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## STATUTORY INSTRUMENTS

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# 1976 No. 1042

## Sex Discrimination (Northern Ireland) Order 1976

### PART VIII

#### ENFORCEMENT

##### *Enforcement in employment field*

#### **Jurisdiction of industrial tribunals**

**63.**—(1) A complaint by any person (“the complainant”) that another person (“the respondent”) —

- (a) has committed an act of discrimination<sup>[F1]</sup> or harassment] against the complainant which is unlawful by virtue of Part III, or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination<sup>[F1]</sup> or harassment] against the complainant,<sup>[F2]</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III,]

may be presented to an industrial tribunal.

(2) Paragraph (1) does not apply to a complaint under Article 16(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any statutory provision.

<sup>[F3]</sup>(3) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998)—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part VI of that Order; or
- (b) such a complaint has been made, but the proceedings under that Order have not been disposed of,

the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken under the Fair Employment and Treatment (Northern Ireland) Order 1998 in respect of the act have been disposed of.]

**F1** SR 2005/426

**F2** [Art. 63\(1\)\(c\)](#) and preceding word inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), [reg. 6](#)

**F3** 1998 NI 21

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**Changes to legislation:** Sex Discrimination (Northern Ireland) Order 1976, Cross Heading: Enforcement in employment field is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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#### [<sup>F4</sup>Burden of proof: industrial tribunals

**63A.**—(1) This Article applies to any complaint presented under Article 63 to an industrial tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed an act of discrimination[<sup>F5</sup> or harassment] against the complainant which is unlawful by virtue of Part III, or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination[<sup>F5</sup> or harassment] against the complainant,[<sup>F6</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III,]

the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.]

**F4** SR 2001/282

**F5** SR 2005/426

**F6** [Art. 63A\(2\)\(c\)](#) and preceding word inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), [reg. 7](#)

*Art. 64 rep. by 1996 NI 18*

#### Remedies on complaint under Article 63

**65.**—(1) Where an industrial tribunal finds that a complaint presented to it under Article 63 is well-founded the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court to pay to the complainant if the complaint had fallen to be dealt with under Article 66;
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.

[<sup>F7</sup>(1A) In applying Article 66 for the purposes of paragraphs (1)(b), no account shall be taken of paragraph (3) of that Article.

(1B) As respects an unlawful act of discrimination falling within [<sup>F8</sup>Article 3A] or Article 5(1)(b), if the respondent proves that the [<sup>F9</sup> provision, criterion or practice] in question was not applied with the intention of treating the complainant unfavourably on the ground of his sex[<sup>F10</sup> or (as the case may be) fulfilment of the condition in Article 5(2)], an order may be made under paragraph (1)(b) only if the industrial tribunal—

- (a) makes such order under paragraph (1)(a) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.]

*Para. (2) rep. by SR 1993/478*

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1)( c), then, if they think it just and equitable to do so,—

(a) the tribunal may<sup>F11</sup> . . . increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)( b), or

(b) if an order under paragraph (1)( b)<sup>F7</sup> was not made], the tribunal may make such an order.

(4) Where compensation falls to be awarded in respect of any act both under the provisions of this Article and under any other statutory provision, an industrial tribunal shall not award compensation under this Article in respect of any loss or other matter which has been taken into account under that other statutory provision by the court in awarding compensation in an action in respect of that act.

**F7** SR 1996/418

**F8** Words in art. 65(1B) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **19**

**F9** SR 2001/282

**F10** [2004 c.33](#)

**F11** SR 1993/478

**Changes to legislation:**

Sex Discrimination (Northern Ireland) Order 1976, Cross Heading: Enforcement in employment field is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- Instrument am. (prosp.) by [1998 c. 17 s.50Sch.4 para.13](#)
- Instrument am. (prosp.) by [1998 c. 32 s.74\(1\)Sch.4 para.12](#)
- Instrument rev. in pt. (saving) (prosp.) by [1998 c. 32 s.74\(2\)\(3\)Schs.56](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 46 s. 22](#)
- Act amended by [1996 c. 46 s. 22](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch.3 rev. (prosp.) by [1998 c. 47 ss .99 100\(2\) Sch.13 para.2\(4\). Sch.15](#)
- Sch.6 para.2 rev. (prosp.) by [1998 c. 47 s. 100\(2\)Sch.15](#)
- art.19(6)(aa) added (prosp.) by [1997 c. 50 s.134\(1\)Sch.9 para.37](#)
- art.19(6)(aa) added (prosp.) by [1997 c. 50 s.134\(1\)Sch.9 para.37](#)
- art.54(2)(3)(4) rev. (prosp.) by [1998 c. 47 ss .99 100\(2\) Sch.13 para.2\(3\)\(b\). Sch. 15](#)