
STATUTORY RULES OF NORTHERN IRELAND

2003 No. 497

**Employment Equality (Sexual Orientation)
Regulations (Northern Ireland) 2003**

PART VI

ENFORCEMENT

Restriction of proceedings for breach of Regulations

33.—(1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.

(2) Paragraph (1) does not prevent the making of an application for judicial review 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⁽¹⁾ by the Pensions Ombudsman.

Jurisdiction of industrial tribunals

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

- (a) has committed against the complainant an act to which this regulation applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

may be presented to an industrial tribunal.

(2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part II other than —

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any statutory provision, regulation 18 (qualifications bodies);
- (b) regulation 22 (institutions of further and higher education); or
- (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 22, regulation 23 (relationships which have come to an end).

(3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 2 December 2003, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

(4) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998)(2) –

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

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

Burden of proof: industrial tribunals

35.—(1) This regulation applies to any complaint presented under regulation 34 to an industrial tribunal.

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

- (a) has committed against the complainant an act to which regulation 34 applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

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.

Remedies on complaints in industrial tribunals

36.—(1) Where an industrial tribunal finds that a complaint presented to it under regulation 34 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 regulation 37 (jurisdiction of county courts);
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within regulation 3(1)(b), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of sexual orientation, an order may be made under paragraph (1)(b) only if the industrial tribunal –

- (a) makes such order under paragraph (1)(a) (if any) 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.
- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so –
 - (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
 - (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.
- (4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Industrial Tribunals (Interest on Awards in Sexual Orientation Discrimination Cases) Regulations (Northern Ireland) 2003(3).
- (5) This regulation has effect subject to paragraph 7 of Schedule 1 (occupational pension schemes).

Jurisdiction of county courts

- 37.—**(1) A claim by any person (“the claimant”) that another person (“the respondent”) –
- (a) has committed against the claimant an act to which this regulation applies; or
 - (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the claimant such an act,
- 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.
 - (3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.
 - (4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of –
 - (a) regulation 22 (institutions of further and higher education); or
 - (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 22, regulation 23 (relationships which have come to an end).
 - (5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 2 December 2003, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

Burden of proof: county courts

- 38.—**(1) This regulation applies to any claim brought under regulation 37(1) in a county court.
- (2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent –

- (a) has committed against the claimant an act to which regulation 37 applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

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.

Help for persons in obtaining information etc

39.—(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 34 (jurisdiction of industrial tribunals) or a claim brought under regulation 37 (jurisdiction of county courts) questions in the form set out in Schedule 2 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 3 or forms to the like effect with such variation as the circumstances require.

(2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not) –

- (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or 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) In proceedings before a county court a question shall only be admissible as evidence in pursuance of paragraph (2)(a) –

- (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.

(4) In proceedings before an industrial tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a) –

- (a) where it was served before a complaint had been presented to the tribunal, if it was so served within the period of three months beginning when the act complained of was done;
- (b) where it was served when a complaint had been presented to the tribunal, either –
 - (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented, or
 - (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.

(5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved –

- (a) by delivering it to him; or
- (b) by sending it by post to him at his usual or last-known residence or place of business; or
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Industrial Relations (Northern Ireland) Order

1992(4), by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office; or

- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.

(6) This regulation is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation "respondent" includes a prospective respondent.

Assistance by Commission

40.—(1) Where, in relation to proceedings or prospective proceedings under these Regulations, an individual who is an actual or prospective complainant applies to the Commission for assistance under this regulation, 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 to 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.

(2) Assistance by the Commission under this regulation may include –

- (a) giving advice;
- (b) procuring or attempting to procure the settlement of any matter in dispute;
- (c) arranging for the giving of advice or assistance by a solicitor or counsel;
- (d) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel 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;
- (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.

(3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this regulation, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission –

- (a) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) The charge conferred by paragraph (3) is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981⁽⁵⁾ and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(5) In this regulation “respondent” includes a prospective respondent and “rules or regulations” –

- (a) in relation to county court proceedings, means county court rules;
- (b) in relation to industrial tribunal proceedings, means industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996⁽⁶⁾.

Period within which proceedings to be brought

41.—(1) An industrial tribunal shall not consider a complaint under regulation 34 (jurisdiction of industrial tribunals) unless it is presented to the tribunal before the end of –

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which regulation 43(6) (armed forces) applies, the period of six months so beginning.

(2) A county court shall not consider a claim brought under regulation 37 (jurisdiction of county courts) unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

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

(4) For the purposes of this regulation and regulation 39 (help for persons in obtaining information etc) –

- (a) when the making of a contract is, by reason of the inclusion of any term, 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 decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he 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 was to be done.

(5) S.I. 1981/228 (N.I. 8)
(6) S.I. 1996/1921 (N.I. 18)