
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 261

**The Employment Equality (Age)
Regulations (Northern Ireland) 2006**

PART 4

GENERAL EXCEPTIONS FROM PARTS 2 AND 3

Exception for statutory authority

28. Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision.

Exception for national security etc

29. Nothing in Part 2 or 3 shall render unlawful any act done by any person if—

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of the act is justified by that purpose.

Effect of certificates by Secretary of State

30.—(1) This regulation applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Part 2 or 3; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
 - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
 - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with rules under section 91 of the Northern Ireland Act 1998⁽¹⁾, appeal against the certificate to the tribunal established under that section.

(3) If on an appeal under paragraph (2) that tribunal determines—

- (a) that the act specified in the certificate was done for the certified purpose; and
- (b) that the doing of the act was justified by that purpose,

the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If—

- (a) the claimant does not appeal against the certificate; or

(b) the certificate is upheld on appeal,
the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this regulation as they apply in relation to appeals under section 90 of that Act.

(6) In this regulation—

“claim” includes complaint; and

“claimant” includes complainant.

Exceptions for positive action

31.—(1) Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with—

(a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or

(b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work.

(2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 19 (trade organisations) in or in connection with—

(a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or

(b) encouraging only members of the organisation who are of a particular age or age group to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts.

(3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 19 (trade organisations) in or in connection with encouraging only persons of a particular age or age group to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members.

Exception for retirement

32.—(1) This regulation applies in relation to an employee within the meaning of Article 3 of the 1996 Order and a person in Crown employment.

(2) Nothing in Part 2 or 3 shall render unlawful the dismissal of a person to whom this regulation applies at or over the age of 65 where the reason for the dismissal is retirement.

(3) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with Articles 130ZA to 130ZH of the 1996 Order⁽²⁾.

(2) Articles 130ZA to 130ZH are inserted by regulation 53(1) of, and paragraph 3(4) of Schedule 7 to, these Regulations.

Exception for the national minimum wage

33.—(1) Nothing in Part 2 or 3 shall render it unlawful for a relevant person (“A”) to be remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where—

- (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and
- (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998⁽³⁾.

(2) Nothing in Part 2 or 3 shall render it unlawful for an apprentice who is not a relevant person to be remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work.

(3) In this regulation—

“apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999⁽⁴⁾, is to be treated as employed under a contract of apprenticeship;

“relevant person” means a person who qualifies for the national minimum wage⁽⁵⁾ (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998 or at a different rate).

Exception for provision of certain benefits based on length of service

34.—(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C.

(2) Where B’s length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, fulfils a business need of his undertaking (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).

(3) In calculating a worker’s length of service for these purposes, A shall calculate—

- (a) the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the worker, for example, in terms of effort, skills and decision making); or
- (b) the length of time the worker has been working for him in total;

and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service.

(4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him—

- (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him;

(3) [1998 c. 39](#). The hourly rate is prescribed in regulation 11 of the National Minimum Wage Regulations 1999 (S.I. [1999/584](#)) and that rate has most recently been amended by regulation 2 of the National Minimum Wage Regulations (Amendment) Regulations 2005 (S.I. [2005/2019](#))

(4) S.I. [1999/584](#); Regulation 12(3) was substituted by S.I. [2000/1989](#) and amended by S.I. [2004/1930](#)

(5) A person qualifies for the national minimum wage if he is a person who – (a) is a worker; (b) is working, or ordinarily work, in the United Kingdom under a contract; and (c) has ceased to be of compulsory school age; see section 1(2) of the National Minimum Wage Act 1998

- (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers' absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so;
- (c) A may discount any period of time during which the worker was present at work ("the relevant period") where—
 - (i) the relevant period preceded a period during which the worker was absent from work, and
 - (ii) in all the circumstances (including the length of the worker's absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to discount the relevant period.
- (5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if—
 - (a) that period is treated as a period of employment with A for the purposes of the 1996 Order by virtue of the operation of Article 14 of that Order; or
 - (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to "relevant service" within the meaning of Article 190 of the 1996 Order.
- (6) In paragraph (5)—
 - (a) the reference to being made redundant is a reference to being dismissed by reason of redundancy for the purposes of the 1996 Order;
 - (b) the reference to Article 190 of the 1996 Order is a reference to that Article as modified by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order (Northern Ireland) 1999⁽⁶⁾.
- (7) In this regulation, "benefit" does not include any benefit awarded to a worker by virtue of his ceasing to work for A.

Exception for provision of enhanced redundancy payments to employees

- 35.—**(1) Nothing in Part 2 or 3 shall render it unlawful for an employer—
- (a) to give a qualifying employee an enhanced redundancy payment which is less in amount than the enhanced redundancy payment which he gives to another such employee if both amounts are calculated in the same way;
 - (b) to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (a) or (c)(i) of the definition of qualifying employee below.
- (2) In this regulation—
- "the appropriate amount" has the same meaning as in Article 197 of the 1996 Order⁽⁷⁾;
 - "enhanced redundancy payment" means a payment of an amount calculated in accordance with paragraph (3) or (4);
 - "qualifying employee" means—
 - (a) an employee who is entitled to a redundancy payment by virtue of Article 170 of the 1996 Order;

⁽⁶⁾ S.R. 1999 No. 409: see paragraph 2 of Part I of Schedule 2

⁽⁷⁾ Paragraphs (4), (5) and (8) of Article 197 of the 1996 Order are repealed by regulation 53(2) of, and Schedule 8 to, these Regulations

- (b) an employee who would have been so entitled but for the operation of Article 190 of the 1996 Order;
 - (c) an employee who agrees to the termination of his employment in circumstances where, had he been dismissed—
 - (i) he would have been a qualifying employee by virtue of paragraph (a) of this definition; or
 - (ii) he would have been a qualifying employee by virtue of paragraph (b);
- “a redundancy payment” has meaning given by Part XII of the 1996 Order;
- “a week’s pay” has the meaning given by Chapter IV of Part I of the 1996 Order.
- (3) For an amount to be calculated in accordance with this paragraph it must be calculated in accordance with Article 197(1) to (3) of the 1996 Order.
- (4) For an amount to be calculated in accordance with this paragraph—
- (a) it must be calculated as in paragraph (3);
 - (b) however, in making that calculation, the employer may do one or both of the following things—
 - (i) he may treat a week’s pay as not being subject to a maximum amount or as being subject to a maximum amount above the amount laid down in Article 23(1) of the 1996 Order⁽⁸⁾;
 - (ii) he may multiply the appropriate amount allowed for each year of employment by a figure of more than one;
 - (c) having made the calculation as in paragraph (3) (whether or not in making that calculation he has done anything mentioned in sub-paragraph (b)) the employer may increase the amount thus calculated by multiplying it by a figure of more than one.
- (5) For the purposes of paragraphs (3) and (4), the reference to “the relevant date” in Article 197(1)(a) of the 1996 Order is to be read, in the case of a qualifying employee who agrees to the termination of his employment, as a reference to the date on which that termination takes effect.

Exception for provision of life assurance cover to retired workers

- 36.**—(1) Where a person (“A”) arranges for workers to be provided with life assurance cover after their early retirement on grounds of ill health, nothing in Part 2 or 3 shall render it unlawful—
- (a) where a normal retirement age applied in relation to any such workers at the time they took early retirement, for A to arrange for such cover to cease when such workers reach that age;
 - (b) in relation to any other workers, for A to arrange for such cover to cease when the workers reach the age of 65.
- (2) In this regulation, “normal retirement age”, in relation to a worker who has taken early retirement, means the age at which workers in A’s undertaking who held the same kind of position as the worker held at the time of his retirement are normally required to retire.

(8) Article 23(1) was amended by paragraph 4 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. [2002/2836 \(N.I. 2\)](#)) and paragraph 2(2) of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. [2003/2902 \(N.I. 15\)](#)). The amount laid down in Article 23(1) may be increased or decreased by order made by the Department for Employment and Learning under Article 33 of the Employment Relations (Northern Ireland) Order 1999 (S.I. [1999/2790 \(N.I. 9\)](#)); see [S.R. 2006 No. 75](#)