
STATUTORY INSTRUMENTS

1998 No. 3162 (N.I. 21)

**The Fair Employment and Treatment
(Northern Ireland) Order 1998**

16th December 1998

F1

F1 functions transf. by SR 1999/481

Modifications etc. (not altering text)

C1 Order: functions of Lord Chancellor transferred to Department of Justice (except functions which are transferred by virtue of paragraph 32 of Schedule 4 to the Northern Ireland Act 2009) (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), [Sch. 17 para. 50](#) (with arts. 15(6), 28-31); S.I. 2010/977, [art. 1\(2\)](#)

PART I

INTRODUCTORY

Title and commencement

Title and commencement

1.—(1) This Order may be cited as the Fair Employment and Treatment (Northern Ireland) Order 1998.

(2) This Order comes into operation on such day or days as the Secretary of State may by order appoint^{F2}.

F2 fully exercised by SR 1999/81; 1999/355

Interpretation

General interpretation

2.—(1) Subject to Articles 102 and 103, the Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Northern Ireland Assembly.

(2) In this Order—

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- “access” shall be construed in accordance with paragraphs (7) and (8);
- “act” includes a deliberate omission;
- “advertisement” includes every form of advertisement or notice, whether to the public or not;
- “affirmative action” has the meaning given in Article 4;
- “the Agency” means the Labour Relations Agency;
- “benefits”^[F3], except in Article 25A,] includes all opportunities, services and facilities and, in particular, includes opportunities for training, transfer or promotion, for betterment of any kind (including more attractive terms or conditions of work) or for any financial advantage (including bonuses, advances of money and preferential terms for acquiring property of any kind);
- “the Commission” means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998;
- “complainant” means a person making a complaint that unlawful discrimination^[F3] or unlawful harassment] has been committed against him;
- “complaint” means a complaint of unlawful discrimination^[F3] or unlawful harassment] made to the Tribunal under Article 38;
- “confer”, in relation to a qualification, includes renew and extend;
- “contract” includes any contract, whether in writing or oral, express or implied;
- “costs” includes expenses;
- “the Department” means the Department of Economic Development;
- ^[F3]“detriment” does not include conduct of a nature such as to constitute harassment;]
- “discrimination” and “discriminate” shall be construed in accordance with Article 3;
- “employer” (except in Part VII) means—
- (a) in relation to a person who is seeking employment, anybody who has employment available;
 - (b) in relation to a person employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, the person entitled to the benefit of the contract;
 - (c) in relation to a person who has ceased to be in employment, his former employer;
- and “employee”, correspondingly, means (except in that Part) such a person as is first mentioned in sub-paragraph (a), (b) or (c) of this definition;
- “employment” (except in Part VII) means employment under—
- (a) a contract of service or apprenticeship; or
 - (b) a contract personally to execute any work or labour;
- “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;
- “employment in Northern Ireland” shall be construed in accordance with Article 6;
- “equality of opportunity” shall be construed in accordance with Article 5;
- “government department” means a Northern Ireland department or a department of the Government of the United Kingdom;
- ^[F3]“harassment” shall be construed in accordance with Article 3A;]
- “member”

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- (a) in relation to a vocational organisation, includes (except in Article 23) a person seeking to become a member and a person who has ceased to be a member; and
- (b) in relation to such an organisation (other than an organisation of workers or employers) also includes any person belonging to a class of person recognised by the organisation as having any particular status in connection with an employment or occupation for the purposes of which the organisation exists, including students and associates,

and “membership” shall be construed accordingly;

“Northern Ireland” includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

“Northern Ireland Minister” includes the First Minister and deputy First Minister acting jointly;

“notice” means notice in writing;

“occupation” means any trade, business, profession or vocation, but not any employment;

“occupation in Northern Ireland” shall be construed in accordance with Article 6;

“organisation” includes any society or association, whether corporate or unincorporate;

“practices” includes procedures and arrangements;

“premises” includes land of any description;

“the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal;

[^{F3}“provision, criterion or practice” includes requirement or condition;]

“qualification” includes authorisation, recognition, registration, enrolment, approval and certification;

[^{F3}“religious belief” in relation to discrimination or harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) includes any religion or similar philosophical belief;]

“the respondent”

(a) in relation to a complaint, has the meaning given by Article 38(1); and

(b) in relation to a claim under Article 40, has the meaning given by Article 40(1);

“school” has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986;

“statutory body” means a body established by a statutory provision;

“statutory office” means an office established by a statutory provision;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“training” includes any form of education or instruction, except that in Articles 5(4)(b)(ii), 11(1)(e) and 24, it does not include education provided by—

- (a) a school;
- (b) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 or an institution providing further education in respect of which grants are paid under Article 5(1) of that Order;
- (c) a college of education within the meaning of the Education and Libraries (Northern Ireland) Order 1986; or
- (d) a university;

“the Tribunal” means the Fair Employment Tribunal for Northern Ireland;

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“unlawful discrimination” shall be construed in accordance with Article 3(7);

[^{F3}“unlawful harassment” shall be construed in accordance with Article 3A(3);]

“the Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal;

“vocational organisation” means—

- (a) an organisation of workers;
- (b) an organisation of employers;
- (c) any other organisation of persons engaged in a particular employment or occupation, or employments or occupations of any class, for the purposes of which the organisation exists.

[^{F3}“vocational training” and “vocational guidance” have the same meaning as in Article 3 of Council Directive 2000/78/EC;]

(3) In this Order references to a person's religious belief or political opinion include references to—

- (a) his supposed religious belief or political opinion; and
- (b) the absence or supposed absence of any, or any particular, religious belief or political opinion.

(4) In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.

(5) For the purposes of this Order a person is seeking employment if he is available for employment, whether or not he is aware of the existence of an opportunity for any particular employment.

(6) References in this Order to submitting a person for consideration for employment include references to making available to an employer in any way relevant particulars relating to him.

(7) References in this Order to the affording by any person of access to benefits are not limited to benefits provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits provided by any other person (the “actual provider”).

(8) Where by any provision of this Order the affording by any person of access to benefits in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Order of the actual provider.

(9) Subject to paragraph (10), in this Order references (however expressed) to acts done or to power to do any acts include references to acts done or power to do the acts outside Northern Ireland.

(10) Paragraph (9)—

- (a) is without prejudice to Article 6 or any order under paragraph (3) of that Article;
- (b) is subject to any other provision of this Order which is by its express terms limited to acts done in Northern Ireland; and
- (c) does not apply to references to acts which may be the subject of criminal proceedings under this Order.

(11) References in this Order to a contract include references to a contract which is not governed by the law of Northern Ireland.

(12) References in this Order to the Crown are to the Crown in right of the Government of the United Kingdom and in right of the Government of Northern Ireland.

F3 SR 2003/520

“Discrimination” and “unlawful discrimination”

3.—(1) In this Order “discrimination” means—

- (a) discrimination on the ground of religious belief or political opinion; or
- (b) discrimination by way of victimisation;

and “discriminate” shall be construed accordingly.

(2) A person discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of [F4 a provision of this Order, other than a provision to which paragraph (2A) applies,] if—

- (a) on either of those grounds he treats that other less favourably than he treats or would treat other persons; or
- (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—
 - (i) which is such that the proportion of persons of the same religious belief or of the same political opinion as that other who can comply with it is considerably smaller than the proportion of persons not of that religious belief or, as the case requires, not of that political opinion who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the religious belief or political opinion of the person to whom it is applied; and
 - (iii) which is to the detriment of that other because he cannot comply with it.

[F4(2A) A person also discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of any provision referred to in paragraph (2B) if—

- (a) on either of those grounds he treats that other less favourably than he treats or would treat other persons; or
- (b) he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—
 - (i) which puts or would put persons of the same religious belief or of the same political opinion as that other at a particular disadvantage when compared with other persons;
 - (ii) which puts that other at that disadvantage; and
 - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.

(2B) The provisions mentioned in paragraph (2A) are—

- (a) Part III;
- (b) Article 27, so far as it applies to vocational training or vocational guidance;
- (c) Article 32; and
- (d) Part V, in its application to the provisions referred to in sub-paragraphs (a) to (c).]

(3) A comparison of the cases of persons of different religious belief or political opinion under paragraph (2)[F4 or (2A)] must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) A person (“A”) discriminates by way of victimisation against another person (“B”) in any circumstances relevant for the purposes of this Order if—

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- (a) he treats B less favourably than he treats or would treat other persons in those circumstances; and
 - (b) he does so for a reason mentioned in paragraph (5).
- (5) The reasons are that—
- (a) B has—
 - (i) brought proceedings against A or any other person under this Order; or
 - (ii) given evidence or information in connection with such proceedings brought by any person or any investigation under this Order; or
 - (iii) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or
 - (iv) otherwise done anything under or by reference to this Order in relation to A or any other person; or
 - (b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.
- (6) Paragraph (4) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.
- (7) For the purposes of this Order a person commits unlawful discrimination against another if—
- (a) he does an act^{F4} other than an act of harassment] in relation to that other which is unlawful by virtue of any provision of Part III or IV; or
 - (b) he is treated by virtue of any provision of Part V as doing such an act.

F4 SR 2003/520

[^{F5}“Harassment” and “unlawful harassment”

3A.—(1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) where, on the ground of religious belief or political opinion, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.

(3) For the purposes of this Order a person subjects another to unlawful harassment if he engages in conduct in relation to that other which is unlawful by virtue of any provision mentioned in Article 3(2B).]

F5 SR 2003/520

“Affirmative action”

4.—(1) In this Order “affirmative action” means action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community in Northern Ireland by means including—

- (a) the adoption of practices encouraging such participation; and

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(b) the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation.

(2) In the application of this Article for the purposes of Part VII, references to employment are references to employment within the meaning of that Part.

“Equality of opportunity”

5.—(1) In this Order “equality of opportunity” means equality of opportunity between persons of different religious beliefs.

(2) For the purposes of this Order a person of any religious belief has equality of opportunity with a person of any other religious belief if, being—

(a) a person who is seeking employment or is in employment; or

(b) a person who is seeking to become engaged in, or is engaged in, any occupation,

he has in any circumstances the same opportunity of a kind mentioned in paragraph (4) as that other person has or would have in those circumstances, due allowance being made for any material difference in their suitability.

(3) For the purposes of paragraph (2), a person is not to be treated as not having the same opportunity as another person has or would have by reason only of anything lawfully done in pursuance of affirmative action.

(4) The kinds of opportunity referred to in paragraph (2) are—

(a) in relation to an employment, the opportunity to be considered, and to be submitted for consideration, for the employment and to have and to hold it on any terms, with access to all benefits connected with it and without being subjected to any detriment; and

(b) in relation to an employment or an occupation—

(i) the opportunity to become, and remain, on any terms a member of any vocational organisation which exists for purposes of the employment or the occupation (or for purposes of employments or occupations of any class which includes the employment or occupation), with access to all benefits of membership and without being subjected to any detriment; and

(ii) where services in connection with training for the employment are provided by a person other than the employer, or where services in connection with training for the occupation are provided by any person, the opportunity to have those services on any terms, with access to all benefits connected with them; and

(iii) the opportunity to have conferred on him, and to hold, on any terms any qualification which is needed for, or facilitates, his engagement in the employment or the occupation.

(5) Any reference in this Order to the promotion of equality of opportunity includes a reference to the promotion of affirmative action and, accordingly, any reference to action for promoting equality of opportunity includes a reference to affirmative action.

“Employment in Northern Ireland” and “occupation in Northern Ireland”

6.—(1) For the purposes of this Order, employment is to be regarded as being employment in Northern Ireland^[F6] if the employee—

^[F6](a) does his work wholly or partly in Northern Ireland; or

(b) does his work wholly outside Northern Ireland and paragraph (1A) applies.]

^[F6](1A) This paragraph applies if—

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- (a) the employer has a place of business at an establishment in Northern Ireland;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Northern Ireland—
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.]

[^{F7}(2) The reference to "employment" in paragraph (1) includes—

- (a) employment on board a ship registered at a port of registry in Northern Ireland; and
- (b) employment on aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.]

[^{F6}(3) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department may by order provide that—

- (a) paragraph (1) shall have effect as if the references to Northern Ireland in sub-paragraphs (a) and (b) included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964, or any part of such an area, in which the law of Northern Ireland applies; and
- (b) paragraph (2) shall have effect as if the last reference to Northern Ireland included such an area, or any part of such an area.]

(4) An order under paragraph (3) may provide that, in relation to employment to which the order applies, this Order is to have effect with such modifications as are specified in the order.

(5) In this Article references to the work an employee does include—

- (a) in relation to a person who is seeking employment, references to the work he would do if employed; and
- (b) in relation to a person who has ceased to be in employment, references to the work he did when employed.

(6) This Article has effect for construing references in this Order to a person's being engaged, or seeking to become engaged, in an occupation in Northern Ireland as if references in this Article to employment were references to an occupation and references to an employee were references to a person engaged, or seeking to become engaged, in an occupation.

(7) In the application of this Article for the purposes of Part VII, references to employment are references to employment within the meaning of that Part.

F6 SR 2003/520

F7 SR 2000/8

PART II

FUNCTIONS OF THE EQUALITY COMMISSION

Principal functions of Commission

General duty of Commission

7. It shall be the duty of the Commission—

- (a) to promote equality of opportunity in Northern Ireland;

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- (b) to promote affirmative action;
- (c) to work for the elimination of unlawful discrimination^[F8] and unlawful harassment]; and
- (d) to keep under review the working of this Order and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending this Order,

and for the purposes of discharging that duty the Commission shall have the functions conferred on it by this Order.

F8 SR 2003/520

Educational and advisory functions

8.—(1) In order to assist the Commission in discharging its duty under Article 7 the Commission may—

- (a) establish services for giving advice on matters connected with equality of opportunity;
- (b) provide training courses;
- (c) hold conferences;
- (d) undertake research which appears to the Commission to be necessary or expedient for the purposes of its functions; and
- (e) disseminate (subject to the safeguard in Article 18(1)) information about the Commission's activities or anything to which those activities relate;

or it may arrange for, or assist (financially or otherwise), any of those things to be done.

(2) The Commission may advise the Department on—

- (a) any matter relating to the duty of the Commission under Article 7; or
- (b) any other matter specified by the Department.

(3) The Commission may make charges for training or other facilities or services made available by it under paragraph (1).

Codes of practice

9.—(1) The Commission shall continue to maintain a code of practice containing such practical guidance as the Commission thinks fit for the promotion of equality of opportunity, including the elimination of discrimination^[F9] and harassment] which is unlawful by virtue of any provision of Part III.

(2) Where the Commission in carrying out its functions under this Order is considering whether or not action is required for promoting equality of opportunity, it shall have such regard to the recommendations contained in the code of practice under paragraph (1) as it considers proper in all the circumstances.

(3) The Commission may issue a code of practice containing such practical guidance as the Commission thinks fit for the elimination of discrimination^[F9] and harassment] which is unlawful by virtue of any provision of Part IV.

(4) Part I of Schedule 1 shall apply in relation to the issue of a code of practice under paragraph (3) and Part II of that Schedule shall apply in relation to all codes of practice under this Article.

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Identification of patterns and trends of employment, etc.

10.—(1) It shall be the duty of the Commission to identify and keep under review patterns and trends of employment in Northern Ireland and of occupations in Northern Ireland for the purposes of—

- (a) considering whether they reveal the existence or absence of equality of opportunity; and
- (b) assisting the Commission in forming an opinion about—
 - (i) the manner in which equality of opportunity can best be achieved; or
 - (ii) where such equality is absent, the reasons for its absence.

(2) It shall also be the duty of the Commission to keep itself informed about proceedings on complaints under Article 38.

Investigation of practices

11.—(1) The Commission may conduct the investigations mentioned in paragraph (2) for the purpose of assisting it in considering what, if any, action for promoting equality of opportunity ought to be taken by any of the following persons, that is to say—

- (a) any employer;
- (b) any person who is empowered by virtue of any statutory provision to select or nominate another person for employment by a third person;
- (c) any employment agency;
- (d) any vocational organisation;
- (e) any person who provides services in connection with training for employment in any capacity or for a particular employment (not being services provided by the employer of a person who is seeking to obtain or is receiving those services) or in connection with training for a particular occupation; and
- (f) any person who has power to confer a qualification that is needed for, or facilitates, engagement in employment in any capacity, or in a particular employment or occupation.

(2) The investigations referred to in paragraph (1) are investigations—

- (a) into the composition, by reference to religious beliefs, of any of the following classes of person (or any class of person within such a class), that is to say—
 - (i) the employees of, or other persons who have applied for employment by, any employer or employers of any class;
 - (ii) the persons who have applied for or obtained the services of any employment agency;
 - (iii) the members of, or other persons who have applied for membership of, any vocational organisation or such an organisation of any class;
 - (iv) the persons who have sought (or on whose behalf there have been sought) or who have obtained the services of a person such as is mentioned in paragraph (1)(e); or
 - (v) the persons who have applied to have, or have had, conferred on them any qualification such as is mentioned in paragraph (1)(f); and
- (b) into practices—
 - (i) affecting the recruitment, admission to membership or access to benefits of persons belonging to any class referred to in sub-paragraph (a) or the terms of employment or membership or provision of benefits applicable to such persons;
 - (ii) involving any detriment to such persons; or

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(iii) affecting the conferring or holding of any qualification such as is mentioned in paragraph (1)(f),

including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the class of persons in question at that time.

(3) Schedule 2 has effect with respect to the conduct of investigations under this Article.

Undertakings or directions for promoting equality of opportunity

Undertaking following investigation under Article 11

12.—(1) The following provisions of this Article apply where, following an investigation under Article 11, the Commission is of the opinion that any of the persons mentioned in paragraph (1) of that Article ought to take action for promoting equality of opportunity.

(2) The Commission shall use its best endeavours—

- (a) to ensure that the person concerned takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate; and
- (b) where appropriate, to secure a satisfactory written undertaking by him that such action will be taken.

(3) Where the Commission asks the person concerned for an undertaking, on such terms as appear satisfactory to the Commission, to take such action as is mentioned in paragraph (2)(a), then—

- (a) if the undertaking is not given, the Commission shall serve on the person concerned a notice containing directions such as are mentioned in Article 14(1); and
- (b) if the undertaking, although given, is not complied with, the Commission shall either—
 - (i) serve on him such a notice containing such directions (which shall supersede the undertaking); or
 - (ii) make an application to the Tribunal under Article 16 for enforcement of the undertaking.

(4) Paragraph (3) does not apply in any case where the Commission decides that no further action by it is appropriate.

Voluntary undertakings

13.—(1) Any of the persons mentioned in Article 11(1) may give a written undertaking to the Commission if the Commission informs him—

- (a) that, in exercising its functions under this Order, the Commission has formed the opinion that he ought to take action for promoting equality of opportunity; or
- (b) that it appears to the Commission from any decision of the Tribunal in proceedings under Part VI, or from any evidence given in such proceedings, that he ought to take such action.

(2) An undertaking under this Article shall be in such terms as appear satisfactory to the Commission for the purpose of ensuring that the person giving it takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate.

(3) If an undertaking given by a person under this Article is not complied with, the Commission shall either—

- (a) serve on him a notice containing directions (which shall supersede the undertaking) such as are mentioned in Article 14(1); or
- (b) make an application to the Tribunal under Article 16 for enforcement of the undertaking.

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(4) Paragraph (3) does not apply in a case where the Commission decides that no further action by it is appropriate.

(5) Paragraph (3) does not apply in relation to an undertaking given by any of the authorities specified in paragraph (1) of Article 95, but where an undertaking given under this Article by such an authority is not complied with the Commission shall send a report of the circumstances of the failure to comply with it to the person to whom a report under paragraph (2) of that Article following an investigation relating to the authority would be sent.

Directions under Articles 12 and 13

14.—(1) The directions contained in a notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for promoting equality of opportunity, and the directions may in particular include—

- (a) directions for the abandonment, or for the modification in accordance with any instructions given in the directions, of any practice or for the substitution or adoption of new practices specified by the Commission; and
- (b) such directions as the Commission considers necessary to ensure that other directions are duly carried out,

but the terms of the directions contained in a notice under Article 12(3)(b)(i) or 13(3)(a) shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking which they supersede.

(2) The directions contained in a notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) shall not require any person—

- (a) to apply a^{F10} provision, criterion or practice] described in paragraph (1) of Article 75; or
- (b) to do any act described in Article 76(1).

(3) A notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) shall inform the person on whom it is served of the right of appeal against the directions which is conferred by Article 15.

(4) The Commission, on the written application of the person on whom a notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) is served, may—

- (a) revoke all of the directions; or
- (b) modify the directions in accordance with the application—
 - (i) by revoking any of them; or
 - (ii) by substituting new directions for all or any of them,

and, in substitution for any directions which are revoked under sub-paragraph (a), may accept from that person an undertaking such as is mentioned in Article 12(2)(b) or 13(2).

(5) The Commission shall serve notice of the revocation or modification on the person concerned.

(6) The directions—

- (a) are binding on the person concerned (except to the extent that they are quashed, or other directions are substituted for them, by the Tribunal under Article 15); and
- (b) are enforceable only in accordance with Article 16.

F10 SR 2003/520

Appeals and legal proceedings in relation to undertakings and directions

Appeal to Tribunal against directions under Article 12 or 13

15.—(1) Where under Article 12(3) or 13(3)(a), the Commission serves on a person a notice containing directions (not being directions substituted for others in accordance with an application made by him under Article 14(4)), he may within 21 days from the date of service appeal to the Tribunal against the directions.

(2) The appeal may be brought on any of the following grounds—

- (a) that in all the circumstances it is unreasonable to expect the appellant to comply with the directions;
- (b) that in all the circumstances the directions are not appropriate for promoting equality of opportunity; or
- (c) that the appellant is already affording equality of opportunity and taking any appropriate action to promote equality of opportunity and the directions are, therefore, unnecessary.

(3) On hearing the appeal the Tribunal may—

- (a) dismiss the appeal; or
- (b) quash the directions or any of them; or
- (c) substitute for the directions or any of them such other directions (of a kind that the Commission could have given) as the Tribunal considers reasonable and appropriate in all the circumstances.

(4) Directions substituted under paragraph (3)(c) are binding on the appellant and are enforceable only in accordance with Article 16.

Order of Tribunal to enforce undertaking or directions

16.—(1) Where—

- (a) an undertaking to take action for promoting equality of opportunity—
 - (i) which has been given to the Commission under Article 12(2) or 13 and has not been superseded by directions given by the Commission; or
 - (ii) which has been given to the Commission under Article 14(4),
has not been complied with within such period as the Commission considers reasonable;
- (b) directions given by the Commission or substituted by the Tribunal under Article 15 for directions given by the Commission have not been complied with within such period as the Commission considers reasonable; or
- (c) steps have not been taken to the Commission's satisfaction within such period as the Commission considers reasonable to comply with the undertaking or directions,

the Commission may, subject to paragraph (2), make an application to the Tribunal under this Article for enforcement of the undertaking or directions.

(2) An application for the enforcement of directions shall not be made—

- (a) until the end of the period of 21 days within which an appeal may be brought to the Tribunal under Article 15; or
- (b) if such an appeal is brought, until—
 - (i) the appeal is abandoned; or
 - (ii) the appeal is determined and the period within which notice of an appeal to the Court of Appeal under Article 90 may be given has expired; or

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- (c) if notice of an appeal to the Court of Appeal under that Article is given within that period, until the appeal is abandoned or determined.
- (3) On an application under paragraph (1) the Tribunal—
- (a) may make such order as it thinks fit for the purpose of giving effect to the undertaking or directions; and
- (b) whether or not it makes such an order, may order that the whole or part of the undertaking or directions shall cease to have effect.
- (4) An order under paragraph (3)(a)—
- (a) shall specify the steps to be taken by the person by whom the undertaking was given or to whom the directions were given;
- (b) may specify the time within which each step is to be taken; and
- (c) may require a specified person to attend before the Tribunal at a specified time to report to the Tribunal on the extent to which those steps have been taken.
- (5) The terms of an order under paragraph (3)(a) (except so far as it requires attendance before the Tribunal) shall be such as, in the opinion of the Tribunal, are not substantially more onerous than the terms of the undertaking or directions.
- (6) An order under paragraph (3)(a) shall not require any person—
- (a) to apply a^{F11} provision, criterion or practice] described in paragraph (1) of Article 75; or
- (b) to do any act described in Article 76(1).
- (7) The Commission—
- (a) is entitled to appear and be heard when a person attends before the Tribunal in pursuance of an order under paragraph (3)(a); and
- (b) may itself apply to the Tribunal for the enforcement of such an order.
- (8) Subject to paragraphs (5) and (6), the Tribunal may at any time revoke or vary the terms of an order under paragraph (3)—
- (a) on an application by the Commission or by the person in relation to whom the order was made; or
- (b) where a person attends before the Tribunal in pursuance of an order under paragraph (3) (a) or on an application by the Commission under paragraph (7)(b).

F11 SR 2003/520

Failure to comply with order of Tribunal

17.—(1) Paragraph (3) applies where the Tribunal determines that a person (in this Article referred to as “the respondent”)—

- (a) has failed to comply with a requirement to attend before the Tribunal included in an order under Article 16(3)(a); or
- (b) has failed to comply to the satisfaction of the Tribunal with any term included in such an order by virtue of Article 16(4)(a) or (b).

(2) The Tribunal shall not make a determination under paragraph (1) until the end of the period within which notice of an appeal to the Court of Appeal under Article 90 against the order in question may be given or, if notice of such an appeal is given within that period, until the appeal is abandoned or determined.

(3) Where this paragraph applies, the President or Vice-President may—

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- (a) certify the failure to the High Court; or
 - (b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £40,000.
- (4) Where the President or Vice-President has certified a failure under paragraph (3)(a), the High Court may deal with the respondent as if the relevant order of the Tribunal had been an order of the High Court.
- (5) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under paragraph (3)(b) as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).
- (6) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in paragraph (3)(b) such other sum as appears to it to be justified by the change.
- (7) In paragraph (6) “the relevant date” means—
- (a) in relation to the first order under that paragraph, the coming into operation of this Article; and
 - (b) in relation to each subsequent order, the last occasion when the sum specified in paragraph (3)(b) was altered.
- (8) The Department shall pay into the Consolidated Fund any sums received in respect of penalties under this Article.

Restriction on disclosure of information

Restriction on disclosure of information

- 18.**—(1) No information in the Commission's possession which discloses, or from which there can be deduced, the religious belief of any identifiable individual shall, without the written consent of that individual, be disclosed by a person who is, or has been, a member or officer of the Commission to a person who is not associated with the Commission, except so far as such disclosure—
- (a) is necessary or expedient for the proper discharge of the functions of the Commission or is necessary to comply with any obligation imposed by or under any statutory provision (including this Order); or
 - (b) is made for the purpose of, or in connection with—
 - (i) any actual or prospective proceedings before the Tribunal or an industrial tribunal; or
 - (ii) any actual or prospective civil or criminal proceedings before a court.
- (2) For the purposes of paragraph (1) a person is associated with the Commission if—
- (a) he is a member or officer of the Commission; or
 - (b) his services have been made available to the Commission for the purpose of the exercise of any of its functions.
- (3) Paragraph (4) applies to any information supplied to the Commission—
- (a) in the course of an investigation under Article 11 or 71; or
 - (b) in pursuance of a requirement under Article 67.
- (4) No information to which this paragraph applies shall be disclosed by a person who is, or has been, a member or officer of the Commission to a person who is not a member or officer of the Commission, except so far as such disclosure—
- (a) is relevant for the purposes of Article 8(1) or 71(4) of this Order or paragraph 5 of Schedule 8 to the Northern Ireland Act 1998 and is not prohibited by paragraph (1);

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- (b) is made as mentioned in paragraph (1)(b); or
 - (c) is permitted by paragraph (5) or required by paragraph (6).
- (5) Where it is necessary or expedient to do so for the proper discharge of the functions of the Commission, a member or officer of the Commission may—
- (a) disclose to an employer any information in the Commission's possession which relates to his employees or to other persons who have applied for employment by him;
 - (b) disclose to a principal (within the meaning of Article 20) any information in the Commission's possession which relates to contract workers whose services are or have been available to him;
 - (c) disclose to any person who is empowered by virtue of any statutory provision to select or nominate another person for employment by a third person any information in the Commission's possession which relates to a person who has applied for the employment in question;
 - (d) disclose to an employment agency any information in the Commission's possession which relates to a person who has applied for or obtained the services of the agency;
 - (e) disclose to a vocational organisation any information in the Commission's possession which relates to members of that organisation;
 - (f) disclose to a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, any information in the Commission's possession which relates to a person who has sought, or on whose behalf it has been sought, to obtain those services, or who has obtained those services; or
 - (g) disclose to a person who has power to confer a qualification such as is mentioned in Article 25 any information in the Commission's possession which relates to a person who has applied to have, or has had, that qualification conferred on him.
- (6) The Commission shall supply to the Department any information in the Commission's possession, the supply of which is, in the opinion of the Department, necessary for the proper discharge of the Department's functions.
- (7) Any person who discloses any information in contravention of any provision of this Article is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) It is a defence for a person charged with contravening paragraph (1) or (4) to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as a member or officer of the Commission.

PART III

[^{F12}DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD]

F12 SR 2003/520

[^{F13}Discrimination and harassment in the employment field]

F13 SR 2003/520

F14 . . . applicants and employees

19.—(1) It is unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland,—

- (a) where that person is seeking employment—
 - (i) in the arrangements the employer makes for the purpose of determining who should be offered employment; or
 - (ii) in the terms on which he offers him employment; or
 - (iii) by refusing or deliberately omitting to offer that person employment for which he applies; or
- (b) where that person is employed by him—
 - (i) in the terms of employment which he affords him; or
 - (ii) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or
 - (iii) by dismissing him or by subjecting him to any other detriment.

[^{F14}(1A) It is unlawful for an employer, in relation to employment by him in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.]

(2) Paragraph (1)(b) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public comprising the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

[^{F14}(3) In paragraph (1)(b)(iii) reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.]

F14 SR 2003/520

F15 . . . contract workers

20.—(1) This Article applies to any work for a person (“the principal”) which is available to be done by individuals (“contract workers”)—

- (a) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal; and
- (b) who, if they were instead employed by the principal to do that work, would be in his employment in Northern Ireland.

(2) It is unlawful for the principal, in relation to work to which this Article applies, to discriminate against a contract worker—

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- (a) in the terms on which he allows him to do that work; or
- (b) by not allowing him to do it or continue to do it; or
- (c) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

[^{F15}(2A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.]

(3) Paragraph (2)(c) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

F15 SR 2003/520

[^{F16}**Office-holders etc.**

20A.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this Article applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this Article applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this Article applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this Article applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of Article 70 and paragraph (2)

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does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of Article 70 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This Article applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,

but not a political office or a case where Article 19, 20, 21, 26 or 32 applies, or would apply but for the operation of any other provision of this Order.

(9) For the purposes of paragraph (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this Article—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
 - (i) any office of the House of Commons held by a member of it,
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
 - (iii) any office of the Assembly held by a member of it,
 - (iv) any office of a district council held by a member of it, or

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- (v) any office of a political party.
- (c) “relevant person”, in relation to an office or post, means—
 - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit; and
 - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.]

F16 SR 2003/520

^{F17} . . . **persons with statutory power to select employees for others**

21.—[^{F17}(1)] It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person,^{F17} . . .

- (a) by refusing or deliberately omitting to select or nominate him for employment; or
- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

[^{F17}(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment.]

F17 SR 2003/520

^{F18} . . . **employment agencies**

22.—(1) It is unlawful for an employment agency to discriminate against a person,^{F18} . . .

- (a) in the terms on which the agency offers to provide any of its services; or
- (b) by refusing or deliberately omitting to provide any of its services; or
- (c) in the way it provides any of its services.

[^{F18}(1A) It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment a person to whom it provides such services or who requests the provision of such services.]

(2) References in [^{F18} paragraphs (1) and (1A)] to the services of an employment agency include guidance on careers and any other services related to employment.

(3) [^{F18}Paragraph (1)] does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person concerned.

(4) An employment agency shall not be subject to any liability under [^{F18} paragraph (1)] if it proves—

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(a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful; and

(b) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

F18 SR 2003/520

[^{F19}Vocational organisations

23.—(1) It is unlawful for a vocational organisation to discriminate against a person—

(a) who is not a member of the organisation—

(i) in the terms on which it is prepared to admit him to membership of the organisation; or

(ii) by refusing to accept, or deliberately not accepting, his application for membership; or

(b) who is a member of the organisation—

(i) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or

(ii) by depriving him of membership, or varying the terms on which he is a member; or

(iii) by subjecting him to any other detriment.

(2) It is unlawful for a vocational organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.]

F19 SR 2003/520

^{F20} . . . persons providing training services

24.—(1) It is unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation,^{F20} . . . to discriminate against another person—

(a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf—

(i) by refusing or deliberately omitting to provide those services; or

(ii) in the terms on which the person offers to provide those services; or

(b) where that other person is receiving those services—

(i) in the way the person provides those services; or

(ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them; or

(iii) by withdrawing those services from him or varying the terms on which they are provided; or

(iv) by subjecting him to any other detriment.

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[^{F20}(1A) It is unlawful for a person who provides services in connection with training to which paragraph (1) applies, to subject to harassment a person to whom he provides such services or who is seeking to obtain such services.]

(2) In [^{F20} paragraphs (1) and (1A)] “services”, in relation to training for employment, means services provided otherwise than by the employer of the person who is seeking to obtain or is receiving the services.

[^{F20}(3) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment—

- (a) which is rendered unlawful by Article 27; or
- (b) which would be rendered unlawful by Article 27 but for the operation of any other provision of this Order.]

F20 SR 2003/520

[^{F21}**Assisting persons to obtain employment etc.**

24A.—(1) It is unlawful for the Department for Employment and Learning to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 1 of the Employment and Training Act (Northern Ireland) 1950 (general functions of the Department as to employment and training for employment).

(2) This Article does not apply in a case where—

- (a) the Department for Employment and Learning is acting as an employment agency, or
- (b) Article 24 applies, or would apply but for the operation of any other provision of this Order.]

F21 SR 2003/520

^{F22}**. . . persons with power to confer qualifications**

25.—(1) It is unlawful for a person who has power to confer on another a qualification which is needed for, or facilitates, his engagement in employment in any capacity, or in a particular employment or occupation,^{F22} . . . to discriminate against him—

- (a) by refusing or deliberately omitting to confer that qualification on him on his application; or
- (b) in the terms on which the person is prepared to confer it; or
- (c) by withdrawing it from him or varying the terms on which he holds it.

[^{F22}(1A) It is unlawful for a person who has the power referred to in paragraph (1), in relation to a qualification conferred by him, to subject to harassment another who holds or applies for such a qualification.]

[^{F22}(2) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment which is rendered unlawful by Article 27.]

F22 SR 2003/520

[^{F23}Trustees and managers of occupational pension schemes

25A.—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to 10th December 2003, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 2A shall have effect for the purposes of:—

- (a) defining terms used in this Article and in that Schedule;
- (b) treating every occupational pension scheme as including a non-discrimination rule;
- (c) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (d) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to the Tribunal under Article 38.]

F23 SR 2003/520

Discrimination by partnerships

[^{F24} . . . partnerships

26.—(1) It is unlawful for a firm^{F24} . . . , in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining who should be offered that position; or
- (b) in the terms on which they offer him that position; or
- (c) by refusing or deliberately omitting to offer him that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.

[^{F24}(1A) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.]

(2) [^{F24}Paragraphs (1) and (1A)] shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Paragraph (1)(a) and (c) do not apply to a position as partner where, if it were employment, the essential nature of the job would require it to be done by a person holding, or not holding, a particular religious belief or political opinion.

(4) In this Article—

- (a) “firm” has the meaning given by section 4 of the Partnership Act 1890; and
- (b) references to a partner shall, in the case of a limited partnership, be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907.

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[^{F24}(5) The reference in paragraph (1)(d)(ii) to the expulsion of a person from a position as partner includes a reference—

- (a) to the termination of that person's partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.]

F24 SR 2003/520

PART IV

[^{F25}DISCRIMINATION AND HARASSMENT IN OTHER FIELDS]

F25 SR 2003/520

Further and higher education

^{F26} . . . **bodies in charge of further and higher educational establishments**

27.—(1) It is unlawful, in relation to an educational establishment falling within paragraph (2), for the governing body of that establishment to discriminate against a person—

- (a) in the terms in which it offers to admit him to the establishment as a student; or
- (b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
 - (i) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by excluding him from the establishment or subjecting him to any other detriment.

[^{F26}(1A) It is unlawful for the governing body of an educational establishment falling within paragraph (2) to subject to harassment—

- (a) a person who applies for admission to the establishment as a student; or
- (b) a student of the establishment.]
- (2) The educational establishments falling within this paragraph are—
 - (a) a university;
 - (b) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 or an institution providing further education in respect of which grants are paid under Article 5(1) of that Order.
- (3) In this Article “student” includes any person who receives education at an establishment falling within paragraph (2).

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Status: Point in time view as at 01/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

Goods, facilities, services and premises

Discrimination in provision of goods, facilities or services

28.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services—

- (a) by refusing or deliberately omitting to provide him with any of them; or
 - (b) by refusing or deliberately omitting to provide him with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section.
- (2) The following are examples of the facilities and services mentioned in paragraph (1)—
- (a) access to and use of any place which members of the public are permitted to enter;
 - (b) accommodation in a hotel, boarding house or other similar establishment;
 - (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
 - (d) facilities for training;
 - (e) facilities for entertainment, recreation or refreshment;
 - (f) facilities for transport or travel;
 - (g) the services of any profession, trade or business, or any local or other public authority.

Discrimination in disposal or management of premises

29.—(1) It is unlawful for a person with power to dispose of any premises to discriminate against another—

- (a) in the terms on which he offers him those premises; or
 - (b) by refusing his application for those premises; or
 - (c) in his treatment of him in relation to any list of persons in need of premises of that description.
- (2) Paragraph (1) does not apply to a person who owns an estate in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he—
- (a) uses the services of an estate agent; or
 - (b) publishes an advertisement or causes an advertisement to be published.
- (3) It is unlawful for a person managing any premises to discriminate against a person occupying those premises—
- (a) in the way he affords him access to any benefits, or by refusing or deliberately omitting to afford him access to them; or
 - (b) by evicting him, or subjecting him to any other detriment.
- (4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in a tenancy to discriminate against a person by withholding his licence or consent for the disposal of the premises to that person.
- (5) Paragraph (4) applies to tenancies created before as well as after the coming into operation of this Article.
- (6) In this Article—

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“dispose”, in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in a tenancy, includes—

- (a) assigning the tenancy, and
- (b) sub-letting or parting with possession of the premises or any part of the premises; and “disposal” shall be construed accordingly;

“estate agent” means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises; and

“tenancy” means a tenancy created—

- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease,
- (c) by a tenancy agreement, or
- (d) in pursuance of any statutory provision.

(7) This Article applies only in relation to premises in Northern Ireland.

Exception from Articles 28(1) and 29; small dwellings

30.—(1) Where the conditions mentioned in paragraph (2) are satisfied—

- (a) Article 28(1) does not apply to the provision by a person of accommodation in any premises;
- (b) Article 29(1) does not apply to the disposal by a person of any premises;
- (c) Article 29(4) does not apply to the withholding of any consent or licence.

(2) The conditions are that—

- (a) the relevant occupier resides, and intends to continue to reside, on the premises;
- (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;
- (c) the shared accommodation is not storage accommodation or a means of access; and
- (d) the premises are small premises.

(3) For the purposes of this Article, premises are “small premises” if they fall within paragraph (4) or (5).

(4) Premises fall within this paragraph if—

- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him;
- (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household;
- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
- (d) there are not normally more than two such other households.

(5) Premises fall within this paragraph if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

(6) For the purposes of this Article “the relevant occupier” means—

- (a) in a case falling within Article 28(1), the person providing the accommodation or a near relative of his;

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- (b) in a case falling within Article 29(1), the person with power to dispose of the premises, or a near relative of his;
- (c) in a case falling within Article 29(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of his.

(7) For the purposes of this Article “near relative” means a person's spouse^{F27} or civil partner], parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or^{F27} by marriage or civil partnership)].

F27 2004 c.33

Further exceptions from Articles 28(1) and 29

31.—(1) Articles 28(1) and 29 do not apply—

- (a) to discrimination which is rendered unlawful by any provision of Part III or Article 27; or
- (b) to discrimination which would be rendered unlawful by any provision of Part III but for Article 22(3) or 70(1)(b).

(2) Article 28(1) does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or persons requiring a special degree of care and attention.

(3) So far as it relates to discrimination on the grounds of religious belief, Article 28(1) does not apply to goods, facilities or services provided by, or on behalf of, a religious denomination where the essential nature of the goods, facilities or services requires them to be provided—

- (a) only to persons holding or not holding a particular religious belief; or
- (b) in a manner or on terms which, apart from this paragraph, would be unlawful by virtue of this Order.

(4) So far as it relates to discrimination on the grounds of political opinion, Article 28(1) does not apply to goods, facilities or services provided by, or on behalf of, a party registered under the Registration of Political Parties Act 1998 where the essential nature 1998 c. of the goods, facilities or services requires them to be provided—

- (a) only to persons holding or not holding a particular political opinion; or
- (b) in a manner or on terms which, apart from this paragraph, would be unlawful by virtue of this Order.

(5) Article 28(1) does not apply to any goods, facilities or services provided by—

- (a) the Board of Governors or proprietor of a school;
- (b) the governing body of a college of education; or
- (c) a person providing training in connection with any employment or occupation as a clergyman or minister of religion.

(6) Where premises fall within paragraph (7)—

- (a) Article 29(2) does not apply to the disposal by a person of those premises;
- (b) Article 29(4) does not apply to the withholding of any consent or licence in relation to those premises.

(7) Premises fall within this paragraph if the premises are—

- (a) a school;
- (b) a college of education; or

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- (c) premises comprising an establishment providing training in connection with any employment or occupation as a clergyman or minister of religion.

Barristers

^{F28} . . . barristers

32.—(1) It is unlawful for a barrister, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing, or deliberately omitting, to take a person as his pupil.

(2) It is unlawful for a barrister, in relation to a person who is his pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as his pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.

[^{F28}(2A) It is unlawful for a barrister to subject to harassment a person who is, or has applied to be, his pupil.]

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person^{F28} or to subject any person to harassment].

(4) In this Article “pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.

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Extent

Extent of Part IV

33.—(1) Article 27 does not apply to benefits outside Northern Ireland except—

- (a) travel on a ship registered at a port of registry in Northern Ireland; and
- (b) benefits provided on a ship so registered.

(2) Article 28(1)—

- (a) does not apply to goods, facilities or services outside Northern Ireland except as provided in paragraphs (3) and (4); and
- (b) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Northern Ireland.

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(3) Article 28(1) applies to the provision of facilities for travel outside Northern Ireland where the refusal or omission occurs in Northern Ireland or on a ship, aircraft or hovercraft within paragraph (4).

(4) Article 28(1) applies on and in relation to—

- (a) any ship registered at a port of registry in Northern Ireland; and
- (b) any aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland other than an aircraft or hovercraft while operated in pursuance of a contract with a person who has his principal place of business, or is ordinarily resident, outside the United Kingdom,

even if the ship, aircraft or hovercraft is outside Northern Ireland.

(5) This Article shall not render unlawful an act done in or over a country outside the United Kingdom, or in or over that country's territorial waters, for the purpose of complying with the laws of that country.

PART V

OTHER UNLAWFUL ACTS

[^{F29} Relationships which have come to an end

33A.—(1) In this Article a "relevant relationship" is a relationship during the course of which, by virtue of any provision referred to in Article 3(2B), taken with Article 3(2A), or (as the case may be) by virtue of Article 3A—

- (a) an act of discrimination by one party to the relationship ("the relevant party") against another party to the relationship, or
- (b) harassment of another party to the relationship by the relevant party,

is unlawful.

(2) Where a relevant relationship has come to an end it is unlawful for the relevant party—

- (a) to discriminate against another party by subjecting him to a detriment, or
- (b) to subject another party to harassment

where the discrimination or harassment arises out of and is closely connected to that relationship.

(3) In paragraph (1) reference to an act of discrimination or harassment which is unlawful includes in the case of a relationship which has come to an end before 10th December 2003, reference to such an act which would, after that date, be unlawful.

(4) For the purposes of any proceedings in respect of an unlawful act under paragraph (2) that act shall be treated as falling within circumstances relevant for the purposes of such of the provisions referred to in paragraph (1) as determine most closely the nature of the relevant relationship.]

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Discriminatory advertisements

34.—(1) It is unlawful to publish, or cause to be published, an advertisement which indicates, or could reasonably be understood as indicating, an intention by a person to do an act which is unlawful by virtue of any provision of Part III or IV.

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(2) Paragraph (1) does not apply if the intended act would be prevented from being unlawful by any provision of this Order.

(3) Paragraph (1) does not apply to the publisher of an advertisement in respect of the publication of the advertisement if the intended act would not be unlawful by virtue of any provision of Part III or IV but for Article 3(2)(b)^{F30} or 3(2A)(b)].

(4) The publisher of an advertisement which is unlawful by virtue of paragraph (1) shall not be subject to any liability under that paragraph in respect of the publication of the advertisement if he proves—

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of paragraph (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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Accessories and incitement

35.—(1) Any person who—

- (a) knowingly aids or incites; or
- (b) directs, procures or induces,

another to do an act which is unlawful by virtue of any provision of Part III or IV or Article 34 shall be treated for the purposes of this Order as if he, as well as that other, had done that act.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 36 (or would be so liable but for Article 36(4)) shall be taken to have aided the employer or principal to do the act.

(3) A person does not under this Article knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Order, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3) (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) An inducement consisting of an offer of benefit or a threat of detriment is not prevented from falling within paragraph (1) because the offer or threat was not made directly to the person in question.

Liability of employers and principals

36.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Order as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Order as done by that other person as well as by him.

(3) Paragraph (2) applies whether the authority was—

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- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) In proceedings brought under this Order against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing in the course of his employment acts of the same description.

PART VI

ENFORCEMENT OF PARTS III TO V

General

Restriction on proceedings for breach of this Order

37.—(1) Except as provided by this Order or regulations thereunder, no proceedings whether civil or criminal shall be brought against any person in respect of a contravention of any provision of this Order or of such regulations.

(2) Nothing in paragraph (1) prevents any application for judicial review^[F31] or the investigation or determination of any matter in accordance with Part X (investigations: the Pensions Ombudsman) of the Pension Schemes (Northern Ireland) Act 1993 by the Pensions Ombudsman].

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Enforcement of Part III

Complaint to Tribunal

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

- (a) has committed an act of discrimination^[F32] or harassment] against the complainant which is unlawful by virtue of any provision of Part III^[F32] or Article 32]; or
- (b) by virtue of Article 35 or 36 is to be treated as having committed such an act of discrimination^[F32] or harassment] against the complainant,

may be presented to the Tribunal.

^[F33](1A) Paragraph (1) is subject to Article 20 of the Employment (Northern Ireland) Order 2003.]

(2) The Tribunal shall not consider a complaint relating to an act which is unlawful by virtue of Article 25 if the act is one in respect of which an appeal, or proceedings in the nature of an appeal, may be brought to a court under any statutory provision.

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Status: Point in time view as at 01/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

^{F34}**Burden of proof: Tribunal**

38A. Where, on the hearing of a complaint under Article 38, 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 unlawful discrimination or unlawful harassment against the complainant, or
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the complainant,

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.]

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Remedies on complaint under Article 38

39.—(1) Where the Tribunal finds that a complaint presented to it under Article 38 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 40;
- (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 unlawful discrimination^{F35} or unlawful harassment] to which the complaint relates;
- (d) 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 a person other than the complainant of any unlawful discrimination^{F35} or unlawful harassment] to which the complaint relates.

(2) In applying Article 40 for the purposes of paragraph (1)(b), no account shall be taken of paragraph (3) of that Article.

(3) As respects an act of unlawful discrimination falling within^{F35} Article 3(2A)(b)], if the respondent proves that the^{F35} provision, criterion or practice] in question was not applied with the intention of treating the complainant unfavourably on the ground of his religious belief or political opinion as the case may be, an order may be made under paragraph (1)(b) only if the 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.

(4) Compensation awarded to a person under paragraph (1)(b) may include compensation for injury to feelings whether or not it includes compensation under any other head.

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(5) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under paragraph (1)(c), then, if it considers it just and equitable to do so—

- (a) the Tribunal may increase the amount of any 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) was not made, the Tribunal may make such an order.

(6) Where compensation falls to be awarded in respect of any act both under the provisions of this Article and under any other statutory provision, the 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 a court or tribunal in awarding compensation in an action or complaint in respect of that act.

(7) The Department may by order make provision—

- (a) for enabling the Tribunal, where an amount of compensation falls to be awarded under paragraph (1)(b) to include in the award interest on that amount; and
- (b) specifying, for cases where the Tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.

(8) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under paragraph (1)(d), the President or Vice-President may—

- (a) certify the failure to the High Court; or
- (b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £40,000.

(9) Where the President or Vice-President has certified a failure under paragraph (8)(a), the High Court may deal with the respondent as if the recommendation of the Tribunal had been an order of the High Court.

(10) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under paragraph (8)(b) as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).

(11) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in paragraph (8)(b) such other sum as appears to it to be justified by the change.

(12) In paragraph (11) “the relevant date” means—

- (a) in relation to the first order under that paragraph, the coming into operation of this Article; and
- (b) in relation to each subsequent order, the last occasion when the sum specified in paragraph (8)(b) was altered.

(13) The Department shall pay into the Consolidated Fund any sums received in respect of penalties under this Article.

[^{F35}(14) This Article has effect subject to paragraph 7 of Schedule 2A.]

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Enforcement of Part IV

Claims under Part IV

40.—(1) A claim by any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed an act^{F36} . . . against the claimant which is unlawful by virtue of any provision of Part IV^{F36} other than Article 32]; or
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act^{F36} . . . against the claimant,

may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) Proceedings under paragraph (1) shall be brought only in a county court; but all such remedies shall be obtainable in such proceedings as, apart from this paragraph and Article 37, would be obtainable in the High Court.

(3) As respects an act of unlawful discrimination falling within Article 3(2)(b), no award of damages shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of religious belief or political opinion.

(4) Damages in respect of an act of unlawful discrimination^{F36} or unlawful harassment] may include compensation for injury to feelings whether or not they include compensation under any other head.

(5) Civil proceedings in respect of a claim by any person that he has been discriminated against in contravention of Article 27 by a governing body of an establishment falling within paragraph (2) (b) of that Article, shall not be instituted unless the claimant has given notice of the claim to the Department of Education.

(6) Nothing in paragraph (5) applies to a counterclaim.

(7) For the purposes of proceedings under paragraph (1)—

- (a) Article 33(1) (power of judge to appoint assessors) of the County Courts (Northern Ireland) Order 1980 shall apply with the omission of the words “on the application of any party”, and
- (b) the remuneration of assessors appointed under that Article shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and may be defrayed as part of the expenses of the Lord Chancellor.

(8) A county court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its division, including such an act done outside Northern Ireland.

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Modifications etc. (not altering text)

- C2** [Art. 40\(7\)\(b\)](#): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(i)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

[^{F37}**Burden of proof: county court**

40A.—(1) This Article applies where a claim is brought under Article 40 and the claim is that the respondent—

- (a) has committed an act of discrimination which is unlawful by virtue of any provision referred to in Article 3(2B)(b), or Part V in its application to that provision, or
- (b) has committed an act of harassment which is unlawful by virtue of Article 27(1A).

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

- (a) has committed such an act of discrimination or harassment against the claimant, or
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the claimant,

the court shall uphold the claim 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.]

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Other enforcement by Commission

Persistent discrimination

41.—(1) If, during the period of 5 years beginning on the date on which a finding by the Tribunal or a court under Article 38 or 40 that he has committed an act of unlawful discrimination[^{F38} or unlawful harassment] becomes final in respect of any person, it appears to the Commission that unless restrained that person is likely to commit one or more such acts the Commission may apply to a county court for an injunction restraining him from doing so; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(2) For the purposes of this Article and Article 42 a finding by a court or the Tribunal becomes final when—

- (a) an appeal against the finding is abandoned or determined; or
- (b) the time for appealing expires without an appeal having been brought.

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Enforcement of Article 34

42.—(1) Proceedings in respect of a contravention of Article 34 shall be brought only by the Commission in accordance with the following provisions of this Article.

(2) The proceedings shall be—

- (a) an application for a decision whether the alleged contravention occurred; or
- (b) an application under paragraph (4),

or both.

(3) An application under paragraph (2)(a) shall be made—

- (a) in a case based on any provision of Part III[^{F39} or Article 32], to the Tribunal; and
- (b) in any other case, to a county court.

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(4) If it appears to the Commission—

- (a) that a person has done an act which by virtue of Article 34 was unlawful; and
- (b) that unless restrained he is likely to do further acts which by virtue of that Article are unlawful,

the Commission may apply to a county court for an injunction restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(5) In proceedings under paragraph (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful by virtue of Article 34 and within the jurisdiction of the Tribunal unless a finding by the Tribunal under paragraph (3)(a) that he did that act has become final.

(6) In paragraph (5), the acts “within the jurisdiction of the Tribunal” are those in respect of which such jurisdiction is conferred by Article 38.

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Undertakings by persons contravening Part IV

43.—(1) This Article applies to an act contravening any provision of Part IV and so applies whether or not proceedings have been brought in respect of the act.

(2) If the Commission is satisfied that a person is committing or has committed any such act the Commission may, for the purpose of preventing the commission by that person of any further such act, seek to obtain from that person an undertaking—

- (a) that he will do, or refrain from doing, certain acts specified in the undertaking;
- (b) that he will institute certain practices so specified; or
- (c) that he will change his existing practices in a manner so specified.

(3) An undertaking given by any person under this Article shall—

- (a) be in writing;
- (b) be in such terms as may be agreed between that person and the Commission;
- (c) contain such terms as appear to the Commission to be necessary or appropriate for the purpose mentioned in paragraph (2); and
- (d) have effect for such period as may be specified therein.

(4) If it appears to the Commission that a person who has given an undertaking under this Article has, at any time within the period specified therein by virtue of paragraph (3)(d), failed to comply with the undertaking, the Commission may apply to the county court for a decision as to whether that person has failed to comply with the undertaking.

Help for persons suffering discrimination

Help for aggrieved persons in obtaining information, etc.

44.—(1) With a view to helping a person (“the person aggrieved”) who considers that another person may have unlawfully discriminated against him^{F40} or subjected him to unlawful harassment] to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Department shall by regulations prescribe—

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- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant; and
 - (b) forms by which the respondent may if he so wishes reply to any questions.
- (2) Where the person aggrieved questions the respondent (whether in accordance with regulations under paragraph (1) or not)—
- (a) the question, and any reply by the respondent (whether in accordance with the regulations or not) shall, subject to the following provisions of this Article, be admissible as evidence in the proceedings; and
 - (b) if it appears to the court or the Tribunal that the respondent deliberately and without reasonable cause omitted to reply within a^{F40} period of eight weeks beginning with the day on which the question was served on him] or that his reply is evasive or equivocal, the court or the Tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) The Department may by regulations—
- (a) prescribe the period within which questions must be duly served in order to be admissible under paragraph (2)(a); and
 - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (4) County court rules may enable the court entertaining a claim under Article 40 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this Article or not.
- (5) This Article is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or the Tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.
- (6) In this Article “respondent” includes a prospective respondent.

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Advice and assistance from Commission

45.—(1) Where a prospective complainant or claimant requests the Commission in writing for advice in relation to prospective proceedings under this Part, the Commission shall give him such advice unless it considers that the request is frivolous.

(2) Where, in relation to proceedings or prospective proceedings under this Part, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this paragraph, the Commission shall consider the application and may grant it if it thinks fit to do so—

- (a) on the ground that the case raises a question of principle; or
 - (b) on the ground that it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent, or another person involved, or to any other matter to expect the applicant to deal with the case unaided; or
 - (c) by reason of any other special consideration.
- (3) Assistance given by the Commission under paragraph (2) may include—
- (a) giving advice;
 - (b) procuring or attempting to procure the settlement of any matter in dispute;

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- (c) arranging for the giving of advice or assistance by a solicitor or barrister;
 - (d) arranging for representation by any person including all such assistance as is usually given by a solicitor or barrister in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
 - (e) any other form of assistance which the Commission may consider appropriate,
- but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.

Period within which proceedings must be brought

Period within which proceedings must be brought

46.—(1) Subject to paragraph (5)^{F41} and to any regulations under Article 22 of the Employment (Northern Ireland) Order 2003], the Tribunal shall not consider a complaint under Article 38 unless it is brought before whichever is the earlier of—

- (a) the end of the period of 3 months beginning with the day on which the complainant first had knowledge, or might reasonably be expected first to have had knowledge, of the act complained of; or
- (b) the end of the period of 6 months beginning with the day on which the act was done.

(2) Subject to paragraph (5), a county court shall not consider a claim under Article 40 unless proceedings in respect of the claim are instituted before the end of the period of 6 months beginning with the day on which the act complained of was done.

(3) Subject to paragraph (5), the Tribunal or county court shall not consider an application under Article 42(2)(a) unless it is made before the end of the period of 6 months beginning with the day on which the act to which it relates was done; and a county court shall not consider an application under Article 42(4) unless it is made before the end of the period of 5 years so beginning.

(4) Subject to paragraph (5), a county court shall not consider an application under Article 43(4) in relation to an undertaking under that Article unless it is made before the end of the period specified in the undertaking by virtue of paragraph (3)(d) of that Article.

(5) A court or the Tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of this Article—

- (a) when the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.

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VALID FROM 18/04/2011

[^{F42} **Extension of time limits: mediation**

46A.—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to proceedings under this Order; and
- (b) the fixed period specified in relation to such proceedings by Article 46(1) to (4) (“the limitation period”) would, apart from this Article, expire—
 - (a) in the period of 8 weeks after the date on which the mediation ends;
 - (b) on the date on which the mediation ends; or
 - (c) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party's withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

F42 [Art. 46A](#) inserted (18.4.2011) by [Cross-Border Mediation Regulations \(Northern Ireland\) 2011](#) (S.R. 2011/157), [reg. 12\(4\)](#) (with [reg. 1\(2\)](#))

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PART VII

DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

Registration

The register of concerns in which people are employed

47.—(1) The Commission shall keep, in such form as the Commission may determine, a register of trades, businesses and other activities (whether carried on for profit or not) in which people are employed.

(2) References in this Part to a concern are to any such trade, business or other activity and include any activity in the service of the Crown, but only to the extent provided by Article 51.

(3) The Commission shall, on an application under Article 48, enter in the register the description of the concern given in the application, the name and address of the employer so given and the date of entry in the register and serve on the applicant notice of the contents and date of the entry.

(4) The Commission shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public during normal office hours free of charge and any person shall be entitled to obtain from the Commission a copy of the information contained in all or any of the entries in the register upon payment of such reasonable fee as the Commission may fix.

Employers to apply for registration

48.—(1) Where a concern, other than a registered concern, satisfies the condition for registration at the end of any week, the employer shall apply under this Article for the concern to be registered.

(2) For the purposes of this Part a concern satisfies the condition for registration at the end of any week if in that week more than 10 employees have been employed in Northern Ireland.

(3) In paragraph (2), the reference to employees does not include a reference to an individual employed under a contract of service or apprenticeship which normally involves employment for less than 16 hours weekly.

(4) Article 5 of the Employment Rights (Northern Ireland) Order 1996 (normal working hours) shall have effect to determine the normal working hours for the purposes of paragraph (3).

(5) The Department may by order substitute for the number of hours for the time being specified in paragraph (3) such other number as is specified in the order.

(6) An application under this Article shall—

- (a) describe the concern in general terms;
- (b) give the name and address of the employer; and
- (c) give the number of employees employed in Northern Ireland.

(7) If an employer fails to make an application under this Article within the period of one month after the time when the concern first satisfies the condition for registration (or in the case of a concern the entry for which has been removed from the register, first satisfies that condition since the removal), he shall be guilty of an offence.

(8) A person guilty of an offence under paragraph (7)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and

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(b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(9) It is a defence for a person charged with an offence under paragraph (7) to show that he had a reasonable excuse for failing to make an application under this Article within the period allowed and that he made such an application as soon as it was reasonably practicable for him to do so.

(10) In determining for any of the purposes of this Part whether a concern satisfies the condition for registration, references to the employees of any person (referred to in this paragraph as “the employer”) shall, if regulations made by the Department under this Article so provide or in such circumstances as may be specified in the regulations, include a reference to the employees of—

(a) any body corporate controlled by the employer and, if the employer is a body corporate, any associated body corporate; and

(b) any person connected with the employer,

and references to the employer's concern shall be interpreted accordingly.

(11) This Article does not apply to any person who is a public authority for the purposes of Articles 52 to 61 or to any person falling within Article 50(3)(a) or (b).

Rectification of the register

49.—(1) Where a person becomes an employer in relation to a concern that is already a registered concern, he shall, within the period of one month beginning with his becoming such an employer, apply to the Commission for his name and address to be entered in the register and the Commission shall include in the entry in the register the name and address given in the application.

(2) If an employer who is required so to apply fails to do so within that period, he shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2)—

(a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and

(b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(4) It is a defence for a person charged with an offence under paragraph (2) to show that he had a reasonable excuse for failing to make an application under this Article within the period allowed and that he made such an application as soon as it was reasonably practicable for him to do so.

(5) The Commission may, on an application by a registered employer, rectify the description in the register of the registered concern.

(6) The Commission shall remove from the register any entry in respect of a person who becomes a public authority for the purposes of Articles 52 to 61.

(7) The Commission—

(a) may remove from the register, in respect of any concern, the name of any person who appears to the Commission to have ceased to be an employer; and

(b) may remove from the register the entry for any registered concern which appears to the Commission to have ceased to exist.

(8) The power conferred by paragraph (7) is exercisable by the Commission of its own motion or on the application of any person.

(9) If a registered employer applies to the Commission to remove from the register the entry for the registered concern and the concern has been registered throughout the year ending on the date

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of the application, the Commission shall remove the entry if it is of the opinion that the concern did not, at the end of any of the weeks in the period of 26 weeks preceding the application, satisfy the condition for registration.

(10) If the Commission exercises its powers under paragraph (7) or (9), it shall serve notice of its action on any person whose name is removed from the register.

(11) A person who knowingly makes a false statement in connection with an application under paragraph (8) or (9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) In this Article, “registered employer”, in relation to a registered concern, means the person whose name and address is for the time being included in the entry for that concern in the register.

Public authorities

Power to specify public authorities by order

50.—(1) In this Part “public authority” means a person specified in an order made by the Department.

(2) The order may provide for a person to be a public authority for all or any of the purposes of this Part.

(3) The Department shall not exercise the power conferred by this Article so that a person becomes a public authority for any of the purposes of this Part unless the person is—

- (a) a Minister of the Crown or a Northern Ireland Minister;
- (b) a statutory body or the holder of a statutory office; or
- (c) a person appearing to the Department to exercise functions of a public nature.

Certain public authorities to be treated as employers

51.—(1) For the purposes of Articles 52 to 61, any reference to an employer includes any person who is a public authority for the purposes of those Articles.

(2) For the purposes of those Articles, in relation to any such authority—

- (a) “employee” includes any person in the service of the Crown for the purposes of the functions of the authority, but an order under Article 50 may specify the persons who are to be treated for the purposes of those Articles as the employees of that authority; and
- (b) “concern” means the activities of those who are the employees of the authority for the purposes of those Articles.

(3) Those Articles shall apply in relation to a person who becomes an employer for the purposes of those Articles by virtue of an order under Article 50 as if his concern were a registered concern and the description of his concern had been entered in the register on the coming into operation of the order (without prejudice to the effect of any previous order).

(4) The Department shall not exercise the power conferred by Article 50 so that a person becomes an employer for the purposes of those Articles unless it appears to the Department that any of the people—

- (a) who are employed by that person or are in the service of the Crown for the purposes of the functions of that person; or
- (b) who are to be treated by virtue of the order as so employed or as in such service, are employed or serve in Northern Ireland.

Monitoring the workforce

Monitoring returns

- 52.—(1) For the purpose of enabling the composition of—
- (a) those employed in a registered concern in Northern Ireland; and
 - (b) those applying to fill vacancies for employment in Northern Ireland in such a concern,
- to be ascertained, the employer shall prepare for each year and serve on the Commission a return (in this Part referred to as a “monitoring return”) in a form provided by or on behalf of the Department.
- (2) A monitoring return shall contain such information about the employees of the employer and those applying for employment in the concern as may be prescribed.
- (3) For the purpose of enabling the composition of those ceasing to be employed in any concern of a person who is a public authority for the purposes of this Article to be ascertained, the employer shall include in a monitoring return such information as may be prescribed.
- (4) For the purpose of enabling the composition of those ceasing to be employed in any other registered concern in which more than 250 employees are employed to be ascertained, the employer shall include in a monitoring return such information as may be prescribed; and for the purposes of this paragraph where, at the beginning of or at any subsequent time in any prescribed period, more than 250 employees are employed in the concern, that condition is to be treated as satisfied for the whole or, as the case may be, the remainder of that period.
- (5) If no monitoring return for a year in respect of any registered concern is served on the Commission before the time for serving the return expires, the employer shall be guilty of an offence.
- (6) A person guilty of an offence under paragraph (5)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
 - (b) if the failure to submit the monitoring return continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.
- (7) It is a defence for a person charged with an offence under paragraph (5) to show that he had a reasonable excuse for failing to serve on the Commission a monitoring return for that year before the time for serving the return expired and that he served such a return for that year on the Commission as soon as it was reasonably practicable to do so.
- (8) For the purpose of this Article the time for serving a monitoring return expires in the case of each year at the end of the first 4 months of the year.
- (9) In this Article “year”, in relation to a registered concern, means any period of 12 months beginning with—
- (a) the date on which the description of the concern is entered, or treated by virtue of Article 51 as entered, in the register; or
 - (b) the anniversary of that date.
- (10) In this Article and Article 53 “prescribed” means prescribed by regulations under Article 53.
- (11) In this Part—
- “community” means the Protestant community, or the Roman Catholic community, in Northern Ireland; and
- “composition” in relation to those employed or, as the case may be, applying for employment in or ceasing to be employed in, a registered concern means the number who are to be treated for the purposes of monitoring as belonging to each community.

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Regulations as to monitoring

53.—(1) The Department shall, by regulations made after consultation with the Commission, make provision for the purposes of Article 52.

(2) The regulations may—

- (a) require information to be given separately by reference to the sex of the employee, former employee or applicant or by reference to different descriptions or classes of employment;
- (b) provide for Article 52(4) to apply either generally or in prescribed circumstances as if the reference to 250 employees were a reference to the prescribed number of employees;
- (c) provide that—

- (i) the date or period to which any information given in a monitoring return is to relate; and
- (ii) the period in which that information is to be obtained, is to be determined by or in accordance with the regulations;

(d) require—

- (i) information about a person employed or applying for employment in or ceasing to be employed in a concern which might be used if any of the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring were applied; and
- (ii) a record of the determination by an employer of the community to which a person employed or applying for employment in or ceasing to be employed in a concern is to be treated as belonging for those purposes,

to be retained by the employer for such period as may be prescribed and provide that a person who without reasonable excuse fails to comply with such a requirement shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;

(e) make such other provision as to the manner of preparing monitoring returns (including provision for the disclosure of information held for the purposes of monitoring to the person to whom it relates) as appears appropriate to the Department;

(f) provide that—

- (i) an employer who without reasonable excuse serves on the Commission a monitoring return which is not prepared in accordance with the regulations or does not contain the prescribed information is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000; and
- (ii) if a person knowingly gives any false information to another who, with a view to including any information in a monitoring return to be served on the Commission, is seeking information or knowingly includes any false information in such a monitoring return, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;

(g) provide that, subject to such exceptions as may be prescribed, a person who discloses—

- (i) any information of a prescribed description which is obtained or used in pursuance of the regulations for the purposes of preparing any monitoring return; or
- (ii) the determination by an employer of the community to which a person employed or applying for employment in or ceasing to be employed in a concern is to be treated as belonging for the purposes of monitoring,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(3) The regulations may authorise or require the employer to determine which community (if any) a person employed or applying for employment in or ceasing to be employed in the concern is to be treated as belonging to for the purposes of monitoring by applying the principal method prescribed or where that method does not enable him to make that determination, by applying the residuary method, or one of the residuary methods, prescribed; so that, for example—

- (a) where an applicant has stated that he belongs to a particular community the employer may be required to determine that he is to be treated as belonging to the community concerned; and
- (b) where, in any case not within sub-paragraph (a), the employer has information about the applicant, being information which the employer is authorised by the regulations to take into account as tending to show that the person to whom it relates has a connection with a particular community, the employer may be required to determine the community to which the applicant is to be treated as belonging by reference to that information.

(4) Where the regulations authorise an employer to take into account information which relates to the schools attended by any person, the regulations may require the Commission to maintain a list classifying each school, or each school in any class specified by the Department, as a school attended mainly by members of a particular community.

(5) The regulations may require compliance with any direction of the Commission to a particular employer to apply the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring in a manner different from that otherwise authorised or required by the regulations.

(6) Paragraphs (2) to (5) do not prejudice the generality of paragraph (1).

Monitoring applicants

54.—(1) The Department may, by regulations made after consultation with the Commission, provide that the employer shall, for the purpose of enabling the composition of those applying to fill vacancies for employment in any registered concern in Northern Ireland to be ascertained, seek to obtain such information about them as may be prescribed.

(2) The regulations may—

- (a) require information of a prescribed description which is obtained in pursuance of the regulations to be retained by the employer for such period as may be prescribed;
- (b) provide that a person who—
 - (i) without reasonable excuse fails to comply with such a requirement; or
 - (ii) knowingly gives any false information to another who is seeking to obtain information in pursuance of the regulations; or
 - (iii) knowingly includes any false information in any records kept in pursuance of the regulations, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (c) provide that, subject to such exceptions as may be prescribed, a person who discloses any information of a prescribed description which is obtained in pursuance of the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In this Article “prescribed” means prescribed by regulations under this Article.

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Review of recruitment, training and promotion practices

Periodic reviews by employers

55.—(1) In the case of each registered concern, the employer shall from time to time review the composition of those employed in and ceasing to be employed in the concern in Northern Ireland and the employment practices of the concern for the purposes of determining whether members of each community are enjoying, and are likely to continue to enjoy, fair participation in employment in the concern.

(2) In a case where it appears to the employer in the course of the review that members of a particular community are not enjoying, or are not likely to continue to enjoy, such participation, he shall as part of the review determine the affirmative action (if any) which would be reasonable and appropriate.

(3) In a case where the employer determines in the course of the review that affirmative action would be reasonable and appropriate he shall as part of the review—

- (a) consider whether, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community; and
- (b) if he considers that it is practicable to determine such progress, determine the period or periods concerned and, in respect of each period, the progress that, in his opinion, can reasonably be expected to be made towards fair participation by members of the community concerned—
 - (i) in employment in the concern in Northern Ireland or among those whose employment in the concern there begins after the determination; or
 - (ii) among applicants to fill vacancies for employment in the concern there.

(4) A review under this Article shall be carried out not more than 3 years after the date on which the description of the concern is entered, or treated by virtue of Article 51 as entered, in the register and subsequent reviews at intervals of not more than 3 years.

(5) In carrying out a review under this Article the employer shall have regard to the code of practice maintained under Article 9(1) and the Commission shall, if requested to do so by the employer, give advice as to the manner in which a review under this Article should be carried out.

(6) In this Part—

- (a) references to a review are to a review under this Article; and
- (b) “employment practice”, in relation to a concern, means a practice affecting recruitment or training for employment in the concern or training, promotion or redundancy of employees in the concern.

Enquiries, undertakings and directions

Enquiries by the Commission

56.—(1) The Commission may from time to time require the employer to give the Commission such information retained by the employer in compliance with regulations under Article 53(2)(d) or 54(2)(a), as the Commission may specify; but an employer who has been required on any date to give any information under this paragraph shall not be required to do so again before the expiry of the period of 6 months beginning with that date.

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(2) Where a monitoring return in respect of any registered concern has been served on the Commission, the Commission may require the employer to give the Commission such information as to the manner in which the return was prepared as it may specify.

(3) The Commission may, in the case of any registered concern, require the employer to give the Commission such information as it may specify as to the steps the employer has taken or proposes to take to carry out a review and as to the manner in which the review has been or is to be carried out.

(4) The Commission may, where a review has been carried out in the case of any registered concern, require the employer to give to the Commission such information as it may specify—

- (a) as to the matters disclosed by the review;
- (b) as to any determination under Article 55(2); and
- (c) in a case falling within Article 55(3), as to his consideration of the matters referred to in sub-paragraph (a) of that paragraph and any determination under sub-paragraph (b) of that paragraph.

(5) The Commission shall, where a review discloses that members of a particular community are not enjoying, or are not likely to continue to enjoy, fair participation in employment in the concern, make such recommendations as it thinks fit as to the affirmative action to be taken and, assuming the action is taken, as to the progress towards fair participation in employment in the concern, by reference to any period or periods, that can reasonably be expected to be made by members of the community.

(6) Where the employer discloses to the Commission a determination to take any affirmative action, the Commission may from time to time require him to give the Commission such information as it may specify as to the affirmative action that he has taken or proposes to take, but the Commission may not require an employer to give any information under this paragraph before the expiry of the period of 6 months beginning with—

- (a) the date of the disclosure; or
- (b) if he has previously been required to give any information under this paragraph, the date on which he was last required to do so.

(7) Where the employer discloses to the Commission a determination as to the progress towards fair participation in employment in the concern, by reference to any period, that can reasonably be expected to be made by members of a particular community, the Commission may from time to time require him to give the Commission such information as it may specify for the purpose of determining the extent to which the progress has been made on the date of the requirement, but the Commission may not require an employer to give any information under this paragraph before the expiry of the period of 6 months beginning with—

- (a) the date of the disclosure; or
- (b) if he has previously been required to give any information under this paragraph, the date on which he was last required to do so.

(8) A requirement under this Article to give any information in respect of a registered concern—

- (a) shall be made by notice served on the employer; and
- (b) shall specify the time by which the information is to be given,

and the reference in paragraphs (1), (6) and (7) to the date of the requirement is to the date on which the notice was served.

(9) A notice under this Article served on the person whose name and address is for the time being included in the entry for any concern in the register is to be treated as served on the employer.

(10) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

Status: Point in time view as at 01/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

- (11) A person guilty of an offence under paragraph (10)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
 - (b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(12) It is a defence for a person charged with an offence under paragraph (10) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(13) A person required to give any information under this Article who knowingly gives false or misleading information is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Undertakings in connection with monitoring and reviews

57.—(1) The following provisions of this Article apply where the Commission is of the opinion, in the light of information received in respect of any registered concern in pursuance of a requirement under Article 56—

- (a) that the manner in which the employer prepares his monitoring returns is in any respect unsatisfactory or that the information sought by him for the purposes of monitoring is in any respect inadequate; or
- (b) that the employer has no proposals for carrying out a review or that the manner in which he proposes to carry out the review, or the timing of the review, is in any respect unsatisfactory or that the information sought by him for the purposes of the review is in any respect inadequate.

(2) The Commission shall use its best endeavours for the following purposes (as the case may be)—

- (a) to ensure that the manner in which the employer prepares his monitoring returns is satisfactory;
- (b) to ensure that the information sought by the employer for the purposes of monitoring is adequate;
- (c) to ensure that the information sought by the employer for the purposes of a review is adequate; or
- (d) to ensure that a review is carried out at a time and in a manner that is satisfactory,

and shall where appropriate use its best endeavours to secure a satisfactory written undertaking by the employer for the purpose in question.

(3) Where the Commission asks the employer for an undertaking, on such terms as appear satisfactory to the Commission, for the purpose in question, then—

- (a) if the undertaking is not given, the Commission shall serve on the employer a notice containing directions such as are mentioned in Article 58; and
- (b) if the undertaking, although given, is not complied with, the Commission shall either—

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- (i) serve on him a notice containing such directions (which shall supersede the undertaking); or
- (ii) make an application to the Tribunal under Article 16 for enforcement of the undertaking.

(4) Paragraph (3) does not apply in any case where the Commission decides that no further action by it is appropriate.

Directions

58.—(1) The directions contained in a notice served under Article 57(3) shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for the purpose in question.

(2) The directions may in particular include such directions as the Commission considers necessary to ensure that other directions are duly carried out.

(3) The terms of the directions contained in a notice served under Article 57(3)(b)(i) which supersede an undertaking shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking.

(4) A notice served under Article 57(3)(a) or (b)(i) shall inform the employer of the right of appeal against the directions which is conferred by Article 15.

(5) The Commission, on the written application of the employer, may—

- (a) revoke all of the directions; or
- (b) modify the directions in accordance with the application—
 - (i) by revoking any of them; or
 - (ii) by substituting new directions for all or any of them,

and, in substitution for any directions which are revoked under sub-paragraph (a), may accept from the employer an undertaking such as is mentioned in Article 57(2).

(6) The Commission shall serve notice of the revocation or modification on the employer.

(7) The directions—

- (a) are binding on the employer (except to the extent that they are quashed, or other directions are substituted for them, by the Tribunal under Article 15); and
- (b) are enforceable only in accordance with Article 16.

Application of Articles 15 to 17

59. Articles 15 to 17 shall have effect for the purposes of Articles 57 and 58 as they have effect for the purposes of Articles 12 and 14, but as if—

- (a) references to Article 12(2) or (3) were references to Article 57(2), or as the case may be, (3);
- (b) references to Article 14(4) were references to Article 58(5); and
- (c) for sub-paragraphs (b) and (c) of Article 15(2) there were substituted—
 - “(b) that in all the circumstances the directions are not appropriate for the purpose in question; or
 - (c) that the appellant is already taking appropriate steps for the purpose in question and the directions are, therefore, unnecessary.”

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Goals and timetables

Notices about goals and timetables

60.—(1) The Commission may serve a notice under paragraph (2) on the person who is the employer in relation to a registered concern where—

- (a) he gives an undertaking under Part II to take any action;
- (b) he has been directed under that Part to take any action; or
- (c) the Tribunal makes an order under Article 16(3)(a) in relation to an undertaking given by, or directions given to, him to take any action,

being action appearing to the Commission to be affirmative action, and the Commission is of the opinion that, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community.

(2) The notice (“a notice about goals and timetables”) shall specify the period or periods concerned and, in respect of any specified period, the progress that, in the opinion of the Commission, can reasonably be expected to be made towards fair participation by members of the community concerned—

- (a) in employment, or any class of employment, in the concern in Northern Ireland; or
- (b) among applicants to fill vacancies for such employment or any class of such employment.

(3) Where, by virtue of any undertaking given by, or directions given to, the person who is the employer in relation to a registered concern, such a notice is served on him, the notice shall cease to have effect—

- (a) if the Tribunal makes an order for the purpose of giving effect to the undertaking or directions or, in the case of directions, the Tribunal or the Commission substitutes for them or any of them other directions; or
- (b) in the case of directions, if they, or such of them as the notice relates to, are quashed or otherwise cease to have effect; or
- (c) in the case of an undertaking, if it, or such part of it as the notice relates to, ceases to have effect,

but without prejudice, in a case within sub-paragraph (a), to any power to give a new notice.

(4) Where a notice about goals and timetables has effect, the Commission may from time to time require the employer to give the Commission such information as the Commission may specify for the purpose of determining the extent to which the progress specified in the notice in respect of any period has been made on the date of the requirement.

(5) The Commission may not require an employer to give any information under this Article before the expiry of the period of 6 months beginning with—

- (a) the date of the notice about goals and timetables; or
- (b) if he has previously been required to give any information under this Article, the date on which he was last required to do so.

(6) A requirement under this Article to give any information—

- (a) shall be made by notice served on the employer; and
- (b) shall specify the time by which the information is to be given,

and the reference in paragraphs (4) and (5) to the date of the requirement is to the date on which the notice was served.

(7) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(8) A person guilty of an offence under paragraph (7)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(9) It is a defence for a person charged with an offence under paragraph (7) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(10) A person required to give any information under this Article who knowingly gives any false or misleading information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power to secure further undertakings or issue further directions

61.—(1) Paragraph (2) applies where, by reason of any undertaking or directions under Article 12, any directions substituted for such directions by the Tribunal or any order made by the Tribunal for the purpose of giving effect to any such undertaking or directions, a notice has been served on any person under Article 60(2).

(2) If, while the notice has effect, the Commission forms the opinion—

- (a) that the progress specified in the notice in respect of any period has not been made; and
- (b) that the person concerned ought to take action for promoting equality of opportunity in addition to the action required to be taken under the existing undertaking or directions,

Article 12 shall again apply in relation to the person concerned as if the Commission had conducted a fresh investigation under Article 11.

(3) Where, by virtue of this Article, the Commission secures a written undertaking from the person concerned or serves a notice on him containing directions—

- (a) the undertaking or directions shall have effect in place of the existing undertaking or directions; and
- (b) any notice previously served on him under Article 60(2) shall cease to have effect, but without prejudice to any power to give a new notice under that paragraph.

Employers in default and connected persons: restrictions on dealing with them or giving them financial assistance

Employers in default: notice stating they are not qualified

62.—(1) For the purposes of this Article, an employer is in default in any of the following circumstances—

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- (a) in the case of any concern that is not a registered concern but has satisfied the condition for registration at the end of any week, the employer stands convicted of an offence under Article 48(7);
 - (b) in the case of a registered concern—
 - (i) the employer's name is not entered in the register; and
 - (ii) he stands convicted of an offence under Article 49(2);
 - (c) the employer—
 - (i) has failed within the time allowed under Article 52 to serve on the Commission a monitoring return for any period or has failed to serve a return for that period that complies with the requirements of that Article or regulations under Article 53; and
 - (ii) stands convicted of an offence under Article 52(5) or regulations made by virtue of Article 53(2)(f)(i), in respect of that failure; and
 - (d) the employer has failed to comply with an order of the Tribunal and a penalty has been imposed under Article 17(3)(b), or the High Court has exercised its jurisdiction by virtue of Article 17(4), in respect of that failure.
- (2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of Articles 64 to 66; and references in those Articles to an unqualified person are to a person on whom a notice has been served under this paragraph or Article 63(1) which has not been cancelled.
- (3) The Commission shall take all such steps as it considers reasonable to bring the fact that a person is an unqualified person, or has ceased to be an unqualified person, to the attention of public authorities and other interested persons.
- (4) Where notice has been served on a person under paragraph (2) by virtue of paragraph (1) (a) or (b) and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under paragraph (2).
- (5) Where notice has been served on a person under paragraph (2), the Commission shall, if it is at any time satisfied, whether on an application under paragraph (6) or otherwise—
- (a) in the case of a notice served by virtue of paragraph (1)(c), that he has served on it a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53; or
 - (b) in the case of a notice served by virtue of paragraph (1)(d), that he is complying, or has fully complied, with the order concerned,
- serve notice on him cancelling the notice under paragraph (2).
- (6) An application under this paragraph may be made by the person on whom the notice under paragraph (2) was served but may not be made before the expiry of the period of 6 months beginning with—
- (a) the date of the notice under paragraph (2); or
 - (b) if he has previously applied under this paragraph, the latest date on which he so applied.
- (7) Where the Commission refuses to grant an application under paragraph (6), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.
- (8) If, on the appeal, the Tribunal is satisfied—
- (a) in the case of a notice served by virtue of paragraph (1)(c), that the appellant has served on the Commission a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53, or

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(b) in the case of a notice served by virtue of paragraph (1)(d), that the appellant is complying, or has fully complied, with the order concerned,
the Commission shall serve on him a notice cancelling the notice under paragraph (2).

(9) No action shall lie in respect of any loss or damage that may be suffered in consequence of a notice or purported notice under this Article or Article 63 or any failure to give such a notice.

Notice stating that connected and other persons are not qualified

63.—(1) Where notice has been served on any employer under Article 62(2) and has not been cancelled, the Commission may serve notice on any of the following persons—

- (a) any body corporate controlled by him and, if he is a body corporate, any associated body corporate; and
- (b) any person connected with him,

stating that the person on whom the notice is served is not qualified for the purposes of Articles 64 to 66.

(2) No notice shall be served on any person under paragraph (1) if it appears to the Commission—

- (a) that it is unlikely that he will execute any work or supply any goods or services for the purposes of any contract—
 - (i) made by a public authority accepting any offer made in response to an invitation by the public authority to submit offers; or
 - (ii) falling within a class or description for the time being specified for the purposes of Article 64(3) to which a public authority is a party; or
- (b) that, if he executes any work or supplies any goods or services for the purposes of any such contract, it is unlikely that the employer on whom the notice was served under Article 62(2) will benefit, directly or indirectly.

(3) Where notice has been served on any person under paragraph (1), the Commission shall serve notice on him cancelling the notice—

- (a) if the notice served on the employer under Article 62(2) is cancelled; or
- (b) if it appears to the Commission, whether on an application under paragraph (4) or otherwise, that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in his case.

(4) An application under this paragraph may be made by the person on whom the notice under paragraph (1) was served, but if he has previously made an application under this paragraph may not be made before the expiry of the period of 6 months beginning with the latest date on which he so applied.

(5) Where the Commission refuses to grant an application under paragraph (4), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.

(6) If, on the appeal, it appears to the Tribunal that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in the appellant's case, the Commission shall serve notice on him cancelling the notice under paragraph (1).

Restriction on execution of works, etc. by unqualified persons

64.—(1) A public authority shall not enter into any contract to which paragraph (2) or (3) applies.

(2) This paragraph applies to a contract made by the public authority accepting an offer to execute any work or supply any goods or services where the offer is made—

- (a) by an unqualified person; and

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(b) in response to an invitation by the public authority to submit offers.

(3) This paragraph applies to a contract falling within a class or description for the time being specified in an order made by the Department, where work is to be executed or goods or services supplied by any unqualified person.

(4) Where a public authority enters into a contract—

(a) made by the public authority accepting an offer made by any person, being an offer made in response to an invitation by the public authority to submit offers; or

(b) falling within a class or description for the time being specified for the purposes of paragraph (3),

the public authority shall take all such steps as are reasonable to secure that no work is executed or goods or services supplied for the purposes of the contract by any unqualified person.

(5) An order under paragraph (3) may frame any class or description of contract by reference to—

(a) any work to be executed or goods or services to be supplied under the contract;

(b) any amounts to be paid under or in connection with the contract;

(c) any terms of the contract; and

(d) any surrounding circumstances,

and by reference to such other factors as the Department thinks fit.

(6) Nothing in this Article affects the validity of any contract.

(7) This Article does not apply to the execution of any work, or the provision of any goods or services, by any person which is certified in writing by the Secretary of State to be necessary or desirable for the purpose of safeguarding national security or protecting public safety or public order.

Enforcement at instance of Commission and actions for breach of duty

65.—(1) If it appears to the Commission—

(a) that any public authority has taken any action in contravention of Article 64 or has, in neglecting to take any action, failed to comply with that Article and that, unless an injunction is granted, the authority is likely again to contravene or fail to comply with that Article; or

(b) that any public authority proposes to take any action in contravention of that Article,

the Commission may apply to the High Court for an injunction restraining him from contravening that Article and, where sub-paragraph (a) applies, requiring him to comply with that Article.

(2) Any contravention of that Article is actionable by any person who, in consequence, suffers loss or damage, but the amount recoverable in any such action shall not exceed any expenditure reasonably incurred by him before the date of the contravention in question.

Denial of financial assistance to unqualified persons

66.—(1) A Northern Ireland department may refuse to give to any unqualified person any financial assistance to which this Article applies or, where it has given or agreed to give such assistance to any unqualified person, refuse or cease to make any payments to him in pursuance of the assistance.

(2) This Article applies to any financial assistance by way of grant or otherwise which may be given at the discretion of a Northern Ireland department, if the moneys required for giving the assistance are payable out of the Consolidated Fund or may be appropriated by Act of the Northern Ireland Assembly.

General

Additional powers of Commission to obtain information

67.—(1) In connection with its functions under this Part, the Commission may require any person to give the Commission such information as it may specify for the purpose of determining—

- (a) whether a person is an employer or whether a concern has satisfied the condition for registration at the end of any week;
- (b) whether a body corporate is controlled by an employer or associated with him or whether any person is connected with him; and
- (c) whether a contract of either of the following kinds has been made or is likely to be made—
 - (i) a contract made by a public authority accepting an offer to execute any work or supply any goods or services where the offer is made by any person in response to an invitation by the public authority to submit offers; or
 - (ii) a contract falling within a class or description for the time being specified for the purposes of Article 64(3) to which a public authority is a party,or whether any person has executed any work or supplied any goods or services for the purposes of any such contract, or is likely to do so.

(2) A requirement under this Article to give any information—

- (a) shall be made by notice served on the person concerned; and
- (b) shall specify the time by which the information is to be given.

(3) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(5) It is a defence for a person charged with an offence under paragraph (3) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(6) A person required to give any information under this Article who knowingly gives any false or misleading information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A notice under this Article may not require any person to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court.

Procedure in case of default by Crown bodies

68.—(1) This Article applies where—

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- (a) the Commission asks a public authority acting on behalf of the Crown for an undertaking under Article 57 and the undertaking is not given;
 - (b) an undertaking is given under that Article by such a public authority, but is not complied with; or
 - (c) such a public authority is, or is in the opinion of the Commission, in breach of any duty under Article 52, 55, 56, 60, 64 or 67 or under regulations under Article 53 or 54,
- and, accordingly, Articles 57(3), 58 and 65 do not apply in relation to such a public authority.

(2) The Commission shall send a report of the circumstances of the failure to comply with the Commission's request or with the undertaking or other breach of duty—

- (a) where a Minister of the Crown is the public authority or is generally responsible for matters falling within the scope of the functions of the public authority, to the Minister; and
- (b) in any other case, to the Northern Ireland Minister generally responsible for matters falling within the scope of the functions of the public authority.

(3) Where a report is sent to a Minister of the Crown he shall lay it before Parliament, and where a report is sent to a Northern Ireland Minister he shall lay it before the Assembly.

Interpretation of this Part

69.—(1) In this Part—

“employee” means—

- (a) an individual employed under a contract of service or of apprenticeship; or
- (b) an individual employed under a contract personally to execute any work or labour;

and includes a person in the service of the Crown, but only to the extent provided by Article 51; and “employment” and “employed” shall be interpreted accordingly;

“employer”, in relation to a concern, means the person entitled to the benefit of the contracts of those employed in the concern and includes a public authority, but only to the extent provided by Article 51;

“register” means the register kept under Article 47;

“registered concern” means a concern a description of which is for the time being included in the register; but where, by reason of a disposal of a part of a registered concern, there has been a change of employer in relation to that part, that part is not to be treated as a registered concern unless registered since the disposal; and

“week” means a week ending on a Saturday.

(2) For the purposes of this Part—

- (a) where people are employed by a body corporate, references to the name of the employer are to the name of the body and of its secretary and references to the address of the employer are to the address of the body's registered or principal office, or its principal office in Northern Ireland;
- (b) where people are employed by the members of a partnership, references to the employer are to the firm and references to the employer's address are to the principal office of the partnership, or its principal office in Northern Ireland, but each member of the partnership may exercise any function, under this Part, of the employer;
- (c) where people are employed by any other body, references to the employer are to the secretary or other executive officer charged with the conduct of the general affairs of the body.

(3) For the purposes of this Part—

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- (a) bodies corporate are associated if they are members of the same group, and for this purpose any two bodies corporate are to be treated as members of the same group if one of them is a body corporate of which the other is a subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986) or if both of them are subsidiaries (within the meaning of that Article) of one and the same body corporate;
 - (b) a body corporate (call it “A”) is controlled by a person (call him “B”) if B has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to A or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating A or any other body corporate, that the affairs of A are conducted in accordance with the wishes of B;
 - (c) a person is connected with an individual if that person is the individual's wife or husband^{F43} or civil partner], or is a relative, or the wife or husband^{F43} or civil partner] of a relative, of the individual or of the individual's wife or husband^{F43} or civil partner], and for this purpose “relative” means brother, sister, ancestor or lineal descendant; and
 - (d) a person is connected with a body corporate if he is a director or officer of that body.
- (4) References in this Part to a person in the service of the Crown do not include the holder of any office in Schedule 2 to the House of Commons Disqualification Act 1975.

F43 2004 c.33

PART VIII EXCEPTIONS

Excepted employments, etc.

70.—(1) This Order does not apply to or in relation to—

- (a) any employment or occupation as a clergyman or minister of a religious denomination,^{F44} . . .

Sub.-para.(b) rep. by SR 2003/520

(2) Part VII does not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.

(3) So far as they relate to discrimination on the ground of religious belief, Parts III and V do not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.

(4) So far as they relate to discrimination on the ground of political opinion, Parts III and V do not apply to or in relation to an employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular political opinion.

(5) Paragraphs (2) to (4) do not apply to employment mentioned in Article 71(1).

F44 SR 2003/520

School teachers

71.—^{F45}(1) Subject to paragraph (2)—

- (a) Part VII does not apply to or in relation to employment as a teacher in a school; and

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Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

- (b) the other provisions of this Order do not apply to or in relation to the recruitment of a person as a teacher in a school.]

[^{F45}(1A) For the purposes of paragraph (1)(b) “recruitment” means any step in the process of engagement of a person for employment up to the commencement of the employment.]

(2) The Commission shall keep under review the [^{F45} exceptions] contained in paragraph (1) with a view to considering whether, in the opinion of the Commission, it is appropriate that any steps should be taken to further equality of opportunity in the employment of teachers in schools.

(3) For the purpose of assisting it in the discharge of its duty under paragraph (2), the Commission may conduct investigations—

- (a) into the composition, by reference to religious beliefs, of the staff employed as teachers, or teachers of any class, in schools generally, schools of any class or particular schools; and

- (b) into practices—

(i) affecting the recruitment or access to benefits of, or the terms of employment applicable to, such staff; or

(ii) involving any detriment to such staff,

including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the staff at that time.

(4) The Commission may, and shall whenever the Department so directs, report to the Department upon the exercise of its functions under this Article; and a report under this paragraph may make recommendations as to any action which the Commission considers ought to be taken to further equality of opportunity in the employment of teachers, or teachers of any class, in schools, or in schools of any class (including action by way of the exercise of the power conferred by paragraph (6) to remove or limit the [^{F45} exceptions] contained in paragraph (1)).

(5) Schedule 2 shall have effect with respect to the conduct of investigations under this Article.

(6) The Department may by order provide that [^{F45} paragraph (1)(a) or (b) or both]

- (a) shall cease to have effect; or

- (b) shall, on and after such day or days as may be specified in the order, have effect only in relation to particular classes of teachers or particular classes of schools or for particular purposes of this Order.

F45 SR 2003/520

[^{F46}The police and the police support staff

71A.—(1) Nothing in Part III or V shall render unlawful anything done by the Chief Constable in order to comply with the requirements of section 46(1) of the Police (Northern Ireland) Act 2000 (selection of persons for appointment as police trainees).

(2) Nothing in Part III or V shall render unlawful anything done by the Chief Constable in order to comply with the requirements of section 46(5) of the Police (Northern Ireland) Act 2000 (selection of persons for certain posts in police support staff).

(3) The application of any [^{F47} provision, criterion or practice] to any person applying for appointment as a police reserve trainee with a view to service in the Police Service of Northern Ireland Reserve on a part-time basis where the [^{F47} provision, criterion or practice] is one that the person applying is resident in a particular area is not by virtue of [^{F47} Article 3(2A)] unlawful under any provision of Part III or V.]

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F46 2000 c. 32
F47 SR 2003/520

Modifications etc. (not altering text)

C3 Art. 71A continued in force (temp. from 28.3.2007 to 28.3.2010) by [Police \(Northern Ireland\) Act 2000 \(Renewal of Temporary Provisions\) Order 2007 \(S.R. 2007/214\)](#), [art. 2](#)

Provision of training in pursuance of affirmative action

72.—(1) This Article applies where, in pursuance of affirmative action, persons are afforded access to facilities for training which would help to fit them for employment, for employment in a particular capacity or for a particular employment or occupation, but—

- (a) the facilities are provided only at a particular place in Northern Ireland or the training is confined to persons of a particular class, not being a class framed by reference to religious belief or political opinion; and
- (b) by providing the facilities only there or by so confining the training, access to the facilities by persons of a particular religious belief or political opinion is excluded or restricted.

(2) For the purpose of determining whether any act done in, or in connection with, affording those facilities is by virtue of^{F48} Article 3(2A)] unlawful under any provision of Parts III and V, the fact that, by providing the facilities only there or by so confining the training, their access to the facilities is thereby excluded or restricted is to be disregarded.

F48 SR 2003/520

Redundancy

73.—(1) This Article applies where—

- (a) a practice relating to the selection of employees who may be dismissed as redundant is followed by an employer in pursuance of affirmative action; and
- (b) the practice does not involve the application of any condition or requirement framed by reference to religious belief or political opinion, but has or may have the effect that the proportion of employees of a particular religious belief or political opinion who are selected is smaller than the proportion of employees not of that religious belief or, as the case may be, not of that political opinion who are selected.

(2) The dismissal of an employee in pursuance of the practice is not by virtue of^{F49} Article 3(2A)] unlawful under any provision of Parts III and V.

F49 SR 2003/520

Measures to encourage applications, etc. from under-represented community

74. Nothing in Part III or V shall render unlawful any act done by—

- (a) an employer;
- (b) an employment agency;
- (c) a vocational organisation; or
- (d) a person providing services as mentioned in Article 24(1),

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in or in connection with encouraging members of the Roman Catholic, or members of the Protestant, community in Northern Ireland to consider or to apply for a particular employment or particular training or to consider a particular occupation, where the act is done in pursuance of affirmative action.

Selection of unemployed persons

75.—(1) The application of any^[F50] provision, criterion or practice] to any person applying to fill a vacancy for employment where the^[F50] provision, criterion or practice] is one that the person applying to fill the vacancy has not been in employment for a specified period of time is not by virtue of^[F50] Article 3(2A)] unlawful under any provision of Parts III and V.

(2) The Commission shall, on request, advise any person who proposes to apply any^[F50] provision, criterion or practice] described in paragraph (1).

(3) In paragraph (1) “specified” means specified by the person applying the^[F50] provision, criterion or practice] in question.

F50 SR 2003/520

Religion specific training

76.—(1) Subject to paragraph (3), nothing in Parts III to V shall render unlawful any act done by—

- (a) an employer; or
- (b) a person who provides training services in connection with the training of persons for employment and is acting on behalf of an employer,

in relation to employment with the employer at a particular establishment in Northern Ireland, being an act done in or in connection with affording only persons of a particular religious belief access to training which would help to fit them for that employment where the conditions in paragraph (2) are satisfied at any time within the 12 months immediately preceding the doing of that act.

(2) The conditions referred to in paragraph (1) are—

- (a) that it appears to the Commission that—
 - (i) there are no persons of the religious belief in question among those engaged in that employment at the establishment; or
 - (ii) that the proportion of persons of that belief among those engaged in that employment at that establishment is small in comparison with the proportion of persons of that belief among all those employed by the employer there or among the population of the area from which that employer might reasonably be expected to recruit persons for employment at that establishment; and
- (b) that the Commission has given its approval to the act.

(3) Paragraph (1) does not apply in relation to any act done by an employer, or a person providing training services on behalf of an employer, in relation to any person who is employed by the employer at the time when the act is done.

Charities

77.—(1) ^[F51]Subject to paragraph (3)] Nothing in this Order shall—

- (a) be construed as affecting a provision to which this paragraph applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(2) Paragraph (1) applies to a provision for conferring benefits on persons of a particular religious belief or a particular political opinion (disregarding any benefits to persons not of that belief or opinion which are exceptional or are relatively insignificant), being a provision—

- (a) which is contained in a statutory provision or other instrument; and
- (b) which has been enacted or made for purposes which are exclusively charitable according to the law of Northern Ireland.

[^{F51}(3) Paragraph (1) does not apply to an act which is unlawful by virtue of a provision referred to in Article 3(2B).]

F51 SR 2003/520

Acts done under statutory authority

78.—(1) [^{F52}Subject to paragraph (1A)] Nothing in this Order renders unlawful anything done in order to comply with a requirement—

- (a) of primary legislation passed or made before the date on which this Order is made;
- (b) of an instrument made or approved (whether before or after that date) under primary legislation passed or made before that date.

[^{F52}(1A) Paragraph (1) does not apply to an act which is unlawful by virtue of a provision referred to in Article 3(2B).]

(2) In paragraph (1) “primary legislation” means—

- (a) an Act of Parliament; or
- (b) Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978.

(3) Where primary legislation passed or made on or after the date on which this Order is made re-enacts (with or without modification) a provision of primary legislation passed or made before that date, paragraph (1) shall apply to that provision as re-enacted as if it continued to be contained in primary legislation passed or made before that date.

F52 SR 2003/520

Acts safeguarding national security, etc.

79. No act done by any person shall be treated for the purposes of any provision of Parts III to V as unlawfully discriminating 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

80.—(1) This Article applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Parts III to V; 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—

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- (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, 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 Article as they apply in relation to appeals under section 90 of that Act.
- (6) In this Article—
- “claim” includes complaint; and
 - “claimant” includes complainant.

PART IX

THE FAIR EMPLOYMENT TRIBUNAL

Constitution

The Fair Employment Tribunal

81.—(1) The Department shall by regulations provide for the establishment of a tribunal, to be known as the Fair Employment Tribunal for Northern Ireland, to exercise the jurisdiction conferred on it by this Order^{F53} or any other statutory provision].

(2) Regulations under this Article may provide for the jurisdiction of the Tribunal to be exercised by a single tribunal or by two or more tribunals.

F53 2003 NI 15

President, Vice-President and Chairmen

82.—(1) There shall continue to be—

- (a) a President of the Industrial Tribunals and the Fair Employment Tribunal;
- (b) a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal; and
- (c) a panel of chairmen of the Fair Employment Tribunal,

who shall each be appointed by the Lord Chancellor and shall exercise the functions respectively conferred on them by or under this Order or any other statutory provision.

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[^{F54}(2) A person is not qualified for appointment under paragraph (1) unless —

- (a) he is a barrister-at-law or solicitor of at least 7 years' standing;
- (b) he has a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41); or
- (c) he is an advocate or solicitor admitted in Scotland of at least 7 years' standing.]

(3) The President and Vice-President may each resign his office at any time by notice in writing to the Lord Chancellor and shall each vacate his office on the day on which he attains the age of 70, but subject to paragraph (4) and subsections (4) to (6) of section 26 of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).

(4) If, in the opinion of the Lord Chancellor, the President or Vice-President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.

(5) A person appointed under paragraph (1)(c) to a panel of chairmen shall hold and vacate office as provided by or under regulations under Article 81.

(6) The functions of the President or Vice-President may, if he is for any reason unable to act or during a vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor.

(7) Regulations under Article 81 may provide for specified functions of the President and Vice-President (including functions under Articles 17 and 85) to be exercised in specified circumstances by a person appointed, under paragraph (1)(c), to a panel of chairmen.

F54 Art. 82(2) substituted (15.1.2006) by [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), [arts. 1\(2\), 3](#)

Remuneration and allowances

83.—(1) The Department may pay to members of the Tribunal (other than the President and the Vice-President) such remuneration, fees and allowances as it may, with the consent of the Department of Finance and Personnel, determine.

(2) The Department may pay to any other persons such allowances as it may, with the consent of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at the Tribunal.

Procedure

Tribunal procedure

84.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.

(2) The regulations may, in particular, include provision—

- (a) for determining by which tribunal any proceedings are to be determined, where the jurisdiction of the Tribunal is being exercised by more than one tribunal;
- (b) for parties to proceedings to be represented by such persons as may be determined by or under the regulations;
- (c) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
- (d) as to the admissibility of evidence;

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(e) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;

Sub#para. (f) rep. by 2003 NI 15

Sub#para. (g) rep. by 2003 NI 15

(h) for enabling the Tribunal to review its decisions, and revoke or vary its orders or awards, in such circumstances as may be determined in accordance with the regulations;

Sub#para. (i) rep. by 2003 NI 15

Sub#para. (j) rep. by 2003 NI 15

(k) for the registration and proof of decisions, orders and awards of the Tribunal.

[^{F55}(2A) The regulations may—

- (a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before the Tribunal;
- (b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.]

[^{F55}(2B) The regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.]

(3) The regulations may include provision authorising or requiring the Tribunal, in circumstances specified in the regulations, to send notice or a copy of—

- (a) any document specified in the regulations which relates to any proceedings before the Tribunal; or
- (b) any decision, order or award of the Tribunal,

to any person or body so specified.

[^{F56}(4) In relation to proceedings on a complaint under Article 38 the regulations may include provision for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn.]

(5) The regulations may enable the Tribunal to sit in private for the purposes of—

- (a) hearing evidence which in the opinion of the Tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;
- (b) hearing evidence from any person which in the opinion of the Tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision;
 - (ii) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person;
 - (iii) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works; or
 - (iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

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(6) Where the Tribunal sits in private in accordance with any provision included in the regulations by virtue of paragraph (5), the Tribunal may make an order prohibiting the disclosure of specified information, except so far as the disclosure is necessary—

- (a) for the purposes of the proceedings;
- (b) for communicating to any person the decision of the Tribunal in the proceedings and for communicating the reasons for the decision to any person to whom the Tribunal is required by the regulations to communicate them; or
- (c) for the purposes of any criminal proceedings or to comply with the order of a court.

(7) The Tribunal shall give reasons for its decisions.

(8) Part I of the Arbitration Act 1996 does not apply to any proceedings before the Tribunal.

(9) Any person who without reasonable excuse fails to comply with—

- (a) any requirement imposed by the regulations by virtue of paragraph (2)(c); or
- (b) any requirement with respect to the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(e),

[^{F55}(c) any requirement imposed by virtue of regulations under this Article to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (2B).]

is guilty of an offence.

(10) A person guilty of an offence under paragraph (9)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(11) If a person discloses any information in contravention of an order of the Tribunal under paragraph (6), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

F55 2003 NI 15

F56 2003 NI 15

[^{F57}Practice directions

84A.—(1) Regulations under Article 84 may include provision—

- (a) enabling the President to make directions about the procedure of the Tribunal, including directions about the exercise by the Tribunal of powers under such regulations;
- (b) for securing compliance with such directions; and
- (c) about the publication of such directions.

(2) The regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.]

F57 2003 NI 15

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^{F58} Pre-hearing reviews and preliminary matters

84B.—(1) Regulations under Article 84 may include provision—

- (a) for authorising the Tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a “pre-hearing review”);
- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2) Such regulations may in particular include provision—

- (a) for authorising the Tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding^{F59} £500]; and

(b) for prescribing—

- (i) the manner in which the amount of any such deposit is to be determined in any particular case;
- (ii) the consequences of non-payment of any such deposit; and
- (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it or be paid over to another party to the proceedings.

(3) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.

(4) The Department may by order substitute for the sum specified in paragraph (2)(a) such other sum as is specified in the order.

(5) The regulations may also include provision for authorising the Tribunal to hear and determine separately any preliminary issue of a description prescribed by the regulations which is raised in any case.]

F58 2003 NI 15

F59 SR 2004/158

Procedure for matters within jurisdiction of industrial tribunal

85.—(1) This Article applies where a complaint has been made to the Tribunal under Article 38 and it appears to the President or Vice-President that the complaint is one in respect of which—

(a) a complaint could be made to an industrial tribunal on the ground that—

- (i) a person has committed an act of discrimination against the complainant which is unlawful by virtue of any provision of Part III of the Sex Discrimination (Northern Ireland) Order 1976; or
- (ii) a person has committed an act^{F60} . . . against the complainant which is unlawful by virtue of any provision of Part II of the Disability Discrimination Act 1995; or
- (iii) the complainant has been unfairly dismissed within the meaning of Part XI of the Employment Rights (Northern Ireland) Order 1996; or
- (iv) a person has committed an act^{F61} . . . against the complainant which is unlawful by virtue of any provision of Part II^{F61}, Article 72ZA or (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26] of the Race Relations (Northern Ireland) Order 1997; or

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- [^{F62}(v) a person has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part II of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; or]
- (b) a complaint has been made to an industrial tribunal on that ground, but the proceedings under the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995, the Employment Rights (Northern Ireland) Order 1996 or the Race Relations (Northern Ireland) Order 1997[^{F62} or the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003], (as the case may be), have not been disposed of.
- (2) Where this Article applies and the President or Vice-President considers that any matters which would otherwise fall to be determined by an industrial tribunal could appropriately be heard and determined by the Tribunal, he may direct that those matters shall be so heard and determined.
- (3) Where a direction is made under paragraph (2) that any matters shall be heard and determined by the Tribunal, then—
- (a) for the purpose of complying with that direction, the Tribunal shall, in relation to those matters, have the jurisdiction, and may exercise all the powers, of an industrial tribunal;
- (b) none of the following, namely—
- (i) Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976;
- (ii) Article 11(5) of the Industrial Tribunals (Northern Ireland) Order 1996;
- (iii) Article 52(3) of the Race Relations (Northern Ireland) Order 1997,
- [^{F62}(iv) regulation 34(4) of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003,]
- shall apply in relation to the hearing and determination of those matters by the Tribunal;
- (c) Articles 16 and 17 of the Industrial Tribunals (Northern Ireland) Order 1996 (recovery of, and interest on, sums awarded by industrial tribunals) shall apply in relation to any sum payable in pursuance of a decision of the Tribunal in relation to any such matters as it applies in relation to a sum payable in pursuance of a decision of an industrial tribunal; and
- (d) Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996 (appeals against decisions of industrial tribunals) shall apply in relation to a decision of the Tribunal in relation to any such matter as it applies in relation to a decision of an industrial tribunal.

F60 SR 2004/55

F61 SR 2003/341

F62 SR 2003/497

[^{F63}Costs and expenses

- 85A.**—(1) Regulations under Article 84 may include provision—
- (a) for the award of costs;
- (b) for the award of any allowances payable under Article 83(2).
- (2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person's ability to pay when considering the making of an award against him under such regulations.
- (3) The regulations may include provision for authorising the Tribunal—
- (a) to disallow all or part of the costs of a representative of a party to proceedings before it by reason of that representative's conduct of the proceedings;

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- (b) to order a representative of a party to proceedings before it to meet all or part of the costs incurred by a party by reason of the representative's conduct of the proceedings;
 - (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 83(2) by reason of the representative's conduct of the proceedings.
- (4) The regulations may also include provision for taxing or otherwise settling the costs referred to in paragraph (1)(a) or (3)(b) (and, in particular for enabling such costs to be taxed in the county court).]

F63 2003 NI 15

Payments in respect of preparation time

85B.—(1) Regulations under Article 84 may include provision for authorising the Tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party's case.

(2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person's ability to pay when considering the making of an order against him under such regulations.

(3) If regulations under Article 84 include—

- (a) provision of the kind mentioned in paragraph (1); and
- (b) provision of the kind mentioned in Article 85A(1)(a),

they shall also include provision to prevent the Tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.

Interest on awards of compensation

86.—(1) The Department may by order made with the approval of the Department of Finance and Personnel provide that an award of compensation under Article 39(1)(b) shall carry interest at such rate and between such times as may be prescribed by the order.

(2) The power conferred by paragraph (1) includes power—

- (a) to specify cases or circumstances in which interest is not payable;
- (b) to provide that interest is payable only on compensation exceeding a specified amount or falling between specified amounts;
- (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid;
- (d) to provide that any statutory provision—
 - (i) does or does not apply in relation to interest payable by virtue of paragraph (1); or
 - (ii) applies to it with such modifications as may be specified in the order;
- (e) to make provision for cases where compensation is payable in pursuance of decisions or awards made on appeal from the Tribunal.

(3) In particular, an order under paragraph (1) may provide that the rate of interest shall be the rate from time to time in force in relation to interest on amounts awarded by decree in the county court.

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Enforcement

87. The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to^{F64} any sum payable in pursuance of a decision of the Tribunal] as it applies to a sum due under a money judgment (within the meaning of that Order).

F64 Words in art. 87 substituted (15.1.2006) by [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), arts. 1(2), 4

Other methods of dispute resolution

Conciliation

88.—(1) Where a complaint is presented to the Tribunal under Article 38, the Tribunal shall send a copy of the complaint to the Agency and it shall be the duty of the Agency—

- (a) if it is requested to do so by both the complainant and the respondent; or
- (b) if, in the absence of any such request, the Agency considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.

^{F65}(1A) Where regulations under Article 84 include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn—

- (a) paragraph (1) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty; and
- (b) the regulations shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.]

(2) Where, before a complaint has been presented to the Tribunal, a request is made to the Agency to make its services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, paragraph (1) applies as if the complaint had been so presented and a copy of it had been sent to the Agency.

(3) In proceeding under paragraph (1) or (2), the Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(4) Anything communicated to the Agency in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.

F65 2003 NI 15

VALID FROM 03/04/2011

^{F66}**Conciliation: recovery of sums payable under compromises**

88A.—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
 - (i) has taken action under Article 88 in a case, and

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- (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
 - (i) in a single relevant document, or
 - (ii) in a combination of two or more relevant documents.
- (2) A document is a “relevant document” for the purposes of paragraph (1) if—
 - (a) it is the certificate, or
 - (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.
- (3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the Tribunal.
- (4) A compromise sum is not recoverable under paragraph (3) if—
 - (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
 - (b) that declaration is made.
- (5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—
 - (a) beginning with the issue of the certificate, and
 - (b) ending at such time as may be specified in, or determined under, county court rules.
- (6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.
- (7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.
- (8) An application for a declaration under paragraph (4) may be made to the Tribunal or a county court.
- (9) Regulations under Article 84 may (in particular) make provision as to the time within which an application to the Tribunal for a declaration under paragraph (4) is to be made.
- (10) County court rules may make provision as to—
 - (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;
 - (b) when an application (whether made to a county court or the Tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).
- (11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.
- (12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.]

F66 Art. 88A inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), **ss. 14, 17(1)**; [S.R. 2011/159](#), **art. 2**

Labour Relations Agency arbitration scheme

89.—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before the Tribunal.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme; and
- (b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the revised scheme; and
- (b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

Appeals

Appeals from Tribunal

90.—(1) Where—

- (a) a person is dissatisfied in point of law with a decision of the Tribunal under Article 15, 16 or 17; or
- (b) any party to a complaint under Article 38 is dissatisfied in point of law with a decision of the Tribunal; or
- (c) a person is dissatisfied in point of law with a decision of the Tribunal on an appeal brought by him under Article 62 or 63,

he may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.

(2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.

(3) A person on whom a penalty is imposed under Article 17(3)(b) may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the amount of the penalty.

(4) In paragraph (1)(a) the reference to Articles 15, 16 and 17 includes a reference to those Articles as applied by Article 59.

(5) Paragraph (1)(b) does not apply to a decision of the Tribunal to which Article 85(3)(d) applies.

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PART X

APPLICATION TO THE CROWN, THE POLICE AND PUBLIC AUTHORITIES

Application to the Crown

- 91.**—(1) Subject to the following provisions of this Part, this Order (except Part VII) applies—
- (a) to an act done by or for purposes of a Minister of the Crown or a government department; or
 - (b) to an act done on behalf of the Crown by a statutory body or a person holding a statutory office; or
 - (c) to an act done by a member of Her Majesty's forces acting as such,
- as it applies to an act done by a private person.
- (2) For the purposes of paragraph (1), in this Order (except Part VII)—
- (a) references to employment include references to—
 - (i) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; and
 - (ii) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; and
 - (iii) service as a member of Her Majesty's forces;
 - (b) references to a contract of employment include references to the terms of such service;
 - (c) references to an employee include references to a person who is seeking to become engaged in such service, who is in such service or who has ceased to be in such service; and
 - (d) references to an employer, in relation to an employee, include references to (as the case requires) the authority with power to appoint him, to fix his terms of service, to afford him any benefit, to dismiss him or to subject him to any detriment.
- (3) Paragraph (2) of Article 6 (or that paragraph as it has effect by virtue of an order under paragraph (3) of that Article) and paragraph (4) of Article 33—
- (a) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland as they have effect in relation to a ship, aircraft or hovercraft mentioned in sub-paragraph (a) or (b) of the paragraph in question; but
 - (b) shall not have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom.
- (4) In this Part—
- (a) references to Her Majesty's forces are references to the naval, military or air forces of the Crown, but do not include references to any cadet training corps for the time being administered by the Ministry of Defence; and
 - (b) service “for purposes of” a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975.

Proceedings against the Crown

92. The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Order as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that—

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- (a) section 20 of that Act (removal of proceedings from county court to High Court) shall not apply; and
- (b) section 28 of that Act (discovery) shall have effect subject to Article 93(3).

Disclosure of information by Crown for purposes of investigation or proceedings

93.—(1) Subject to paragraph (3), any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any statutory provision or by any rule of law, shall not apply to the disclosure of information for the purposes of any investigation, appeal or proceedings under this Order; and the Crown shall not be entitled in relation to any such investigation, appeal or proceedings to any such privilege in respect of the production of documents or the giving of evidence as is allowed to the Crown alone by law in legal proceedings.

(2) A Minister of the Crown or a Northern Ireland Minister may by a certificate in writing, with respect to any document or information specified in the certificate, or documents or information of any class so specified, certify that in his opinion the disclosure of that document or information or of documents or information of that class would be prejudicial to the safety of the United Kingdom or any part of it or otherwise contrary to the public interest.

(3) Where a certificate is given under paragraph (2) nothing in this Order shall be construed as authorising or requiring the communication to any person or for any purpose of any document or information specified in the certificate, or any document or information of a class so specified.

(4) A document purporting to be a certificate such as is mentioned in paragraph (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

(5) Where, in consequence of paragraph (1), any information is disclosed to persons not in the service of the Crown, those persons shall, without prejudice to paragraphs (1) and (3), be subject to the same restrictions on the disclosure of the information as if they were in that service and, in particular, the Official Secrets Act 1989 shall have effect in relation to them as if they were Crown servants within the meaning of that Act.

(6) Any reference in paragraph (2) to a Minister of the Crown includes a reference to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

[^{F67}The Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve

94.—(1) For the purposes of this Order (except Article 36 and Part VII), the holding of the office of constable as a police officer shall be treated as employment—

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
- (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.

(2) For the purposes of Article 36—

- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000—

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- (a) any compensation, damages or costs awarded against the Chief Constable in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings;
 - (b) costs incurred by him in connection with any investigation under Part II so far as not defrayed by sums paid by the Commission under paragraph 10 of Schedule 2; and
 - (c) any sum required by the Chief Constable for the settlement of any claim made against him under this Order if the settlement is approved by the Policing Board.
- (4) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay—
- (a) any compensation, damages or costs awarded in proceedings under this Order against a police officer;
 - (b) any costs incurred and not recovered by a police officer in such proceedings; and
 - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.
- (5) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (4).
- (6) This Article—
- (a) applies in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996 or section 23 or 24 of the Serious Organised Crime and Police Act 2005] as it applies in relation to a police officer;
 - (b) applies in relation to a police officer who by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998 is under the direction and control of the Police Ombudsman for Northern Ireland as if—
 - (i) in paragraph (1) the reference to the Chief Constable included a reference to the Ombudsman;
 - (ii) in paragraphs (2), (4) and (5) the references to the Chief Constable were references to the Ombudsman.

F67 2000 c. 32

Other police bodies

94A.—(1) For the purposes of this Order (except Article 36 and Part VII), the holding of the office of constable otherwise than as a police officer shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
 - (b) by the police authority as respects any act done by it in relation to that office or the holder of it.
- (2) For the purposes of Article 36—
- (a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
 - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—

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- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings;
 - (b) costs incurred by him in connection with any investigation under Part II so far as not defrayed by sums paid by the Commission under paragraph 10 of Schedule 2; and
 - (c) any sum required by a chief officer of police for the settlement of any claim made against him under this Order if the settlement is approved by the police authority.
- (4) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- (a) any compensation, damages or costs awarded in proceedings under this Order against a person under the direction and control of the chief officer of police;
 - (b) any costs incurred and not recovered by such a person in such proceedings; and
 - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).
- [^{F68}(6) In this Article, in relation to any body of constables—
- (a) “chief officer of police” means the person who has the direction and control of the body;
 - (b) “police authority” means the authority by which the members of the body are paid; and
 - (c) “police fund” means money provided by that authority.]
- (7) Nothing in paragraphs (3) to (6) applies in relation to the police.

F68 Art. 94A(6) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178(8), Sch. 4 para. 121; S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (with [art. 4\(2\)-\(7\)](#))

Procedure following investigation under Article 11 in relation to certain public authorities

95.—(1) This Article applies where, following an investigation under Article 11, the Commission is of the opinion that action for promoting equality of opportunity ought to be taken by any of the following authorities, namely—

- (a) a Minister of the Crown or a government department or a person acting for purposes of such a Minister or department; or
- (b) a member of Her Majesty's forces acting as such; or
- (c) any other person acting on behalf of the Crown, being a statutory body or a person holding a statutory office; or
- (d) the Police Authority for Northern Ireland or the Chief Constable of the Royal Ulster Constabulary;

and, accordingly, Articles 12(3), 14, 15 and 16 shall not have effect in relation to any such authority.

(2) Where the Commission asks for an undertaking such as is mentioned in Article 12(2)(b), but—

- (a) the undertaking is not given; or
- (b) the undertaking, although given, is not complied with,

the Commission shall send a report of the results of its investigation and of the opinion it has formed in relation to the subject-matter of the investigation (including any recommendations the Commission considers appropriate for action on the part of the authority concerned)—

- (i) where the investigation related to a Minister of the Crown, to that Minister;

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- (ii) where the investigation related to a government department, to the Minister of the Crown in charge of the department, or in the case of a Northern Ireland department to the Northern Ireland Minister in charge of the department; or
 - (iii) where the investigation related to any other authority, to the Minister of the Crown or the Northern Ireland Minister generally responsible for matters falling within the scope of the functions of that authority.
- (3) Where the report is sent to a Minister of the Crown he shall lay it before Parliament; and where the report is sent to a Northern Ireland Minister he shall lay it before the Assembly.
- (4) A person who is not in the service of the Crown shall not be regarded as within paragraph (1) (a) by reason only of his acting in pursuance of a contract entered into with a Minister of the Crown or a government department.

PART XI

MISCELLANEOUS AMENDMENTS

Amendment of the Sex Discrimination (Northern Ireland) Order 1976

Acts safeguarding national security, etc.

96. For Article 53 of the Sex Discrimination (Northern Ireland) Order 1976 (acts safeguarding national security) there shall be substituted—

“Acts safeguarding national security, etc.

53. No act done by any person shall be treated for the purposes of any provision of Parts III to V as unlawfully discriminating 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

53ZA.—(1) This Article applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of—
 - (i) the relevant provisions of Part IV; or
 - (ii) Part V, so far as it has effect in relation to those provisions; 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, 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

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(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 Article as they apply in relation to appeals under section 90 of that Act.

(6) In paragraph (1) “the relevant provisions of Part IV” means the provisions of that Part except so far as they apply to vocational training.”.

Amendment of the Race Relations (Northern Ireland) Order 1997

Selection of unemployed persons

97. After Article 36 of the Race Relations (Northern Ireland) Order 1997 there shall be inserted—

“Selection of unemployed persons

36A.—(1) The application of any requirement or condition to any person applying to fill a vacancy for employment where the requirement or condition is one that the person applying to fill the vacancy has not been in employment for a specified period of time is not by virtue of Article 3(1)(b) unlawful under any provision of Parts II and IV.

(2) The Commission shall, on request, advise any person who proposes to apply any requirement or condition described in paragraph (1).

(3) In paragraph (1) “specified” means specified by the person applying the requirement or condition in question.”.

Acts safeguarding national security, etc.

98. In the Race Relations (Northern Ireland) Order 1997—

- (a) for Article 41 (acts safeguarding national security) there shall be substituted—

“Acts safeguarding national security, etc.

41. No act done by any person shall be treated for the purposes of any provision of Parts II to IV as unlawfully discriminating 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 that act is justified by that purpose.

Effect of certificates by Secretary of State

41A.—(1) This Article applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Parts II to IV; and

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- (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, 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 Article as they apply in relation to appeals under section 90 of that Act.

(6) In this Article—

- “claim” includes complaint; and
- “claimant” includes complainant.”;

- (b) in Article 66, paragraph (2)(b) and the word “or” immediately preceding it shall cease to have effect.

PART XII

SUPPLEMENTARY

Power of High Court to revise contracts

99.—(1) Subject to paragraphs (2) and (3), where a term is included in or omitted from a contract in contravention of any provision of Part III or IV or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part of it is unenforceable by reason only of the contravention.

(2) Where a complaint has been presented to the Tribunal under Article 38, the complainant or respondent may apply to the High Court to revise the contract or any of its terms.

(3) Where proceedings under Article 40 have been brought in the county court, the claimant or respondent may apply to the county court to revise the contract or any of its terms.

(4) On an application under paragraph (2) or (3) the High Court or, as the case may be, the county court, may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of Part III or IV.

(5) Where the High Court or the county court makes an order under paragraph (4), every party to the contract, whether or not a party in the action, shall be bound by the order; but the High Court

or, as the case may be, the county court, shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.

Restrictions on contracting out

100.—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order; or
- (b) to preclude any person from presenting a complaint to the Tribunal under Article 38.

(2) Paragraph (1) does not apply—

- (a) to an agreement settling a complaint to which Article 38(1) applies where the Agency has taken action in accordance with Article 88(1) or (2); or
- (b) to an agreement settling a complaint to which Article 38(1) applies if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement; or
- (c) to an agreement settling a claim to which Article 40 applies.

(3) The conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before the Tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser; and
- (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union;
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre; or
- (d) if he is a person of a description specified in an order made by the Department.

(5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party;
- (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party;
- (c) in the case of a person within paragraph (4)(c), if the complainant makes a payment for the advice received from him; or

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- (d) in the case of a person of a description specified in an order under paragraph (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (6) In paragraph (4)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) In paragraph (4)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.
- (8) For the purposes of paragraph (5) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
 - (b) if both are companies of which a third person (directly or indirectly) has control.
- (9) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (2)(a) and (b) as being an agreement settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 89; and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme; but
 - (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.

[^{F69} **Collective agreements and rules of undertaking**

- 100A.**—(1) This Article applies to—
- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
 - (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
 - (c) any rule made by an organisation to which Article 23 applies for application to all or any of its members or prospective members; or
 - (d) any rule made by a person to whom Article 25 applies for application to all or any of the persons on whom he has conferred qualifications or who are seeking the qualifications which he has power to confer.
- (2) Any term or rule to which this Article applies is void where, as the case may be—
- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of a provision referred to in Article 3(2B);
 - (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of such a provision; or
 - (c) the term or rule provides for the doing of such an act.
- (3) Paragraph (2) applies whether the agreement was entered into, or the rule made, before, on or after 10th December 2003; but in the case of an agreement entered into, or a rule made, before that date, that paragraph does not apply in relation to any period before that date.
- (4) In this Article, and in Article 100B, “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.]

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Complaints relating to collective agreements and rules of undertaking

100B.—(1) A person to whom this paragraph applies may present a complaint to the Tribunal that a term or rule is void by virtue of Article 100A if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of Article 100A(2)(c), that—
 - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
 - (ii) the act would be rendered unlawful by a provision referred to in Article 3(2B) if done in relation to him in present circumstances.

(2) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer;
 - (ii) an organisation of employers of which an employer is a member; or
 - (iii) an association of such organisations of one of which an employer is a member; or
- (b) a rule made by an employer referred to in Article 100A(1)(b);

paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(3) In the case of a complaint about a rule made by an organisation to which Article 100A(1)(c) applies, paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, a member of the organisation.

(4) In the case of a complaint about a rule made by a person to whom Article 100A(1)(d) applies, paragraph (1) applies to anyone—

- (a) on whom the person has conferred a qualification, or
- (b) who is genuinely and actively seeking a qualification which the person has power to confer.

(5) When the Tribunal finds that a complaint presented to it under paragraph (1) is well-founded the Tribunal shall make an order declaring that the term or rule is void.

(6) An order under paragraph (5) may include provision as respects any period before the making of the order (but after 10th December 2003).

(7) The avoidance by virtue of Article 100A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely—

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

Power to amend this Order

101.—(1) The Department may by order—

- (a) amend any provision of Part III, IV, V or VIII so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 19(1), 28(1) or 29;

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Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

Sub-para. (b) rep. by SR 2003/520

- (2) The Department may by order provide that Article 6(3) shall have effect—
- (a) with the substitution for the words from “exploration” to “natural resources” of the words “any activity falling within section 11(2) of the Petroleum Act 1998”; and
 - (b) with the insertion after “1964” of the words “or specified under section 10(8) of the Petroleum Act 1998”.
- (3) The Department shall not lay before the Assembly the draft of an order under paragraph (1) unless it has consulted the Commission about the contents of the draft.

Offences by bodies corporate and partnerships

102.—(1) For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) Where a partnership is guilty of an offence under this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

Service of documents

103. For the purposes of this Order section 24 of the Interpretation Act (Northern Ireland) 1954 applies with the omission from subsection (1) of the word “registering”.

Regulations and orders

104.—(1) No regulations under Article 48(10), 53 or 54 or order under Article 6(3), 48(5), 71(6) or 101(1) shall be made unless a draft of the regulations or order has been laid before and approved by resolution of the Assembly.

(2) Regulations and orders made by the Department under any other provision of this Order (except orders under paragraph 1(5) or 2(7) of Schedule 1) shall be subject to negative resolution.

(3) Regulations and orders made by the Department under this Order may contain such incidental, supplementary, consequential and transitional provisions as the Department thinks fit.

Amendments, transitional provisions, savings and repeals

Para.(1)—Amendments

(2) The transitional provisions and savings set out in Schedule 4 shall have effect.

(3) The Department may by order make such other transitional provisions and savings as it thinks fit in connection with the coming into operation of any provision of this Order.

Para.(4)—Repeals

Status: Point in time view as at 01/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Article 9(4).

CODES OF PRACTICE

PART I

ISSUE OF CODE OF PRACTICE UNDER ARTICLE 9(3)

1.—(1) Where the Commission proposes to issue a code of practice under Article 9(3), it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(2) In the course of preparing any draft code of practice for publication under sub-paragraph (1) the Commission shall consult with such persons as it thinks fit.

(3) If the Commission determines to proceed with the draft, it shall send the draft to the Department which shall—

(a) if it approves of the draft, lay it before the Assembly; and

(b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(4) If, within the statutory period beginning with the day on which the draft of the code of practice is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(5) If no such resolution is passed as is referred to in sub-paragraph (4), the Commission shall issue the code of practice in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

PART II

CODES OF PRACTICE – GENERAL

Revision of a code of practice

2.—(1) The Commission may from time to time revise the whole or any part of a code of practice under Article 9.

(2) If the Commission proposes to revise a code of practice, it shall publish a draft of the revised code or of the amendments to the existing code.

(3) The Commission shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft for publication under sub-paragraph (2) the Commission shall consult with such persons as the Commission thinks fit.

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(5) Where the Commission determines to proceed with the revision of a code of practice after publishing the draft under sub-paragraph (2), the Commission shall send a draft of the revised code to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which the draft of the revised code is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in sub-paragraph (6), the Commission shall issue the revised code of practice in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

Publication

3. The Commission shall—

- (a) publish a code of practice under Article 9 as for the time being in force; and
- (b) take such other steps as it considers necessary to publicise any such code.

Effect of code of practice

4. The Commission and the Department shall each take such steps as they consider necessary to encourage the adoption of the policies and practices recommended in a code of practice under Article 9.

5. A failure on the part of any person to observe any provision of a code of practice under Article 9 shall not of itself render him liable to any proceedings, but in any proceedings under this Order before the Tribunal or a court—

- (a) any code of practice shall be admissible in evidence; and
- (b) if any provision of a code appears to the Tribunal or the court to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

SCHEDULE 2

Article 11(3).

CONDUCT OF INVESTIGATIONS BY THE COMMISSION

Preliminary

1. In this Schedule “the investigation” means an investigation under Article 11 or 71.

Notices

2. Before holding the investigation, the Commission shall—

- (a) serve on every person whose practices it intends to investigate notice of the Commission's intention to hold the investigation; and
- (b) furnish to each such person, in writing, particulars of the scope and purpose of the investigation.

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Procedure

3. The Commission shall afford to every person such as is mentioned in paragraph 2(a) an opportunity to comment on the matters which are the subject of the investigation and to furnish oral or other evidence respecting them.

4. The investigation shall be conducted in private.

5. Subject to paragraphs 3 and 4, the procedure for conducting the investigation shall be such as the Commission considers appropriate in the circumstances of the case.

Information and evidence

6. For the purposes of the investigation, the Commission may obtain information from such persons and (subject to paragraph 4) in such manner and may make such inquiries and call for such reports (including reports by officers of the Commission on inquiries or interviews conducted by them on the Commission's behalf) as the Commission thinks fit.

7.—(1) For the purposes of the investigation the Commission may require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For those purposes the Commission shall have the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths and the examination of witnesses abroad; and
- (b) the production of documents.

(3) A person shall not be compelled for the purposes of the investigation—

- (a) to give any information or produce any document which he could not be compelled to give in evidence or produce in civil proceedings before the High Court; or
- (b) to give any information or produce any document which discloses, or from which there can be deduced, his religious belief, if he informs the Commission that he objects to doing so; or
- (c) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

8. For the purposes of the investigation the Commission may also require an employer or vocational organisation to take such reasonable action as the Commission specifies for communicating to his or its employees or members (as the case requires), or to employees or members of any class, any written material provided for the purposes by the Commission.

Obstruction and contempt

9.—(1) If any person, without lawful authority or reasonable excuse, obstructs the Commission or any member or officer of the Commission in the performance of its or his functions in connection with the investigation, or is guilty of any act in relation to the investigation which, if the investigation were a proceeding in the High Court, would constitute contempt of court, the Commission may certify the offence to the High Court.

(2) Where an offence is certified under this paragraph, the High Court may inquire into the matter and after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and

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(b) any statement that may be offered in defence, may deal with the person charged with the offence in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

Expenses

10. Without prejudice to paragraph 7(3)(c), the Commission may, if it thinks fit, pay to any person who attends, or furnishes information for the purposes of, the investigation, sums in respect of expenses properly incurred by him and allowances by way of compensation for the loss of his time in accordance with such scales and subject to such conditions as the Department with the approval of the Department of Finance and Personnel may determine.

^{F70}SCHEDULE 2A

Article 25A(2)

OCCUPATIONAL PENSION SCHEMES

F70 SR 2003/520

Interpretation

1.—(1) In this Schedule—

“active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, in relation to an occupational pension scheme, have the meanings given by Article 121(1) of the Pensions (Northern Ireland) Order 1995 as at 10th December 2003;

“member” means any active member, deferred member or pensioner member;

“non-discrimination rule” means the rule in paragraph 2;

“occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 as at 10th December 2003;

“prospective member”, in relation to an occupational pension scheme, means any person who, under the terms of his employment or the rules of the scheme or both—

- (a) is able, at his own option, to become a member of the scheme;
- (b) shall become so able if he continues in the same employment for a sufficient period of time;
- (c) shall be admitted to it automatically unless he makes an election not to become a member; or
- (d) may be admitted to it subject to the consent of his employer.

(2) In paragraph 6, “employer”, in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995 as at 10th December 2003.

(3) Any term used in Article 25A and in this Schedule shall have the same meaning in that Article as it has in this Schedule.

Status: Point in time view as at 01/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

Non-discrimination rule

2. Every occupational pension scheme shall be treated as including a provision ("the non-discrimination rule") containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of Article 25A.

3. The other provisions of the scheme are to have effect subject to the non-discrimination rule.

4. The trustees or managers of an occupational pension scheme may—

(a) if they do not (apart from this paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule; or

(b) if they have such power but the procedure for doing so:—

(i) is liable to be unduly complex or protracted; or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty;

by resolution make such alterations to the scheme.

5. Alterations made by a resolution such as is referred to in paragraph 4 may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before 10th December 2003).

Procedure in the Tribunal

6. Where under Article 38 a member or prospective member of an occupational pension scheme presents to the Tribunal a complaint that the trustees or managers of the scheme—

(a) have committed against him an act which is unlawful by virtue of Article 25A or 33A; or

(b) are by virtue of Article 35 or 36 to be treated as having committed against him such an act;

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

Remedies in the Tribunal

7.—(1) This paragraph applies where—

(a) under Article 38 a member or prospective member of an occupational pension scheme ("the complainant") presents to the Tribunal a complaint against the trustees or managers of the scheme or an employer;

(b) the complainant is not a pensioner member of the scheme;

(c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and

(d) the Tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the Tribunal may, without prejudice to the generality of its power under Article 39(1)(a), make an order declaring that the complainant has a right—

(a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;

(b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

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Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before 10th December 2003);
 - (b) may make such provision as the Tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.
- (4) Where this paragraph applies, the Tribunal may not make an order for compensation under Article 39(1)(b), whether in relation to arrears of benefits or otherwise, except—
- (a) for injury to feelings;
 - (b) by virtue of Article 39(5).]

Schedule 3—Amendments

SCHEDULE 4

Article 105(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Article 26 and Part IV

- 1.—(1) Article 26 of this Order shall not apply in relation to any act done before that Article comes into operation.
- (2) Part IV of this Order shall not apply in relation to any act done before that Part comes into operation.

National security certificates

2. In relation to any act done before the coming into operation of Article 79—
- (a) Article 79 shall have effect as if paragraph (b) of that Article were omitted; and
 - (b) Article 80 shall have effect as if paragraphs (1)(b)(ii) and (3)(b) of that Article were omitted.
3. In relation to any act done before the coming into operation of Article 96—
- (a) Article 53 of the Sex Discrimination (Northern Ireland) Order 1976 (as substituted by Article 96) shall have effect as if paragraph (b) were omitted; and
 - (b) Article 53ZA of the Sex Discrimination (Northern Ireland) Order 1976 (as substituted by Article 96) shall have effect as if paragraphs (1)(b)(ii) and (3)(b) were omitted.
4. In relation to any act done before the coming into operation of Article 98—
- (a) Article 41 of the Race Relations (Northern Ireland) Order 1997 (as substituted by Article 98) shall have effect as if paragraph (b) were omitted; and
 - (b) Article 41A of the Race Relations (Northern Ireland) Order 1997 (as substituted by Article 98) shall have effect as if paragraphs (1)(b)(ii) and (3)(b) were omitted.

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Changes to legislation: There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998. (See end of Document for details)

Devolution order under section 3 of the Northern Ireland Act 1998

5. If provisions of this Order come into operation before the day appointed by an Order in Council under section 3 of the Northern Ireland Act 1998 for the commencement of Parts II and III of that Act, then until the day so appointed—

- (a) references in those provisions to an Act of the Assembly shall be read as references to a Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973; and
- (b) references in those provisions to a Northern Ireland Minister shall be read as references to the head of a Northern Ireland department.

The Commission

6.—(1) If provisions of this Order come into operation before the day appointed under section 101(3) of the Northern Ireland Act 1998 for the coming into operation of section 73(1) of that Act, then until the day so appointed—

- (a) references in those provisions to the Commission shall be read as references to the Fair Employment Commission for Northern Ireland; and
- (b) section 1 of, and Schedule 1 to, the Fair Employment (Northern Ireland) Act 1976 (as amended by the Fair Employment (Northern Ireland) Act 1989) shall, notwithstanding the repeal of those Acts by this Order, continue to have effect in relation to that Commission.

The Police (Northern Ireland) Act 1998 (1998 c. 32)

7. If Article 94 comes into operation before the day appointed under section 75(1) of the Police (Northern Ireland) Act 1998 for the coming into operation of section 10(5) of that Act, then until the day so appointed, Article 94 shall have effect—

- (a) as if paragraph (5) were omitted; and
- (b) as if the reference to the Police (Northern Ireland) Act 1998 were a reference to the Police Act (Northern Ireland) 1970.

^{F71}Section 50(2) of the Fair Employment (Northern Ireland) Act 1989

F71 retresp. insertion by [2002 NI 2](#)

8. The repeals effected by this Order do not affect the operation of—

- (a) subsection (2) of section 50 of the Fair Employment (Northern Ireland) Act 1989; or
- (b) any provision of the Fair Employment (Northern Ireland) Act 1976 mentioned in that subsection,

in relation to a complaint or act mentioned in that subsection.]

Schedule 5—Repeals

Status:

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Changes to legislation:

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