STATUTORY INSTRUMENTS

# 1990 No. 246 (N.I. 2)

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

- - - - - - *14th February 1990*

**Modifications etc. (not altering text)**

**C1** Order: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 1 Pt. 2** (with art. 9(2))

## 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[F1], 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[F2];

(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[F1].

**F1** fully exercised by SRs 1990/277; 1997/385 (C.23)
**F2** 1965 c. 20 (N.I.)

### 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 e#ect 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[F3];

"the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976[F4];

"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.

**F3** 1954 c. 33 (N.I.)
**F4** 1976 NI 15

## 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 e#ect 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 e#ect 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 e#ect of any provision in so far as it requires the application by any person of a**[**F5 provision, criterion or practice**]** falling within **[**F5**[**F6Article 3A(2)(b)**]** or 5(1)(b)(i)**]** of the 1976 Order (indirect 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**[**F5 provision, criterion or practice**]** in question to be **[**F7proportionate as mentioned in Article 3A(2)(d) or 5(1)(b)(iii)**]****[**F5of that Order**]**; and

(b) the said **[**F8Article 3A(2)(d) or 5(1)(b)(iii)**]** shall accordingly have e#ect in relation to the**[**F5 provision, criterion or practice**]** 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.

**F5** SR 2001/282
**F6** Words in art. 3(3) substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191), regs. 1(1), **21(a)**
**F7** Words in art. 3(3)(a) substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191), regs. 1(1), **21(b)**
**F8** Words in art. 3(3)(b) substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191), regs. 1(1), **21(c)**

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

**4** [F9]**.**—(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 e#ect 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.

**F9** functions transf. by SR 1999/481

## 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 e#ect 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[F10]) 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 e#ect for the purpose of protecting women as regards—

(i) pregnancy or maternity; or

(ii) other circumstances giving rise to risks specifically a#ecting 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 e#ect 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 e#ect 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.".

**F10** 1978 NI 9

**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 e#ect 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 e#ect 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** [F11]**.**—(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 e#ect 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;

[F12](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).

**F11** functions transf. by SR 1999/481
**F12** 1986 NI 3