
STATUTORY INSTRUMENTS

1998 No. 3162

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

PART VI

ENFORCEMENT OF PARTS III TO V

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^{F1} . . . against the claimant which is unlawful by virtue of any provision of Part IV^{F1} other than Article 32]; or
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act^{F1} . . . 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^{F1} 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 ^{F2}..., including such an act done outside Northern Ireland.

F1 SR 2003/520

F2 Words in [art. 40\(8\)](#) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 117, Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)\(m\)](#) (with [art. 3](#))

Modifications etc. (not altering text)

C1 [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\(2\)](#)

[^{F3}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.]

F3 SR 2003/520

Changes to legislation:

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, Cross Heading: Enforcement of Part IV.