985 so far as relating to pregnancy. S.I. 1985/1643

Other instruments

Paragraph 118 of the Approved Code of Practice relating to the Control of Lead at Work Regulations (Northern Ireland) 1986 (approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978). S.R. 1986 No. 36
1978 NI 9

The following provisions of the medical standards contained in Merchant Shipping Notice No. M 1331 (issued for the purposes of Regulation 7 of the Merchant Shipping (Medical Examination) Regulations 1983), namely— S.I. 1983/808

(a) Part X so far as relating to gynaecological conditions; and

(b) Part XI.

SCHEDULE 2

Article 11.

REVOCATION, ETC. OF INSTRUMENTS REQUIRING DIFFERENT TREATMENT
OF CERTAIN EMPLOYEES

PART I

PROVISIONS REVOKED

Regulation 1(c), (d), (e) and (m) of the Regulations dated 2nd January 1913 (Manufacture and decoration of pottery). S.R. & O. 1913/2

Article 2 of the Order dated 5th October 1917 (Tin or terne plate factories). S.R. & O. 1917/1035

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

PART II

AMENDMENTS

- S.R. & O.
1905/1103 In Regulation 4(b) of the Regulations dated 17th October 1905 (Spinning by self-acting mules) omit "woman, young person, or".
- S.R. & O.
1913/2 In the Regulations dated 2nd January 1913 (Manufacture and decoration of pottery)—
 (a) in Regulation 11(o) omit the words from "provided" onwards; and
 (b) in Regulation 12(c) and (d) omit the words "by an adult male".
- In each of the following provisions, namely—
- S.R. & O. (N.I.)
1970 No. 136 (a) Regulation 5(c) of the Coal and Other Mines (Sanitary Conveniences) Regulations (Northern Ireland) 1970; and
- S.R. & O. (N.I.)
1970 No. 104 (b) Regulation 73(b) of the Miscellaneous Mines (General) Regulations (Northern Ireland) 1970,
- for "sanitary convenience provided at the mine for the use of females" substitute "water closet provided at the mine above ground".

Article 12.

SCHEDULE 3

REMOVAL OF RESTRICTIONS RELATING TO EMPLOYMENT OF YOUNG PERSONS

PART I

REPEALS RELATING TO RESTRICTIONS WITH RESPECT TO HOURS OF EMPLOYMENT AND HOLIDAYS

- 1946 c. 7 (N.I.) Sections 25 to 30 of the Shops Act (Northern Ireland) 1946 (special provisions as to employment of young persons).
- 1965 c. 20 (N.I.) The following provisions of the Factories Act (Northern Ireland) 1965—
 sections 86 to 94 (hours of employment and holidays of young persons);
 sections 96 to 108 and 110 to 113 (suspension of, and exceptions from, provisions as to hours of employment, etc.);
 section 114 (regulation of employment of young persons in certain occupations);
 section 138(1)(d) (posting of notices); and
 section 140(1)(d) (general registers).
- 1969 c. 6 (N.I.) Section 109 of the Mines Act (Northern Ireland) 1969 (hours of work and periods of employment).
- 1983 NI 4 Article 13 of the Quarries (Northern Ireland) Order 1983 (regulation of hours of employment and holidays).

PART II

REPEALS RELATING TO OTHER REQUIREMENTS

- The following provisions of the Factories Act (Northern Ireland) 1965—
 section 12(1)(a)(iii) (power to require medical supervision);
 section 72(1) (prohibition of employment of female young persons where certain processes are carried on); and
 section 117A (duty of factory occupier to give notice of employment of young persons).

Section 38(2) of the Children and Young Persons Act (Northern Ireland) 1968 (street trading). 1968 c. 34 (N.I.)

The following provisions of the Mines Act (Northern Ireland) 1969 [1969 c. 6 (N.I.)]—

section 106(2) (restriction on male young persons being employed below ground);

section 108 (training); and

section 110 (register of young persons employed).

Article 15(1)(a) of the Quarries (Northern Ireland) Order 1983 [1983 NI 4] (register of young persons employed).

PART III

AMENDMENT OF CERTAIN AGE LIMITS

Factories Act (Northern Ireland) 1965 (c. 20)

In section 115(1) (exemptions from provisions regulating hours of employment), for “of or over the age of sixteen” substitute “(other than children)”.

Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

In section 39(2) (penalties and legal proceedings in respect of general provisions as to employment) for “person under the age of eighteen” substitute “child”.

In section 40 (restriction on persons under 16 taking part in public performances)—

(a) in subsections (1), (3) and (4) for “person under the age of sixteen” substitute “child”;

(b) in subsections (2), (5)(b) and (6) for “person” wherever it occurs substitute “child”;

(c) in subsection (3) for “person’s” substitute “child’s” and for “persons under the age of sixteen” substitute “children”.

In section 41 (supplementary provisions as to licences under section 40)—

(a) in subsections (3) and (7)(a) for “person under the age of sixteen” substitute “child”;

(b) in subsection (9) for “person” substitute “child”.

In section 42 (prohibition on persons under 16 taking part in performances endangering life and limb)—

(a) for “person under the age of sixteen” substitute “child”; and

(b) for “such a person” substitute “a child”.

In section 43 (restrictions on training for performances of a dangerous nature)—

(a) in subsection (1)—

(i) for “person” in the first place where it occurs, substitute “child”;
and

(ii) for “person under the age of sixteen” substitute “child who has attained that age”; and

(b) in subsection (2), for “person who has attained the age of twelve but is under the age of sixteen” substitute “child who has attained the age of twelve”;

(c) in subsections (3), (4) and (6)(a) for "person" wherever it occurs substitute "child".

In section 45(1) and (2)(b) (powers of entry) for "person" wherever it occurs substitute "child".

Article 19(1).

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c. 19)

1.—(1) Section 42 (payments out of Redundancy Fund to employees) shall be amended as follows.

(2) After subsection (1) insert—

"(1A) In this Act "employer's payment", in relation to an employee, means—

- (a) a redundancy payment which his employer is liable to pay to him under Part II; or
- (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 21, liable to make to him on the termination of his contract of employment.

(1B) In relation to a case where, under section 14, 20 or 47, an industrial tribunal determines that an employer is liable to pay only part of a redundancy payment, the reference in subsection (1A)(a) to a redundancy payment shall be construed as a reference to that part of the redundancy payment."

(3) In subsection (2), for "section 40(1)" substitute "subsection (1A)".

(4) Omit subsection (4).

2. For section 44 substitute—

44.—(1) Where on an application to the Department for a payment under section 42 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an industrial tribunal—

- (a) any question as to the liability of the employer to pay the employer's payment; and
- (b) any question as to the amount of the sum payable in accordance with Schedule 7.

(2) For the purposes of any reference under this section an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy."

3. For section 46(4) (meaning of employer's payment) substitute—

"(4) In this Part "employer's payment" has the meaning given by section 42(1A) and (1B)."

4.—(1) Schedule 7 (calculation of payments out of Redundancy Fund) shall be amended as follows.

(2) In paragraph 1(2), for "section 40(5)" substitute "section 42(1B)".

"References to tribunal relating to payments out of fund.

(3) For paragraph 2 substitute—

“2.—(1) Where the employer’s payment is not a redundancy payment or part of a redundancy payment, the sum referred to in section 42(2) is a sum equal to—

- (a) the amount of the employer’s payment, or
- (b) the amount of the relevant redundancy payment,

whichever is less.

(2) The reference in sub-paragraph (1)(b) to the amount of the relevant redundancy payment is a reference to the amount of the redundancy payment which the employer would have been liable to pay to the employee if—

- (a) the order in force in respect of the agreement as mentioned in section 42(1A)(b) had not been made;
- (b) the circumstances in which the employer’s payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances;
- (c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee’s contract of employment is treated for the purposes of the agreement as having taken effect; and
- (d) in so far as the provisions of the agreement which relate to the following matters, that is to say—
 - (i) the circumstances in which the continuity of an employee’s period of employment is to be treated as broken, and
 - (ii) the weeks which are to count in computing a period of employment,

are inconsistent with the provisions of Schedule 1 as to those matters, those provisions of the agreement were substituted for those provisions of that Schedule.

(3) In sub-paragraph (2) “the agreement” means the agreement falling within section 42(1A)(b) by reference to which the employer’s payment is payable.”.

Factories Act (Northern Ireland) 1965 (c. 20)

5.—(1) In sections 123(2)(aa) and (3)(b), 124(2)(aa) and 125(2)(aa) for “sections 10A and 117A” substitute “section 10A”.

(2) In section 176(5) (application of provisions of Act to young persons employed outside factories) for the words from “the provisions” to “expressly provided” substitute “section 117 shall not apply”.

Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (NI 15)

6. In paragraph 16A(1) of Schedule 1 (discrimination required by public entertainment licences)—

- (a) at the beginning insert “Without prejudice to the generality of Article 3(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990,”; and
- (b) omit the words from “, apart from” to “authority),”.

SCHEDULE 5

Article 19(2).

REPEALS

PART I

REPEALS COMING INTO OPERATION TWO MONTHS AFTER ORDER IS MADE

Chapter or Number	Short Title	Extent of Repeal
1946 c. 7 (N.I.).	The Shops Act (Northern Ireland) 1946.	<p>In section 16(1) the words "Subject to the provisions of this Part of this Act regarding the employment of young persons".</p> <p>In section 16(2) the words ", not being a young person,".</p> <p>In section 18(1) the words "Subject to the provisions of this Part of this Act regarding the employment of young persons,".</p> <p>Sections 25 to 30.</p> <p>In section 34(4) the words ", other than the provisions of subsections (5) and (6) of section twenty-five of this Act,".</p> <p>In section 36(1)(a) the words "or young person".</p> <p>Section 38(2).</p> <p>In section 41(1) the definition of "young person".</p>
1965 c. 19 (N.I.).	The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.	<p>Sections 40 and 40A.</p> <p>Section 42(4).</p> <p>Section 57(2A) and (2B).</p> <p>Schedule 6.</p> <p>In Schedule 8 the entry relating to section 40.</p>
1965 c. 20 (N.I.).	The Factories Act (Northern Ireland) 1965.	<p>Section 12(1)(a)(iii).</p> <p>In section 21 the words "woman or", in both</p>

**THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)**

Chapter or Number	Short Title	Extent of Repeal
1966 c. 26 (N.I.).	The Office and Shop Premises Act (Northern Ireland) 1966.	<p>places where they occur.</p> <p>Section 72(1).</p> <p>Sections 86 to 94.</p> <p>Sections 96 to 108.</p> <p>Sections 110 to 114.</p> <p>Section 115(1)(a).</p> <p>Section 119(1)(f) (except the final "and") and (5).</p> <p>Section 124(2)(f).</p> <p>Section 138(1)(d).</p> <p>Section 140(1)(d).</p> <p>In section 176(4) the words from "except that" onwards.</p> <p>In section 17, subsection (3), in subsection (4) the words from "except when any" onwards, and subsection (5).</p>
1968 c. 34 (N.I.).	The Children and Young Persons Act (Northern Ireland) 1968.	<p>Section 38(2).</p> <p>In section 39(1) the words "or young person".</p>
1969 c. 4 (N.I.).	The Redundancy Rebates Act (Northern Ireland) 1969.	The whole Act.
1969 c. 6 (N.I.).	The Mines Act (Northern Ireland) 1969.	<p>In sections 42(1), 43 and 44 the word "male" wherever occurring.</p> <p>In section 93 the words "woman or young", in both places where they occur.</p> <p>Section 106(2).</p> <p>Sections 108 to 111.</p>
1976 NI 15.	The Sex Discrimination (Northern Ireland) Order 1976.	<p>In Article 10, paragraph (2)(f) and in paragraph (4) " , (f)".</p> <p>In Article 80 " , 17(2)(c)".</p>

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

Chapter or Number	Short Title	Extent of Repeal
1976 NI 16.	The Industrial Relations (Northern Ireland) Order 1976.	In Part II of Schedule 5, paragraphs 26 and 27.
1977 c. 22.	The Redundancy Rebates Act 1977.	The whole Act.
1983 NI 4.	The Quarries (Northern Ireland) Order 1983.	In Article 12(2) the words "or rules made under Article 13". Article 13. Article 15(1)(a). In Articles 20(1) and 22(2) the words "or of the rules made under Article 13".
1984 NI 9.	The Industrial Training (Northern Ireland) Order 1984.	In Schedule 3, paragraph 7.
1985 NI 15.	The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.	In paragraph 16A(1) of Schedule 1 the words from "apart from" to "authority",.
1986 NI 16.	The Redundancy Rebates (Northern Ireland) Order 1986.	Article 3. Article 5(1). In Schedule 2, paragraph 1.
1987 NI 9.	The Industrial Relations (Northern Ireland) Order 1987.	In Schedule 2, paragraph 3(3). In Schedule 3, paragraph 4(11).
1988 NI 13.	The Sex Discrimination (Northern Ireland) Order 1988.	Article 12.

THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)

PART II

**REPEALS COMING INTO OPERATION ON A DAY APPOINTED UNDER
ARTICLE 1(3)**

Chapter or Number	Short Title	Extent of Repeal
1965 c. 20 (N.I.).	The Factories Act (Northern Ireland) 1965.	In section 115(1) the words from "any of the following" to "that is to say", and paragraph (b) and the "(c)" immediately following it. Section 117A.
1969 c. 6 (N.I.).	The Mines Act (Northern Ireland) 1969.	Section 106(1).
1976 NI 15.	The Sex Discrimination (Northern Ireland) Order 1976.	Article 23(1).
1978 NI 9.	The Health and Safety at Work (Northern Ireland) Order 1978.	In Schedule 5, paragraph 7.

**THE EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NI) ORDER 1990
SI 1990/246 (NI 2)**

Article 19(3).

SCHEDULE 6

INSTRUMENTS REVOKED

Number	Title	Extent of Revocation
S.R. & O. 1905/1103.	Regulations dated 17th October 1905 (Spinning by self-acting mules).	In Regulation 4(b), the words "woman, young person, or".
S.R. & O. 1913/2.	Regulations dated 2nd January 1913 (Manufac- ture and decoration of pottery).	In Regulation 1, para- graphs (c), (d), (e) and (m). In Regulation 11(o) the words from "provided" onwards. In Regulation 12(c) and (d) the words "by an adult male".
S.R. & O. 1917/1035.	Order dated 5th October 1917 (Tin or terne plate factories).	Article 2.

SCHEDULE 7

Article 19(4).

TRANSITIONAL PROVISIONS AND SAVINGS

Sex discrimination

1. Nothing in Article 5 shall render unlawful any act done by any person if—

- (a) it was done before the coming into operation of that Article; or
- (b) it was done before the coming into operation of Article 11(5) and it was necessary for him to do it in order to comply with section 106(1) of the Mines Act (Northern Ireland) 1969.

1969 c. 6 (N.I.)

Redundancy payments: assimilation of age limits

2.—(1) The amendments made by Article 14 shall not have effect in relation to an employee in whose case the relevant date (as defined in sub-paragraph (2)) falls before the coming into operation of that Article.

(2) In sub-paragraph (1) “the relevant date” means the date which for the purposes of section 18(1) of the 1965 Act is the relevant date in the case of the employee by virtue of section 13(9) or (10), section 14(2) or section 16(2) of that Act.

Redundancy rebates

3.—(1) Nothing in this Order shall affect the continued operation of any provision of the 1965 Act for the purposes of, or in connection with, the payment of a redundancy rebate under section 40 of that Act in a case where—

- (a) a claim for the rebate has been made in accordance with regulations under section 40(4) before the coming into operation of Article 15; or
- (b) notwithstanding that such a claim has not been so made, the rebate is in respect of any payment falling within section 40(1)(a) or (b) in relation to which the relevant date (as defined in sub-paragraph (2)) falls before the coming into operation of Article 15.

(2) In sub-paragraph (1)(b) “the relevant date”—

- (a) in the case of a payment falling within section 40(1)(a), means the date which for the purposes of section 18(1) of the 1965 Act is the relevant date in relation to that payment by virtue of section 13(9) or (10), section 14(2) or section 16(2) of that Act; and
- (b) in the case of a payment falling within section 40(1)(b), means the date on which the termination of the employee's contract of employment is treated as having taken effect for the purposes of the agreement referred to in that provision.

Insolvency payments

4. The amendments made by Article 17 shall not have effect in relation to any payment made in pursuance of Article 42 or 43 of the Industrial Relations (Northern Ireland) Order 1976 in a case where the employer became insolvent before the coming into operation of Article 17.

1976 NI 16

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of certain provisions of the Employment Act 1989 (c. 38).

This Order—

- (a) makes provision for the equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions;
- (b) repeals or amends certain prohibitions or requirements relating to the employment of young persons and other categories of employees;
- (c) assimilates the age limits for men and women for the purposes of redundancy payments and abolishes redundancy rebates to employers; and
- (d) amends provisions relating to the payment out of the Redundancy Fund of certain debts due to employees in situations where the employer is insolvent.