



# Employment Act 1989

## 1989 CHAPTER 38

### *Removal of restrictions and other requirements relating to employment*

#### **9 Repeal or modification of provisions requiring different treatment of different categories of employees**

- (1) In sections 42(1), 43 and 44 of the Mines and Quarries Act 1954 (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.
- (2) 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.
- (3) Section 124(1) of that Act (prohibition on employment of woman in job requiring a significant proportion of the employee’s time to be spent underground) shall cease to have effect.
- (4) In section 20 of the Factories Act 1961 (prohibition on cleaning of machinery by any woman or young person), the words “woman or” shall be omitted in both places where they occur.
- (5) In section 17 of the Offices, Shops and Railway Premises Act 1963 (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.
- (6) In Schedule 2 to this Act—
  - (a) the provisions of subordinate legislation listed in Part I (which require different treatment of different categories of employees) shall cease to have effect; and

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

## **10 Removal of restrictions relating to employment of young persons**

- (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 Secretary of State considers it appropriate to do so, he may by order—
  - (a) repeal or amend any statutory provision in consequence of subsection (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;
  - (c) amend any statutory provision falling within 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 Secretary of State 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 subsection (3) (apart from a repeal effected by virtue of paragraph (d) of that subsection) shall affect any statutory provision relating to the employment of persons under school-leaving age.
- (5) Any reference in subsection (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 section—
  - “school-leaving age” means—
    - (a) in relation to England and Wales, the upper limit of compulsory school age for the purposes of the Education Act 1944;
    - (b) in relation to Scotland, the upper limit of school age for the purposes of the Education (Scotland) Act 1980; and

(c) in relation to Northern Ireland, the upper limit of compulsory school age for the purposes of the Education and Libraries (Northern Ireland) Order 1986; and

“statutory provision” means a provision of an Act or of subordinate legislation (and references to the repeal of a statutory provision shall be construed accordingly).

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

(1) Any requirement to wear a safety helmet which (apart from this section) 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 section) 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 subsection (2) “associated requirement” means any requirement (other than one falling within subsection (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 subsection (1) or (2)—

- (a) 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; and
- (b) in Scotland no action for reparation shall be brought against him by any person in respect of any such injury, loss or damage.

(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 subsection (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 (or, in Scotland, in an action for reparation), 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 subsection (5) causes the death of the Sikh, and

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- (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 subsection, are recoverable in tort (or, in Scotland, in an action for reparation) in respect of that injury shall not exceed the amount of any damages which would (apart from that subsection) be so recoverable in respect of the Sikh's death.

- (7) In this section—

“building operations” and “works of engineering construction” have the same meaning as in the Factories Act 1961;

“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; and

“statutory provision” means a provision of an Act or of subordinate legislation.

- (8) In this section—

(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.

- (9) This section shall have effect in relation to any relevant construction site within the territorial sea adjacent to Great Britain as it has effect in relation to any construction site within Great Britain.

- (10) In subsection (9) “relevant construction site” means any construction site where there are being undertaken any building operations or works of engineering construction which are activities falling within Article 7(a) of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 1989.

## **12 Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets**

- (1) Where—

(a) any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and

(b) at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,

then, for the purpose of determining whether the application of the requirement or condition to the Sikh constitutes an act of discrimination falling within section 1(1) (b) of the Race Relations Act 1976 (indirect racial discrimination), the requirement or condition shall be taken to be one which cannot be shown to be justifiable as mentioned in sub-paragraph (ii) of that provision.

- (2) Any special treatment afforded to a Sikh in consequence of section 11(1) or (2) above shall not be regarded for the purposes of the Race Relations Act 1976 as giving rise, in relation to any other person, to any discrimination falling within section 1 of that Act.

- (3) Subsections (7) to (10) of section 11 above shall apply for the purposes of this section as they apply for the purposes of that section.