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## STATUTORY INSTRUMENTS

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# 1997 No. 869

## The Race Relations (Northern Ireland) Order 1997

### PART IX

#### SUPPLEMENTAL

##### **District councils: general statutory duty**

**67.** Without prejudice to its obligation to comply with any other provision of this Order, it shall be the duty of a district council to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need—

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity, and good relations, between persons of different racial groups.

##### **Validity and revision of contracts**

**68.**—(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Order; or
- (b) it is included in furtherance of an act rendered unlawful by this Order; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Order.

(2) Paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against<sup>F1</sup> or harassment of,] a party to the contract, but the term shall be unenforceable against that party.

(3) On the application of any person interested in a contract to which paragraph (2) applies, a county court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice of the application (except where under county court rules notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(4) An order under paragraph (3) may include provision as respects any period before the making of the order.

(5) A term in a contract which purports to exclude or limit any provision of this Order is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(6) Paragraph (5) does not apply—

- (a) to a contract settling a complaint to which Article 52(1) applies where the contract is made with the assistance of the Labour Relations Agency; or
- (b) to a contract settling a complaint to which Article 52(1) applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which Article 54 applies.

(7) The conditions regulating compromise contracts under this Order are that—

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- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received<sup>[F2]</sup> advice from a relevant independent adviser] as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a<sup>[F3]</sup> contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.

<sup>[F4]</sup>(8) A person is a relevant independent adviser for the purposes of paragraph (7)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d<sup>F5</sup> if he is a person of a description specified in an order made by the Department.

(8A) But a person is not a relevant independent adviser for the purposes of paragraph (7)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (8)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (8)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (8)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(8B) In paragraph (8)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(8C) In paragraph (8)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(9) For the purposes of paragraph (8A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.]

<sup>[F6]</sup>(10) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of paragraph (6)(a) and
- (b) as being a contract settling a complaint if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but

- (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.]

<b>F1</b>	SR 2003/341
<b>F2</b>	1998 NI 8
<b>F3</b>	1998 NI 8
<b>F4</b>	1998 NI 8
<b>F5</b>	functions transf. by SR 1999/481
<b>F6</b>	1998 NI 8

### [<sup>F7</sup>Collective agreements and rules of undertakings

**68A.**—(1) This Article applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation to which Article 13 (trade organisations) applies, or by a body to which Article 14 (qualifying bodies) applies, for application to—
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this Article applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful on grounds of race or ethnic or national origins, by virtue of a provision referred to in Article 3(1B);
- (b) the term or rule is included or made in furtherance of an act which is unlawful on such grounds by virtue of such a provision; or
- (c) the term or rule provides for the doing of such an act.

(3) Paragraph (2) applies whether the agreement was entered into, or the rule made, before, on or after 19th July 2003; but in the case of an agreement entered into, or a rule made, before that date, that paragraph does not apply in relation to any period before that date.

(4) In this Article, and in Article 68B, “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.]

<b>F7</b>	SR 2003/341
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[<sup>F8</sup>**68B.**—(1) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of Article 68A if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of Article 68(2)(c), that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him, and

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- (ii) the act would be rendered unlawful on grounds of race or ethnic or national origins by a provision referred to in Article 3(1B) if done in relation to him in present circumstances.

(2) In the case of a complaint about—

(a) a term of a collective agreement made by or on behalf of—

(i) an employer;

(ii) an organisation of employers of which an employer is a member; or

(iii) an association of such organisations of one of which an employer is a member; or

(b) a rule made by an employer, within the meaning of Article 68A(1)(b);

paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(3) In the case of a complaint about a rule made by an organisation or body to which Article 68A(1)(c) applies, paragraph (1) applies to any person—

(a) who is, or is genuinely and actively seeking to become, a member of the organisation, or body;

(b) on whom the organisation, or body has conferred an authorisation or qualification, or

(c) who is genuinely and actively seeking an authorisation or qualification which the organisation, or body has power to confer.

(4) When an industrial tribunal finds that a complaint presented to it under paragraph (1) is well-founded the tribunal shall make an order declaring that the term or rule is void.

(5) An order under paragraph (4) may include provision as respects any period before the making of the order (but after 19th July 2003).

(6) The avoidance by virtue of Article 68A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely—

(a) such of the rights of the person to be discriminated against, and

(b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.]

**F8** SR 2003/341

### **Power to amend certain provisions of Order**

**69.**—(1) The Department may by order—

(a) amend Article 5;

(b) amend or repeal Article 11;

(c) amend Part II, III or IV so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 6(1) or (2), 21(1), 22 or 25;

(d) amend Article 12(1) or 25(1)(a) so as to alter the number of partners or members specified in that provision.

(2) The Department may by order provide that Articles 10(5) and 11(3) shall have effect—

- (a) with the substitution for the words from “exploration” to “natural resources” of the words “any activity falling within [F9]section 11(2) of the Petroleum Act 1998] ”; and
  - (b) with the insertion after “1964” of the words “ or specified under [F9]section 10(8) of the Petroleum Act 1998] ”.
- (3) The Department shall not make an order under paragraph (1) unless a draft of the order has been laid before and approved by a resolution of the Assembly.
- (4) The Department shall not lay before the Assembly the draft of an order under paragraph (1) unless it has consulted the Commission about the contents of the draft.

**F9** 1998 c.17

### **Regulations and orders**

- 70.**—(1) All regulations made by the Department under this Order shall be subject to negative resolution.
- (2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to an order under Article 48(2)(a); but any document purporting to be such an order shall be received in evidence and shall, unless the contrary is proved, be deemed to be made by the Department.
- (3) Except as provided by paragraph (4), all other orders made by the Department under this Order shall be subject to negative resolution.
- (4) Paragraph (3) does not apply to an order under—
- (a) Article 1(2) (commencement orders); or
  - (b) Article 10(5) or 69(1) (orders subject to approval in draft by Assembly).
- (5) Regulations and orders under this Order may contain incidental, supplementary, consequential and transitional provisions.

### **Application to Crown etc.**

- 71.**—(1) This Order applies—
- (a) to an act done by or for purposes of a Minister of the Crown or government department; or
  - (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,
- as it applies to an act done by a private person.
- (2) Parts II and IV apply to—
- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or
  - (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
  - (c) service in the armed forces,
- as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

[F10(2A) Paragraphs (1) and (2) do not apply in relation to the provisions mentioned in paragraph (2B).

(2B) Articles 20A to 20D bind the Crown and the other provisions of this Order so far as they relate to those provisions shall be construed accordingly (including, in particular, references to employment in Part IV).]

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(3) Paragraphs (1)<sup>[F10]</sup> to (2B)] have effect subject to<sup>[F11]</sup> Articles 72A and 72B].

(4) Paragraph (2) of Article 10 and paragraph (4) of Article 27 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft such as is mentioned in sub-paragraph (a) or (b) of the paragraph in question; and Article 10(3) shall apply accordingly.

(5) Nothing in this Order shall—

- (a) invalidate any rules (whether made before or after the making of this Order) restricting employment in the service of the Crown or by any public body prescribed for the purposes of this paragraph by regulations made by the Department of Finance and Personnel to persons of particular birth, nationality, descent or residence; or
- (b) render unlawful the publication, display or implementation of any such rules, or the publication of advertisements stating the gist of any such rules.

In this paragraph “employment” includes service of any kind, and “public body” means a body of persons, whether corporate or unincorporate, carrying on a service or undertaking of a public nature.

(6) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Order as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under this Order section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(7) This paragraph applies to any complaint by a person ( “the complainant”) that another person—

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 6; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

(8) No complaint to which paragraph (7) applies shall be presented to an industrial tribunal under Article 52 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council has made a determination with respect to the complaint.

(9) The Secretary of State may by regulations make provision enabling a complaint to which paragraph (7) applies to be presented to an industrial tribunal under Article 52 in such circumstances as may be prescribed by the regulations, notwithstanding that paragraph (8) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(10) Where a complaint is presented to an industrial tribunal under Article 52 by virtue of regulations under paragraph (9), the service redress procedures may continue after the complaint is so presented.

(11) Regulations under paragraph (9) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(12) In this Article—

“armed forces” means any of the naval, military or air forces of the Crown; “service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the

House of Commons Disqualification Act 1975;

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957; and

“statutory body” means a body set up by or in pursuance of a statutory provision and “statutory office” means an office so set up.

**F10** SR 2003/341

**F11** 2000 c.32

## Government appointments outside Article 6

**72.**—(1) This Article applies to any appointment by a Minister of the Crown or government department to an office or post where Article 6<sup>[F12]</sup> or 72ZA] does not apply in relation to the appointment.

(2) In making the appointment, and in making the arrangements for determining who should be offered the office or post, the Minister of the Crown or government department shall not do an act which would be unlawful under Article 6 if the Crown were the employer for the purposes of this Order.

**F12** SR 2003/341

## <sup>[F13]</sup>Other office holders

**72ZA.**—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this Article applies, to discriminate against a person on the grounds of race or ethnic or national origins—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this Article applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person on the grounds of race or ethnic or national origins—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this Article applies, to discriminate against him on grounds of race or ethnic or national origins—

- (a) in the terms of the appointment;

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- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
  - (c) by terminating the appointment; or
  - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is unlawful for a relevant person, in relation to an office or post to which this Article applies, to subject to harassment a person—
- (a) who has been appointed to the office or post;
  - (b) who is seeking or being considered for appointment to the office or post; or
  - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).
- (5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of Article 7A (exception for genuine occupational requirement); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of Article 7A to refuse to offer the person such employment.
- (6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—
- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
  - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
  - (c) the benefits relate to training.
- (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
  - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (8) This Article applies to—
- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
  - (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or a government department,
- but not a political office or a case where Article 6 (applicants and employees), 9 (contract workers), 12 (partnerships) or 26 (barristers) applies, or would apply but for the operation of any other provision of this Order.
- (9) For the purposes of paragraph (8)(a) the holder of an office or post—
- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
  - (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—



- (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.
- (10) In this Article—
- (a) appointment to an office or post does not include election to an office or post;
  - (b) “political office” means—
    - (i) any office of the House of Commons held by a member of it,
    - (ii) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
    - (iii) any office of the Assembly held by a member of it,
    - (iv) any office of a council within the meaning of section 1(3) of the Local Government Act (Northern Ireland) 1972 held by a member of it, or
    - (v) any office of a political party.
  - (c) “relevant person”, in relation to an office or post, means—
    - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
    - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit; and
    - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
  - (d) references to making a recommendation include references to making a negative recommendation; and
  - (e) references to refusal include references to deliberate omission.]

F13 SR 2003/341

<sup>F14</sup>**The Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve**

**72A.—**(1) For the purposes of Part II, the holding of the office of constable as a police officer shall be treated as employment—

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
  - (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.
- (2) For the purposes of Article 32—
- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000—

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- (a) any compensation, damages or costs awarded against the Chief Constable in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by the Chief Constable for the settlement of any claim made against him under this Order if the settlement is approved by the Policing Board.
- (4) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay—
- (a) any compensation, damages or costs awarded in proceedings under this Order against a police officer;
  - (b) any costs incurred and not recovered by a police officer in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.
- (5) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (4).
- (6) This Article—
- (a) applies in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996 or<sup>F15</sup> section 23 of the Police Act 1997 as it applies in relation to a police officer;
  - (b) applies in relation to a police officer who by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998 is under the direction and control of the Police Ombudsman for Northern Ireland as if—
    - (i) in paragraph (1) the reference to the Chief Constable included a reference to the Ombudsman;
    - (ii) in paragraphs (2), (4) and (5) the references to the Chief Constable were references to the Ombudsman.]

**F14** 2000 c.32

**F15** prosp. subst. by 2005 c. 15

### [<sup>F16</sup>Other police bodies

**72B.**—(1) For the purposes of Part II, the holding of the office of constable otherwise than as a police officer shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
  - (b) by the police authority as respects any act done by it in relation to that office or the holder of it.
- (2) For the purposes of Article 32—
- (a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—

- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Order if the settlement is approved by the police authority.
- (4) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- (a) any compensation, damages or costs awarded in proceedings under this Order against a person under the direction and control of the chief officer of police;
  - (b) any costs incurred and not recovered by such a person in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).
- <sup>F17</sup>(6) In this Article—
- “chief officer of police” means—
- (a) in relation to the National Criminal Intelligence Service, the Director General of that Service;
  - (b) in relation to any other body of constables, the person who has the direction and control of the body in question;
- “police authority” means—
- (a) in relation to the National Criminal Intelligence Service, the Service Authority for the National Criminal Intelligence Service;
  - (b) in relation to any other body of constables, the authority by which the members of the body are paid;
- “police fund” means—
- (a) in relation to the National Criminal Intelligence Service, the service fund under section 16 of the Police Act 1997;
  - (b) in relation to any other body of constables, money provided by the authority by which the members of the body are paid.
- (7) Nothing in paragraphs (3) to (6) applies in relation to the police.]

**F16** 2000 c. 32

**F17** prosp. subst. by 2005 c. 15

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