

1994 No. 325

EDUCATION

**Education and Libraries (Defined Activities) (Exemptions)
Order (Northern Ireland) 1994**

Made 17th August 1994

Coming into operation 26th September 1994

The Department of Education, in exercise of the powers conferred on it by Articles 2(3), 4(8) and 17(3) of the Education and Libraries (Northern Ireland) Order 1993(a) and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Education and Libraries (Defined Activities) (Exemptions) Order (Northern Ireland) 1994 and shall come into operation on 26th September 1994.

(2) In this Order—

“the Order” means the Education and Libraries (Northern Ireland) Order 1993;

“relevant work” means work which would, but for this Order, fall within either of the defined activities mentioned in paragraph (a) (cleaning of buildings) or (c) (maintenance of ground) of Article 4(1) of the Order;

“specified board” means a board listed in the Schedule;

and for the purposes of this Order a full-time employee is an employee whose average weekly working hours (including any overtime worked) in the immediately preceding financial year did not exceed 39 hours.

Activities not to be treated as defined activities

2.—(1) An activity falling within Article 4(1) of the Order shall not, if carried out by a specified board, be treated as a defined activity, so long as the condition mentioned in paragraph (2) is fulfilled.

(2) The condition mentioned in paragraph (1) is that the amount estimated by the board as the gross cost of carrying out the activity in question through its direct labour organisation or a similar organisation in the immediately preceding financial year, did not exceed £100,000.

(3) For the purposes of paragraph (2) the gross cost of carrying out any activity shall—

(a) S.I. 1993/2810 (N.I. 12) Article 2(3) is cited because it contains a definition of the “Department” *see* S.I. 1986/594 (N.I. 3) Article 2(2)

- (a) include such proportion of the board's administrative expenses, other than expenses that would be incurred by the board whether the activity were carried out by it or by another person, as is properly attributable to the carrying out of the activity;
- (b) exclude the cost of any work which is treated as carried out by the board by virtue of Article 3 of the Order; and
- (c) exclude the cost of any work which by virtue of Article 3 does not fall within a defined activity.

3. An activity falling within Article 4(1) of the Order shall not, if carried out by a specified board, be treated as a defined activity so long as it constitutes work carried out through an employee who is required as a condition of his employment to live in particular accommodation for the better performance of his duties and the work forms part of his duties.

4.—(1) An activity falling within Article 4(1)(a) or (c) of the Order shall not, if carried out by a specified board, be treated as a defined activity so long as each of the conditions set out in paragraphs (2), (3) and (4) are fulfilled.

(2) The first condition is that the relevant work is carried out on the premises of a school where the board has for the time being delegated to the Board of Governors of that school the management of the school's budget share by or under a scheme prepared in accordance with Part V of the Education Reform (Northern Ireland) Order 1989(a).

(3) The second condition is that, before the beginning of the financial year in question, the board has estimated that not more than the equivalent of three full-time employees will be required to carry out, on the premises of that school and in that financial year—

- (a) any relevant work;
- (b) any work which would be relevant work but for Article 3; and
- (c) any work which would be relevant work but for Article 4(5) of the Order.

(4) The third condition is that the board has made the estimate referred to in paragraph (3) after having regard to—

- (a) the advice of the Board of Governors of the school concerned; and
- (b) the number of persons required in previous financial years to carry out the work mentioned in that paragraph.

Transitional provisions

5. In relation to work mentioned in Article 4(3) carried out in the financial year beginning in 1994, this Order shall have effect as if, in that paragraph—

(a) S.I. 1989/2406 (N.I. 20) to which there are amendments not relevant to the subject matter of this Order.

- (a) for the words "before the beginning of the financial year in question" there were substituted the words "before the work is treated by virtue of this Order as not being a defined activity"; and
- (b) for the words "in that financial year" there were substituted the words "in the financial year beginning in 1994".

Sealed with the Official Seal of the Department of Education on 17th August 1994.

(L.S.)

A. McVeigh

Assistant Secretary

Specified Boards

1. Belfast
2. North-Eastern
3. South-Eastern
4. Southern
5. Western

EXPLANATORY NOTE

(This note is not part of the Order.)

Article 6(3) of the Education and Libraries (Northern Ireland) Order 1993 (“the Order”) empowers the Department of Education to specify in regulations a date on or after which, by virtue of Article 6(1) a board must not carry out functional work falling within a defined activity so specified without subjecting the work to competition. Dates are specified for this purpose in the Education and Libraries (Competition in Functional Work) Regulations (Northern Ireland) 1994 (S.R. 1994 No. 323).

“Functional work” is defined in Article 3 of the Order.

This Order specifies three situations in which work carried out by a specified board will not be treated as falling within a defined activity for the purposes of Article 4(8) of the Order. The Schedule to this Order lists the specified boards.

The first exemption applies where the estimated gross cost to a board carrying out the activity through its direct labour organisation or similar organisation in the preceding financial year did not exceed £100,000 (Article 2). The second applies where work is carried out by an employee of a board who is required to live in particular accommodation for the better performance of his duties and the work forms part of his duties (Article 3). The third exempts in any financial year, cleaning of buildings and maintenance of ground (as defined in paragraphs 1 and 3 of Schedule 1 to the 1993 Order) so long as the work is carried out by a board at a school where the management of the school’s budget share has been delegated to the Board of Governors under Part V of the Education Reform (Northern Ireland) Order 1989 and so long as the board has estimated that no more than the equivalent of three full-time employees will be required to carry out the work in that year, having regard to the advice of the Board of Governors and the number of persons previously required to carry out the work (Article 4).

Article 5 makes transitional provisions for work carried out in the financial year beginning in 1994.

A full-time employee is defined as one whose average weekly working hours (including overtime) do not exceed 39 hours (Article 1(2)).