

Status: Point in time view as at 22/04/2007.

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STATUTORY INSTRUMENTS

1997 No. 869 (N.I. 6)

The Race Relations (Northern Ireland) Order 1997 ^{F1}

- - - - - 19th March 1997

F1 functions transf. by SR 1999/481

PART I INTRODUCTORY

Title and commencement

- 1.—(1) This Order may be cited as the Race Relations (Northern Ireland) Order 1997.
- (2) This Order shall come into operation on such day or days as the Department may by order appoint^{F2}.
- (3) An order under paragraph (2) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

F2 fully exercised by SR 1999/273

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
 - “access” shall be construed in accordance with Article 39;
 - “act” includes a deliberate omission;
 - “advertisement” includes every form of advertisement or notice, whether to the public or not;
 - “the Commission” means^{F3} the Equality Commission for Northern Ireland];
 - “Commissioner” means a member of the Commission;
 - “the Department” means the Department of Economic Development;
 - “discrimination” and related terms shall be construed in accordance with paragraph (4);
 - “education” includes any form of training or instruction;

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“employment” means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

“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;

“final” shall be construed in accordance with paragraph (3);

“formal investigation” means an investigation under Article 46;

“general notice”, in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

“genuine occupational qualification” shall be construed in accordance with Article 8;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“nationality” includes citizenship;

“non-discrimination notice” means a notice under Article 55;

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

“notice” means a notice in writing;

“premises” includes land of any description;

“prescribed” means prescribed by regulations made by the Department;

“profession” includes any vocation or occupation;

“racial grounds” and “racial group” have the meaning given by Article 5;

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

“trade” includes any business;

“training” includes any form of education or instruction.

(3) For the purposes of this Order a non-discrimination notice or a finding by a court or tribunal becomes final when—

- (a) an appeal against the notice or finding is dismissed, withdrawn or abandoned; or
- (b) the time for appealing expires without an appeal having been brought;

and for the purposes of sub-paragraph (a) an appeal against a non-discrimination notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under Article 56(3).

(4) In this Order—

- (a) references to discrimination are to any discrimination falling within Article 3 or 4; and
- (b) references to racial discrimination are to any discrimination falling within Article 3;

and related expressions shall be construed accordingly.

F3 1998 c.47

Racial discrimination

3.—(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Order if—

- (a) on racial 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 racial group as that other but—
 - (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins 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}(1A) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in paragraph (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but—

- (a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons;
- (b) which puts that other at that disadvantage; and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in paragraph (1A) are—

- (a) Part II;
- (b) Articles 18 and 19;
- (c) Article 20A;
- (d) Articles 21 to 24;
- (e) Article 26;
- (f) Article 72 ZA; and
- (g) Part IV in its application to the provisions referred to in sub-paragraphs (a) to (f).

(1C) Where, by virtue of paragraph (1A), a person discriminates against another, paragraph (1)(b) does not apply to him.]

(2) For the purposes of this Order segregating a person from other persons on racial grounds is treating him less favourably than they are treated.

(3) A comparison of the case of a person of a particular racial group with that of a person not of that group under paragraph (1)[^{F4} or (1A)] must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

F4 SR 2003/341

Discrimination by way of victimisation

4.—(1) A person (“A”) discriminates against another person (“B”) in any circumstances relevant for the purposes of any provision of this Order if—

- (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 (2).

(2) The reasons are that—

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- (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
 - (iii) otherwise done anything under this Order in relation to A or any other person; or
 - (iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; 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.
- (3) Paragraph (1) 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.

[^{F5}Harassment

4A.—(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(1B) where, on grounds of race or ethnic or national origins, 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.]

F5 SR 2003/341

Meaning of “racial grounds” “racial group” etc.

5.—(1) Subject to paragraphs (2) and (3), in this Order—

“racial grounds” means any of the following grounds, namely colour, race, nationality or ethnic or national origins;

“racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.

(2) In this Order “racial grounds”

- (a) includes the grounds of belonging to the Irish Traveller community, that is to say the community of people commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland; and
- (b) does not include the grounds of religious belief or political opinion.

(3) In this Order “racial group”

- (a) includes the Irish Traveller community;
- (b) does not include a group of persons defined by reference to religious belief or political opinion.

[^{F6}(3A) In this Order "race or ethnic or national origins" includes origins within the Irish Traveller community.]

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Order.

(5) In this Article references to religious belief or political opinion shall be construed in accordance with^{F7} Article 2(2) and (3) of the Fair Employment and Treatment (Northern Ireland) Order 1998].

F6 SR 2003/341
F7 1998 NI 21

PART II

[^{F8}DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD]

F8 SR 2003/341

[^{F9}Discrimination and harassment by employers]

F9 SR 2003/341

^{F10} . . . applicants and employees

6.—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against another—

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

(2) It is unlawful for a person, in the case of a person employed by him at an establishment in Northern Ireland, to discriminate against that employee—

- (a) in the terms of employment which he affords him; or
- (b) in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (c) by dismissing him, or subjecting him to any other detriment.

[^{F10}(2A) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.]

(3) Except in relation to discrimination falling within Article 4^{F10} or discrimination on grounds of race or ethnic or national origins], paragraphs (1) and (2) do not apply to employment for the purposes of a private household.

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

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

[^{F10}(4A) In paragraph (2)(c) the reference to the dismissal of a person from employment includes, where the discrimination is on grounds of race or ethnic or national origins, references—

- (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;
- (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]

(5) Paragraphs (1) and (2) do not render unlawful any act done by an employer[^{F10}, on grounds other than those of race or ethnic or national origins,] for the benefit of a person not ordinarily resident in Northern Ireland in or in connection with employing him at an establishment in Northern Ireland, where the purpose of that employment is to provide him with training in skills which he appears to the employer to intend to exercise wholly outside Northern Ireland.

F10 SR 2003/341

Discrimination by persons with statutory power to select employees for others

7.—[^{F11}(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, in relation to employment at an establishment in Northern Ireland,—

- (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.

[^{F11}(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.]

F11 SR 2003/341

[^{F12}Exception for genuine occupational requirement

7A.—(1) In relation to discrimination on grounds of race or ethnic or national origins—

- (a) Article 6(1) (a) or (c) does not apply to any employment,
- (b) Article 6(2) (b) does not apply to promotion or transfer to, or training for, any employment, and
- (c) Article 6(2)(c) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) being of a particular race or of particular ethnic or national origins is a genuine and determining occupational requirement;

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- (b) it is proportionate to apply that requirement in the particular case, and—
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that the person meets it.]

F12 SR 2003/341

Exceptions for genuine occupational qualifications

- 8.—**(1) In relation to racial discrimination^{F13} in cases where Article 7A does not apply]
- (a) Article 6(1)(a) or (c) does not apply to any employment where being of a particular racial group is a genuine occupational qualification for the job; and
 - (b) Article 6(2)(b) does not apply to opportunities for promotion or transfer to, or training for, such employment.
- (2) Being of a particular racial group is a genuine occupational qualification for a job only where—
- (a) the job involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity; or
 - (b) the job involves participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that racial group is required for reasons of authenticity; or
 - (c) the job involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity; or
 - (d) the holder of the job provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.
- (3) Paragraph (2) applies where some only of the duties of the job fall within sub-paragraph (a), (b), (c) or (d) as well as where all of them do.
- (4) Sub-paragraph (a), (b), (c) or (d) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has employees of the racial group in question—
- (a) who are capable of carrying out the duties falling within that sub-paragraph; and
 - (b) whom it would be reasonable to employ on those duties; and
 - (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

F13 SR 2003/341

^{F14} . . . contract workers

- 9.—**(1) This Article applies to any work for a person (“the principal”) which is available for doing by individuals (“contract workers”) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.
- (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 any benefits, facilities or services or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

(3) The principal does not contravene paragraph (2)(b) by doing any act in relation to a person not of a particular racial group^[F14], or not of a particular race or particular ethnic or national origins,] at a time when, if the work were to be done by a person taken into the principal's employment, being of that racial group^[F14] or of that race or those origins] would be a genuine occupational qualification^[F14] or, as the case may be, that act would be lawful by virtue of Article 7A] for the job.

^[F14](3A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.]

(4) Nothing in this Article shall render unlawful any act done by the principal^[F14] on grounds other than those of race or ethnic or national origins,] for the benefit of a contract worker not ordinarily resident in Northern Ireland in or in connection with allowing him to do work to which this Article applies, where the purpose of his being allowed to do that work is to provide him with training in skills which he appears to the principal to intend to exercise wholly outside Northern Ireland.

(5) Paragraph (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services 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, facilities or services by the principal to his contract workers.

(6) This Article applies only in relation to work done at an establishment in Northern Ireland; and Article 10 applies for the purposes of this paragraph with appropriate modifications.

F14 SR 2003/341

Meaning of employment at establishment in Northern Ireland

10.—(1) For the purposes of this Part, employment is to be regarded as being at an establishment in Northern Ireland^[F15] if the employee—

- (a) does his work wholly or partly in Northern Ireland; or
- (b) does his work wholly outside Northern Ireland and paragraph (1A) applies.]

^[F15](1A) This paragraph applies if, in a case involving discrimination on grounds of race or ethnic or national origins, or harassment—

- (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.]

^[F16](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.]

Para.3 rep. by SR 2000/8

(4) Where work is not done at an establishment it shall be treated for the purposes of this Part as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

(5) 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^{F16} paragraphs (1) and (2) shall each have effect as if the last reference to Northern Ireland in paragraph (1)] included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 in which the law of Northern Ireland applies.

(6) An order under paragraph (5) may provide that, in relation to employment to which the order applies, this Part is to have effect with such modifications as are specified in the order.

(7) The Department shall not make an order under paragraph (5) unless a draft of the order has been laid before and approved by resolution of the Assembly.

F15 SR 2003/341

F16 SR 2000/8

Exception for seamen recruited abroad

11.—(1) Nothing in Article 6 shall render unlawful any act done by an employer in or in connection with employment by him on any ship in the case of a person who applied or was engaged for that employment outside Northern Ireland^{F17} to the extent that the act—

- (a) relates to the pay the person receives in respect of his employment, and
- (b) amounts to discrimination against the person on the basis of his nationality.]

(2) Nothing in Article 9 shall, as regards work to which that Article applies, render unlawful any act done by the principal in or in connection with such work on any ship in the case of a contract worker who was engaged outside Northern Ireland by the person by whom he is supplied^{F17} to the extent that the act—

- (a) relates to the pay the person receives in respect of the work, and
- (b) amounts to discrimination against the person on the basis of his nationality.]

(3) Paragraphs (1) and (2) do not apply to employment or work concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 in which the law of Northern Ireland applies.

(4) For the purposes of paragraph (1) a person brought to Northern Ireland with a view to his entering into an agreement in Northern Ireland to be employed on any ship shall be treated as having applied for the employment outside Northern Ireland.

^{F17}(5) In this Article—

“pay” includes retirement or death benefit;

“retirement or death benefit” means a pension, annuity, lump sum, gratuity or other similar benefit which will be paid or given to the employee or contract worker or a member of his family or household in the event of his retirement or death.]

F17 SR 2003/318

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Discrimination by other bodies

Partnerships

12.—(1) It is unlawful for a firm consisting of 6 or more partners, 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, facilities or services, 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.

[^{F18}(1A) The limitation of paragraph (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.

(1B) 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) [^{F18}paragraphs (1), (1A) and (1B)] 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, [^{F18}Article 7A or 8 would apply to such employment].

(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.

[^{F18}(5) The reference in paragraph (1)(d)(ii) to the expulsion of a person from a position as partner includes, where the discrimination is on grounds of race or ethnic or national origins, references—

- (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.]

F18 SR 2003/341

Trade unions etc.

13.—(1) This Article applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) It is unlawful for an organisation to which this Article applies, in the case of a person who is not a member of the organisation, to discriminate against him—

- (a) in the terms on which it is prepared to admit him to membership; or

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(b) by refusing, or deliberately omitting to accept, his application for membership.

(3) It is unlawful for an organisation to which this Article applies, in the case of a person who is a member of the organisation, to discriminate against him—

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

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

(c) by subjecting him to any other detriment.

[^{F19}(4) It is unlawful for an organisation to which this Article applies, in relation to a person's membership or application for membership of that organisation, to subject him to harassment.]

F19 SR 2003/341

Qualifying bodies

14.—(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a person—

(a) in the terms on which it is prepared to confer on him that authorisation or qualification; or

(b) by refusing, or deliberately omitting to grant, his application for it; or

(c) by withdrawing it from him or varying the terms on which he holds it.

[^{F20}(1A) It is unlawful for an authority or body to which paragraph (1) applies, in relation to an authorisation or qualification conferred by it, to subject to harassment a person who holds or applies for such an authorisation or qualification.]

(2) In this Article—

(a) “authorisation or qualification” includes recognition, registration, enrolment, approval and certification;

(b) “confer” includes renew or extend.

[^{F20}(3) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment which is rendered unlawful by Article 18 or 19.]

F20 SR 2003/341

Persons concerned with provision of vocational training

15.—(1) It is unlawful, in the case of an individual seeking or undergoing training which would help fit him for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against him —

(a) in the terms on which that person affords him access to any training course or other facilities concerned with such training; or

(b) by refusing or deliberately omitting to afford him such access; or

(c) by terminating his training; or

(d) by subjecting him to any detriment during the course of his training.

(2) Paragraph (1) does not apply to—

(a) discrimination which is rendered unlawful by Article 6(1) or (2) or Article 18 or 19; or

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- (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Order.

[^{F21}(3) It is unlawful for any person who provides, or makes arrangements for the provision of, facilities for training to which paragraph (1) applies, in relation to such facilities or training, to subject to harassment a person to whom he provides such training or who is seeking to undergo such training.

(4) Paragraph (3) does not apply to harassment which is rendered unlawful by Article 6(2A) or by Article 18 or 19.]

F21 SR 2003/341

Employment agencies

16.—(1) It is unlawful for an employment agency to discriminate against a person—

- (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.

[^{F22}(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 [^{F22} paragraphs (1) and (1A)] to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This Article does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this Article if it proves—

- (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.

F22 SR 2003/341

Police

Art. 17 rep. by 2000 c. 32

PART III

DISCRIMINATION IN OTHER FIELDS

*Education***F²³ . . . bodies in charge of educational establishments**

18.—(1) It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a pupil; or
- (b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil; or
- (c) where he is a pupil of the establishment—
 - (i) in the way it affords him access to any benefits, facilities or services, 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.

TABLE

<i>Establishment</i>	<i>Responsible body</i>
1. Educational establishment which is grant-aided.	Education and library board or managers or governing body according to which of them has the function in question.
2. Independent school.	Proprietor.
3. University.	Governing body.
[^{F24} 4. An establishment providing further education in respect of which grants are paid under Article 5(1)(b) of the Further Education (Northern Ireland) Order 1997]	[^{F24} Governing body.]
[^{F25} 5.College of education]	[^{F25} The managers]

[^{F23}(1A) It is unlawful for a responsible body, in relation to an establishment falling within column 1 of the table in paragraph (1), to subject to harassment—

- (a) a person who applies for admission to the establishment as a pupil; or
- (b) a pupil at the establishment.]

(2) Subject to paragraph (3), words and expressions used in this Article, Article 19 or Article 20 to which a meaning is assigned by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning as in the 1986 Order.

(3) In this Article “pupil” includes any person who receives education at an establishment to which this Article applies.

F23 SR 2003/341

F24 1997 NI 15

F25 2005 NI 13

Status: Point in time view as at 22/04/2007.

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Other discrimination^[F26] etc.] by education and library boards

19. It is unlawful for—

- (a) an education and library board, in carrying out such of its functions under the Education Orders as do not fall under Article 18; and
- (b) the Council for Catholic Maintained Schools, in carrying out its functions under the Education Orders,

to do any act which constitutes racial discrimination^[F26] or harassment].

F26 SR 2003/341

General duty in public sector of education

20.—(1) Without prejudice to its obligation to comply with any other provision of this Order, a body to which this paragraph applies shall be under a general duty to secure that facilities for education provided by it, and any ancillary benefits or services, are provided without racial discrimination.

(2) Article 101 of the Education and Libraries (Northern Ireland) Order 1986 (power of Department of Education to give directions) shall apply to the performance by a body to which paragraph (1) applies of the duties imposed by Articles 18 and 19 and shall also apply to the performance of the general duty imposed by paragraph (1), as it applies to the performance by an education and library board of a duty imposed by the Education Orders.

(3) The sanctions in paragraph (2) shall be the only sanctions for breach of the general duty in paragraph (1), but without prejudice to the enforcement of Articles 18 and 19 under Article 54 or otherwise (where the breach is also a contravention of either of those Articles).

(4) Paragraph (1) applies to—

- (a) an education and library board; and
- (b) any other body which is a responsible body in relation to an establishment falling within paragraph 1, 4 or 5(b) of the table in Article 18(1).

^[F27]Public authorities

20A.—(1) It is unlawful for a public authority—

- (a) to discriminate against a person on the grounds of race or ethnic or national origins, or
- (b) to subject a person to harassment

in the course of carrying out any functions of the authority which consist of the provision of:

- (i) any form of social security;
- (ii) healthcare;
- (iii) any other form of social protection, or
- (iv) any form of social advantage,

which does not fall within Article 21.

(2) In this Article “public authority”:

- (a) includes any person certain of whose functions are functions of a public nature; but
- (b) does not include any person mentioned in paragraph (3).

(3) The persons mentioned in this paragraph are—

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- (a) either House of Parliament;
 - (b) a person exercising functions in connection with proceedings in Parliament;
 - (c) the Assembly;
 - (d) a person exercising functions in connection with proceedings in the Assembly;
 - (e) the Security Service;
 - (f) the Secret Intelligence Service;
 - (g) the Government Communications Headquarters; and
 - (h) any unit or part of a unit of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (4) In relation to a particular act, a person is not a public authority by virtue only of paragraph (2) (a) if the nature of the act is private.
- (5) This Article is subject to Articles 20B to 20D.
- (6) Nothing in this Article makes unlawful any act of discrimination on the grounds of race or ethnic or national origins, or harassment, which—
- (a) is made unlawful by virtue of any other provision of this Order; or
 - (b) would be so made but for any provision made by or under this Order.]

F27 SR 2003/341

[^{F28}Exceptions or further exceptions from Article 20A for judicial and legislative acts etc

20B.—(1) Article 20A does not apply to—

- (a) any judicial act, whether done by a court, tribunal or other person; or
- (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Article 20A does not apply to any act of, or relating to, making, confirming or approving any statutory provision.

(3) Article 20A does not apply to any act of, or relating to, making or approving arrangements or imposing requirements or conditions, of a kind excepted by Article 40.

(4) Article 20A does not apply to any act of, or relating to, imposing a requirement, or giving an express authorisation, of a kind mentioned in Article 20C(3) in relation to the carrying out of immigration functions.

(5) In this Article “immigration functions” has the meaning given in Article 20C.]

F28 SR 2003/341

[^{F29}Exception from Article 20A for certain acts in immigration cases

20C.—(1) Article 20A does not make it unlawful for a relevant person to discriminate against another person on grounds of ethnic or national origins in carrying out immigration functions.

(2) For the purposes of paragraph (1), “relevant person” means—

- (a) a Minister of the Crown acting personally; or
- (b) any other person acting in accordance with a relevant authorisation.

Status: Point in time view as at 22/04/2007.

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(3) In paragraph (2), “relevant authorisation” means a requirement imposed or express authorisation given—

- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
- (b) with respect to a particular class of case by any of the statutory provisions mentioned in paragraph (5).

(4) In paragraph (1), “immigration functions” means functions exercisable by virtue of any of the statutory provisions mentioned in paragraph (5).

(5) Those statutory provisions are—

- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002 but excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act);
- (b) the Special Immigration Appeals Commission Act 1997;
- (c) provision made under section 2(2) of the European Communities Act 1972 which relates to immigration or asylum; and
- (d) any provision of Community law which relates to immigration or asylum.]

F29 SR 2003/341

[^{F30}Exceptions from Article 20A for decisions not to prosecute etc

20D. Article 20A does not apply to—

- (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;
- (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and where such a decision has been made:
 - (i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and
 - (ii) any act done for the purpose of securing that the proceedings are not continued.]

F30 SR 2003/341

Goods, facilities, services and premises

^{F31} . . . provision of goods, facilities or services

21.—(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.

[^{F31}(1A) It is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in paragraph (1), in relation to such provision, to subject to harassment—

- (a) a person who seeks to obtain or use those goods, facilities or services, or
- (b) a person to whom he provides those goods, facilities or services.]

(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 education;
- (e) facilities for entertainment, recreation or refreshment;
- (f) facilities for transport or travel;
- (g) the services of any profession or trade, or any local or other public authority.

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^{F32} . . . **disposal or management of premises**

22.—(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 [^{F32} discrimination, on grounds other than those of race or ethnic or national origins, by] 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 facilities, or by refusing or deliberately omitting to afford him access to them; or
- (b) by evicting him, or subjecting him to any other detriment.

[^{F32}(3A) It is unlawful for a person, in relation to such premises as are referred to in paragraph (1) or (3), to subject to harassment a person who applies for or, as the case may be, occupies such premises.]

(4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in a tenancy

- [^{F32}(a) discriminate against a person by withholding the licence or consent for the disposal of the premises to him, or
- (b) in relation to such a licence or consent, to subject to harassment a person who applies for such a licence or consent, or from whom the licence or consent is withheld.]

(5) Paragraph (4) applies to tenancies created before as well as after the coming into operation of this Article.

Status: Point in time view as at 22/04/2007.

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(6) In this Article—

“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.

F32 SR 2003/341

Exception from Articles 21(1) and 22: small dwellings

23.—(1) [^{F33}In relation to discrimination on grounds other than those of race or ethnic or national origins] Where the conditions mentioned in paragraph (2) are satisfied—

- (a) Article 21(1) does not apply to the provision by a person of accommodation in any premises;
- (b) Article 22(1) does not apply to the disposal by a person of any premises;
- (c) Article 22(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.

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(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 21(1), the person providing the accommodation or a near relative of his;
- (b) in a case falling within Article 22(1), the person with power to dispose of the premises, or a near relative of his;
- (c) in a case falling within Article 22(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^[F34] or civil partner], parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or^[F34] by marriage or civil partnership)].

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F34 2004 c.33

Further exceptions from Articles^[F35] 21] and 22

24.—(1) Articles^[F35] 21] and 22 do not apply—

- (a) to discrimination^[F35] or harassment] which is rendered unlawful by any provision of Part II or Article 18 or 19; or
- (b) to discrimination which would be rendered unlawful by any provision of Part II but for any of the following provisions, namely Articles 6(3) and (5)^[F35] 7A(1)(b)], 8(1)(b), 9(4), 11 and 16(3).

(2) Article 21(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.

F35 SR 2003/341

Discrimination: associations not within Article 13

25.—(1) This Article applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if—

- (a) it has 25 or more members; and
- (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of Article 21(1); and
- (c) it is not an organisation to which Article 13 applies.

(2) It is unlawful for an association to which this Article applies, in the case of a person who is not a member of the association, to discriminate against him—

- (a) in the terms on which it is prepared to admit him to membership; or
- (b) by refusing or deliberately omitting to accept his application for membership.

(3) It is unlawful for an association to which this Article applies, in the case of a person who is a member or associate of the association, to discriminate against him—

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- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
 - (b) in the case of a member, by depriving him of membership, or varying the terms on which he is a member; or
 - (c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights; or
 - (d) in either case, by subjecting him to any other detriment.
- (4) For the purposes of this Article—
- (a) a person is a member of an association if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly;
 - (b) a person is an associate of an association to which this Article applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).
- (5) Nothing in this Article shall render unlawful any act not involving discrimination on the ground of colour done by an association to which paragraph (6) applies.
- (6) This paragraph applies to an association if the main object of the association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour.
- (7) In determining whether that is the main object of an association regard shall be had to the essential character of the association and to all relevant circumstances including, in particular, the extent to which the affairs of the association are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question.

Barristers

^{F36} . . . barristers

- 26.—**(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 a pupil, to discriminate against him—
- (a) in respect of any terms applicable to him as a pupil;
 - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
 - (c) in the benefits, facilities or services 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.

(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^{F36} or to subject any person to harassment].

[^{F36}(3A) It is unlawful for a barrister to subject to harassment a person who is, or has applied to be, his pupil.]

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

F36 SR 2003/341

Extent

Extent of Part III

27.—(1) Articles 18 to 20 do not apply to benefits, facilities or services outside Northern Ireland except—

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

[^{F37}(1A) In its application in relation to granting entry clearance (within the meaning of the Immigration Act 1971) Article 20A applies in relation to acts done outside the United Kingdom, as well as those done within Northern Ireland.]

(2) Article 21(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.

(3) Article 21(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 21(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,

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.

F37 SR 2003/341

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PART IV

OTHER UNLAWFUL ACTS

[^{F38}Relationships which have come to end

27A.—(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(1B), taken with Article 3(1) or (1A), or (as the case may be) by virtue of Article 4A—

- (a) an act of discrimination by one party to the relationship (“the relevant party”) against another party to the relationship, on grounds of race or ethnic or national origins, 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, on grounds of race or ethnic or national origins, 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 19th July 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 or Parts referred to in paragraph (1) as determine most closely the nature of the relevant relationship.]

F38 SR 2003/341

[^{F39}**28.**—(1) In this Article “discriminatory practice” means—

- (a) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part II or III taken with Article 3(1)(b), or which would be likely to result in such an act of discrimination if the persons to whom it is applied included persons of any particular racial group as regards which there has been no occasion for applying it, or
- (b) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision referred to in Article 3(1B), taken with Article 3(1A), or which would be likely to result in such an act of discrimination, if the person to whom it is applied included persons of any particular race or of any particular ethnic or national origins, as regards which there has been no occasion for applying it.]

F39 SR 2003/341

Discriminatory advertisements

29.—(1) It is unlawful to publish or to cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an act of discrimination, whether the doing of that act by him would be lawful or, by virtue of Part II or III, unlawful.

(2) Paragraph (1) does not apply to an advertisement—

- (a) if the intended act would be lawful by virtue of any of Articles 6(5), 8, 9(3) and (4), 12(3), 25(5), 34(3)(b), 35 to 38 and 40; or
- (b) if the advertisement relates to the services of an employment agency (within the meaning of Article 16(1)) and the intended act only concerns employment which the employer could by virtue of Article 6(5), 8 or 9(3) or (4) lawfully refuse to offer to persons against whom the advertisement indicates an intention to discriminate.

(3) Paragraph (1) does not apply to an advertisement which indicates that persons of any class defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside Northern Ireland.

(4) The publisher of an advertisement made unlawful by 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) or (3), 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 mentioned 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.

Instructions to^{F40} commit unlawful acts]

30. It is unlawful for a person—

- (a) who has authority over another person; or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of Part II or III^{F40} or Article 72ZA], or procure or attempt to procure the doing by him of any such act.

F40 SR 2003/341

Pressure to^{F41} commit unlawful acts]

31.—(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III^{F41} or Article 72ZA].

(2) An attempted inducement is not prevented from falling within paragraph (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

F41 SR 2003/341

Liability of employers and principals

32.—(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) Paragraphs (1) and (2) do not apply in relation to offences under this Order.
- (5) 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—
- (a) doing that act, or
 - (b) doing, in the course of his employment, acts of that description.

Aiding unlawful acts

33.—(1) A person who knowingly aids another person to do an act made unlawful by this Order shall be treated for the purposes of this Order as himself doing the same kind of unlawful act.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 32 (or would be so liable but for Article 32(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this Article, a person does not 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 mentioned 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.

PART V CHARITIES

Charities

34.—(1) A provision which is contained in a charitable instrument and which provides for conferring benefits on persons of a class defined by reference to colour shall have effect for all purposes as if it provided for conferring the same benefits—

- (a) on persons of the class which results if the restriction by reference to colour is disregarded; or
- (b) where the original class is defined by reference to colour only, on persons generally.

(2) Nothing in paragraph (1) shall be taken to alter the effect of any provision as regards any time before the coming into operation of that paragraph.

(3) Nothing in Parts II to IV shall—

- (a) affect any provision which is contained in a charitable instrument and which provides for conferring benefits on persons of a class defined otherwise than by reference to colour (including a class resulting from the operation of paragraph (1));
- (b) render unlawful an act which is done in order to give effect to such a provision.

[^{F42}(3A) Sub-paragraph (3)(b) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of Article 6, 7 or 9.]

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(4) In this Article “charitable instrument” means a statutory provision or other instrument (whenever taking effect) so far as it relates to purposes which are exclusively charitable according to the law of Northern Ireland.

F42 SR 2003/341

PART VI

GENERAL EXCEPTIONS FROM PARTS II TO IV

Special needs of racial groups in regard to education, training or welfare

35. Nothing in Parts II to IV shall render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits.

Provision of education or training for persons not ordinarily resident in Northern Ireland

36. Nothing in Parts II to IV shall render unlawful any act done by a person^[F43] on grounds other than those of race or ethnic or national origins,] for the benefit of persons not ordinarily resident in Northern Ireland in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Northern Ireland after their period of education or training there.

F43 SR 2003/341

^[F44]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 be virtue of Article 3(1)(b)^[F45] or 3(1A)] 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.]

F44 1998 NI 21

F45 SR 2003/341

Discriminatory training etc.

37.—(1) Nothing in Parts II to IV shall render unlawful any act done in relation to particular work by any person in or in connection with—

- (a) affording only persons of a particular racial group access to facilities for training which would help to fit them for that work; or
- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work,

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where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act—

- (i) there were no persons of that group among those doing that work in Northern Ireland; or
- (ii) the proportion of persons of that group among those doing that work in Northern Ireland was small in comparison with the proportion of persons of that group among the population of Northern Ireland.

(2) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of paragraph (1) is not met for the whole of Northern Ireland it is met for an area within Northern Ireland, nothing in Parts II to IV shall render unlawful any act done by that person in or in connection with—

- (a) affording persons who are of the racial group in question, and who appear likely to take up that work in that area, access to facilities for training which would help to fit them for that work; or
- (b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

(3) Paragraphs (1) and (2) do not apply to any discrimination which is rendered unlawful by Article 6(1) or (2).

(4) Nothing in Parts II to IV shall render unlawful any act done by an employer in relation to particular work in his employment at a particular establishment in Northern Ireland, being an act done in or in connection with—

- (a) affording only those of his employees working at that establishment who are of a particular racial group access to facilities for training which would help to fit them for that work; or
- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work at that establishment,

where any of the conditions in paragraph (5) was satisfied at any time within the 12 months immediately preceding the doing of the act.

(5) Those conditions are—

- (a) that there are no persons of the racial group in question among those doing that work at that establishment; or
- (b) that the proportion of persons of that group among those doing that work at that establishment is small in comparison with the proportion of persons of that group—
 - (i) among all those employed by that employer there; or
 - (ii) among the population of the area from which that employer normally recruits persons for work in his employment at that establishment.

(6) Nothing in Article 13 shall render unlawful any act done by an organisation to which that Article applies in or in connection with—

- (a) affording only members of the organisation who are of a particular racial group access to facilities for training which would help to fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular racial group to take advantage of opportunities for holding such posts in the organisation,

where either of the conditions in paragraph (7) was satisfied at any time within 12 months immediately preceding the doing of the act.

(7) Those conditions are—

- (a) that there are no persons of the racial group in question among persons holding such posts in that organisation; or

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(b) that the proportion of persons of that group among those holding such posts in that organisation is small in comparison with the proportion of persons of that group among the members of the organisation.

(8) Nothing in Parts II to IV shall render unlawful any act done by an organisation to which Article 13 applies in or in connection with encouraging only persons of a particular racial group to become members of the organisation where at any time within the 12 months immediately preceding the doing of the act—

- (a) no persons of that group were members of the organisation; or
- (b) the proportion of persons of that group among members of the organisation was small in comparison with the proportion of persons of that group among those eligible for membership of the organisation.

(9) Article 10 (meaning of employment at establishment in Northern Ireland) shall apply for the purposes of this Article as if this Article were contained in Part II.

Sports and competitions

38. Nothing in Parts II to IV shall render unlawful any act whereby a person discriminates against another on the basis of that other's nationality or place of birth or the length of time for which he has been resident in a particular area or place, if the act is done—

- (a) in selecting one or more persons to represent a country, place or area, or any related association, in any sport or game; or
- (b) in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game.

Indirect access to benefits etc.

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

(2) Where by any provision of this Order the affording by any person of access to benefits, facilities or services 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 any actual provider.

Acts done under statutory authority etc.

40.—(1) Nothing in Parts II to IV shall render unlawful any act of discrimination done—

- (a) in pursuance of any statutory provision; or
- (b) in order to comply with any condition or requirement imposed by a Minister of the Crown or government department by virtue of any statutory provision.

[^{F46}(1A) Paragraph (1) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of a provision referred to in Article 3(1B).]

(2) Nothing in Parts II to IV shall render unlawful any act whereby a person discriminates against another on the basis of that other's nationality or place of ordinary residence or the length of time for which he has been present or resident in or outside the United Kingdom or an area within the United Kingdom, if that act is done—

- [^{F46}(a) in pursuance of any statutory provision; or

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- (b) in order to comply with any requirement imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department by virtue of any statutory provision; or
- (c) in pursuance of any arrangements made by or with the approval of, or for the time being approved by, a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department; or
- (d) in order to comply with any condition imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister or deputy First Minister) or government department.]

(3) This Article applies whether the statutory provision, condition, requirement or arrangement in question was passed, made or imposed (as the case may be) before or after the making of this Order.

F46 SR 2003/341

[^{F47}The Police Service of Northern Ireland and the police support staff

40A.—(1) Nothing in Parts II to IV shall render unlawful any act done by the Chief Constable in order to comply with the requirements of [^{F48}section 46(1) to (1F)] of the Police (Northern Ireland) Act 2000 (selection of persons for appointment as police trainees).

(2) Nothing in Parts II to IV shall render unlawful any act done by the Chief Constable in order to comply with the requirements of [^{F49}section 46(5) to (5F)] of the Police (Northern Ireland) Act 2000 (selection of persons for certain posts in police support staff).]

F47 2000 c.32

F48 Words in art. 40A(1) substituted (22.4.2007) by Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (S.I. 2007/912 (N.I. 6)), arts. 1(3), **8(6)(b)**

F49 Words in art. 40A(2) substituted (22.4.2007) by Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (S.I. 2007/912 (N.I. 6)), arts. 1(3), **9(6)(b)**

Modifications etc. (not altering text)

C1 Art. 40A continued in force (temporary from 28.3.2007 until 28.3.2010) by Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2007 (S.R. 2007/214), **art. 2**

C2 Art. 40A continued in force (temporary from 28.3.2010 until 28.3.2011) by Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2010 (S.R. 2010/112), **art. 2**

[^{F50}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.]

F50 1998 NI 21

[^{F51}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
 - (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.]

F51 1998 NI 21

PART VII

THE COMMISSION FOR RACIAL EQUALITY FOR NORTHERN IRELAND

General

Establishment and duties of Commission

Para.(1) rep. by 1998 c.47

- (2) It shall be the duty of the Commission—
 - (a) to work towards the elimination of discrimination^[F52] and harassment];
 - (b) to promote equality of opportunity, and good relations, between persons of different racial groups generally; and
 - (c) 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.

Paras.(3)#(5) rep. by 1998 c.47

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F52 SR 2003/341

Assistance to organisations

43.—(1) The Commission may give financial or other assistance to any organisation appearing to the Commission to be concerned with the promotion of equality of opportunity, and good relations, between persons of different racial groups.

(2) The Commission shall not give any financial assistance under paragraph (1) out of money appropriated by Measure except with the approval of the Department given with the consent of the Department of Finance and Personnel.

Research and education

44.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of Article 42(2).

(2) The Commission may make charges for educational or other facilities or services made available by it,

Codes of practice

Codes of practice

45.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for all or any of the following purposes, namely—

- (a) the elimination of discrimination^[F53] and harassment] in the field of employment;
- (b) the promotion of equality of opportunity in the field of employment between persons of different racial groups;
- (c) the elimination of discrimination^[F53] and harassment] in the field of housing;
- (d) the promotion of equality of opportunity in the field of housing between persons of different racial groups.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this Article may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Order.

(3) When the Commission proposes to issue a code of practice, 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.

(4) In the course of preparing any draft code of practice relating to the field of employment for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; and
- (b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) In the course of preparing any draft code of practice relating to the field of housing for eventual publication under paragraph (3), the Commission shall consult with such organisations or bodies as appear to the Commission to be appropriate having regard to the content of the proposed code.

(6) If the Commission determines to proceed with the draft, it shall transmit 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.

(7) If, within the statutory period beginning with the day on which a copy of the draft 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.

(8) If no such resolution is passed as is referred to in paragraph (7), the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

(9) The Commission may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code, and paragraphs (3) to (8) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(10) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings, but in any proceedings under this Order before an industrial tribunal or a county court—

- (a) any code of practice issued under this Article shall be admissible in evidence; and
- (b) any provision of the code which appears to the tribunal or court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

F53 SR 2003/341

Investigations

Power to conduct formal investigations

46.—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under Article 42(2), the Commission may if it thinks fit, and shall if required by the Department, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the Department, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

Terms of reference

47.—(1) The Commission shall not embark on a formal investigation unless the requirements of this Article have been complied with.

(2) Terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

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(4) Where the terms of reference of the investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by this Order which it believes that a person so named may have done, the Commission shall—

- (a) inform that person of its belief and of its proposal to investigate the act in question; and
- (b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit).

(5) A person who avails himself of an opportunity under paragraph (4) of making oral representations may be represented—

- (a) by counsel or a solicitor; or
- (b) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.

(6) The Commission or, if the Commission was required by the Department to conduct the investigation, the Department after consulting the Commission may from time to time revise the terms of reference; and paragraphs (1) and (3) to (5) shall apply to the revised investigation and terms of reference as they applied to the original.

Power to obtain information

48.—(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner—

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;
- (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by Article 57, a notice shall be served under paragraph (1) only where—

- (a) service of the notice was authorised by an order made by the Department; or
- (b) the terms of reference of the investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—

- (i) unlawful^[F54] acts of discrimination or harassment];
- (ii) contraventions of Article 28; and
- (iii) contraventions of Articles 29,30 or 31, and confine the investigation to those acts.

(3) A notice under paragraph (1) shall not require a person—

- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court; or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order.

(5) If a person fails, without reasonable excuse, to comply with an order made by the county court under paragraph (4), he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.

(6) A person who—

- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this Article to produce; or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,

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

(7) Proceedings for an offence under paragraph (6) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted—

- (a) against any person at any place at which he has an office or other place of business;
- (b) against an individual at any place where he resides, or at which he is for the time being.

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Recommendations and reports on formal investigations

49.—(1) If in the light of any of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion—

- (a) to make to any person, with a view to promoting equality of opportunity between persons of different racial groups who are affected by any of his activities, recommendations for changes in his policies or procedures, or as to any other matters; or
- (b) to make to the Department any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Department—

- (a) the Commission shall deliver the report to the Department; and
- (b) the Department shall cause the report to be published,

and, unless required by the Department, the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Department, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).

(5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

- (a) to inspect the report during ordinary office hours and take copies of all or any part of the report; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may, if it thinks fit, determine that the right conferred by paragraph (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give general notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

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Restriction on disclosure of information

50.—(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except—

- (a) on the order of any court; or
- (b) with the informant's consent; or
- (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates; or
- (d) in a report of the investigation published by the Commission or made available for inspection under Article 49(5); or
- (e) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (f) for the purpose of any civil proceedings under this Order to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private affairs of any individual or the business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

PART VIII ENFORCEMENT

General

Restriction on proceedings for breach of Order

51.—(1) Except as provided by this Order^{F55} or the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002] 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 this Order.

(2) Paragraph (1) does not preclude the making of an application for judicial review.

F55 SR 2003/341

Enforcement in employment field

Jurisdiction of industrial tribunals

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

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- (a) has committed an act^{F56} . . . against the complainant which is unlawful by virtue of Part II^{F56}, Article 72ZA or, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26]; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act^{F56} . . . against the complainant,

may be presented to an industrial tribunal.

(2) Paragraph (1) does not apply to a complaint under Article 14(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any statutory provision.

(3) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the^{F57} Fair Employment and Treatment (Northern Ireland) Order 1998)]—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under^{F57} Part VI of that Order]; or
- (b) such a complaint has been made, but the proceedings^{F57} under the Fair Employment and Treatment (Northern Ireland) Order 1998] have not been disposed of,

the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken^{F57} under the Fair Employment and Treatment (Northern Ireland) Order 1998] in respect of the act have been disposed of.

F56 SR 2003/341

F57 1998 NI 21

^{F58}**Burden of proof: industrial tribunals**

52A.—(1) This Article applies where a complaint is presented under Article 52 and the complaint is that the respondent—

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in Article 3(1B) (a), (e) or (f), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

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

- (a) has committed such an act of discrimination or harassment against the complainant,
- (b) is by virtue of Article 32 or 33 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.]

F58 SR 2003/341

Remedies on complaint under Article 52

53^{F59}.—(1) Where an industrial tribunal finds that a complaint presented to it under Article 52 is well-founded, the tribunal shall make such of the following as it considers just and equitable—

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- (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 54;
 - (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.
- (2) 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) could have been made but was not, the tribunal may make such an order.
- (3) 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.
- (4) The Department may by order make provision—
- (a) for enabling a 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 a 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.

F59 functions transf. by SR 1999/481

Enforcement of Part III

Claims under Part III^{F60} etc]

- 54.—**(1) A claim by any person (“the claimant”) that another person (“the respondent”)—
- (a) has committed an act^{F60} . . . against the claimant which is unlawful by virtue of Part III^{F60} other than, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26]; or
 - (b) is by virtue of Article 32 or 33 to be treated as having committed such an act^{F60} . . . 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 51(1), would be obtainable in the High Court.

(3) As respects an unlawful act of discrimination falling within Article 3(1)(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 racial grounds.

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(4) Damages in respect of an unlawful act of discrimination 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 18 or 19 by a body to which Article 20(1) applies shall not be instituted unless—

- (a) the claimant has given notice of the claim to the Department of Education; and
- (b) [^{F60}in relation to a claim on grounds of colour or nationality] either—
 - (i) the Department of Education has by notice informed the claimant that it does not require further time to consider the matter; or
 - (ii) the period of 2 months has elapsed since the claimant gave notice to the Department of Education.

(6) Nothing in paragraph (5) applies—

- (a) to a claim against the Department of Education; or
- (b) 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.

[^{F60}(9) A county court shall have jurisdiction to entertain proceedings under this Order with respect to an act done outside the United Kingdom where Article 20A applies in relation to such an act by virtue of Article 27(1A).

(10) This Article has effect subject to Article 54A.]

F60 SR 2003/341

[^{F61}Claims under Article 20A in immigration cases

54A.—(1) No proceedings may be brought by a claimant under Article 54(1) in respect of an immigration claim if—

- (a) the act to which the claim relates was done in the taking by an immigration authority of a relevant decision and the question whether that act was unlawful by virtue of Article 20A has been or could be raised in proceedings on an appeal which is pending, or could be brought, under the 1997 Act or Part 5 of the 2002 Act; or
- (b) it has been decided in relevant immigration proceedings that that act was not unlawful by virtue of that Article.

(2) For the purposes of this Article an immigration claim is a claim that a person—

- (a) has committed a relevant act of discrimination against the claimant which is unlawful by virtue of Article 20A; or

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(b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the claimant.

(3) Where it has been decided in relevant immigration proceedings that an act to which an immigration claim relates was unlawful by virtue of Article 20A, any court hearing that claim under Article 54 shall treat that act as an act which is unlawful by virtue of Article 20A for the purposes of the proceedings before it.

(4) No relevant decision of an immigration authority involving an act to which an immigration claim relates and no relevant decision of an immigration appellate body in relation to such a decision shall be subject to challenge or otherwise affected by virtue of a decision of a court hearing the immigration claim under Article 54.

(5) In this Article—

“the Immigration Acts” has the meaning given by section 158 of the 2002 Act;

“immigration appellate body” means an adjudicator appointed for the purposes of Part 5 of the 2002 Act, the Immigration Appeal Tribunal, the Special Immigration Appeals Commission, the Court of Appeal, the Court of Session or the House of Lords;

“immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971);

“immigration claim” has the meaning given by paragraph (2);

“pending” has the same meaning as in the 1997 Act or, as the case may be, Part 5 of the 2002 Act;

“relevant act of discrimination” means an act of discrimination on the grounds of race or ethnic or national origins, or harassment done by an immigration authority in taking any relevant decision;

“relevant decision” means—

(a) in relation to an immigration authority, any decision under the Immigration Acts relating to the entitlement of the claimant to enter or remain in the United Kingdom; and

(b) in relation to an immigration appellate body, any decision on an appeal under the 1997 Act or Part 5 of the 2002 Act in relation to a decision falling within sub-paragraph (a);

“relevant immigration proceedings” means proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act;

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

and for the purposes of paragraph (1)(a), any power to grant leave to appeal out of time shall be disregarded.]

F61 SR 2003/341

[^{F62}**Burden of proof: county court**

54B.—(1) This Article applies where a claim is brought under Article 54 and the claim is that the respondent—

(a) has committed an act of discrimination, on grounds of race or ethnic or national origins which is unlawful by virtue of any provision referred to in Article 3(1B)(b) to (d), or Part IV in its application to those provisions, or

(b) has committed an act of harassment.

(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 32 or 33 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.]

F62 SR 2003/341

Non-discrimination notices

Issue of non-discrimination notice

55.—(1) This Article applies to—

- (a) an unlawful^{F63} act of discrimination or harassment]; and
- (b) an act contravening Article 28; and
- (c) an act contravening Article 29, 30 or 31,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form (“a non-discrimination notice”) requiring him—

- (a) not to commit any such acts; and
- (b) where compliance with sub-paragraph (a) involves changes in any of his practices or other arrangements—
 - (i) to inform the Commission that he has effected those changes and what those changes are; and
 - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than 5 years after the notice has become final.

(5) The Commission shall not serve a non-discrimination notice in respect of any person unless it has first—

- (a) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so; and
- (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice; and
- (c) taken account of any representations so made by him.

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(6) Paragraph (2) does not apply to any acts in respect of which the Department of Education could exercise the powers conferred on it by Article 20(2); but if the Commission becomes aware of any such acts it shall give notice of the acts to the Department of Education.

(7) Article 48(4) shall apply to requirements under paragraph (2)(b), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under Article 48(1).

F63 SR 2003/341

Appeal against non-discrimination notice

56.—(1) Not later than 6 weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice—

- (a) to an industrial tribunal, so far as the requirement relates to acts which are within the jurisdiction of the tribunal;
- (b) to a county court, so far as the requirement relates to acts which are within the jurisdiction of the court^{F64} (ignoring Article 54A)] and are not within the jurisdiction of an industrial tribunal.

(2) Where the tribunal or court considers a requirement in respect of which an appeal is brought under paragraph (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the tribunal or court shall quash the requirement.

(3) On quashing a requirement under paragraph (2) the tribunal or court may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Paragraph (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under paragraph (3).

F64 SR 2003/341

Investigation as to compliance with non-discrimination notice

57.—(1) If—

- (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination notice are being or have been carried out, but Article 48(2)(b) does not apply; and
- (b) Article 47(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of 5 years beginning when the non-discrimination notice became final,

the Commission may within the period referred to in paragraph (2) serve notices under Article 48(1) for the purposes of the investigation without the authorisation mentioned in Article 48(2)(a).

(2) The said period begins on the commencement date and ends on the later of the following dates—

- (a) the date on which the period of 5 years mentioned in paragraph (1)(b) expires;
- (b) the date 2 years after the commencement date.

Register of non-discrimination notices

58.—(1) The Commission shall establish and maintain a register (“the register”) of non-discrimination notices which have become final.

(2) Any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by paragraph (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

Persistent discrimination

59.—(1) If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely—

- (a) a non-discrimination notice served on him, or
- (b) a finding by a tribunal or court under Article 52 or 54 that he has done an unlawful^{F65} act of discrimination or harassment],^{F65} or]
- ^{F65}(c) a finding under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002 that he has done an act which was unlawful by virtue of Article 20A.]

it appears to the Commission that unless restrained he is likely to do one or more acts falling within sub-paragraph (b), or contravening Article 28, 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) In proceedings under this Article the Commission shall not allege that the person to whom the proceedings relate has done an act falling within paragraph (1)(b) or contravening Article 28 which is within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

F65 SR 2003/341

Enforcement of Articles 29 to 31

60.—(1) Proceedings in respect of a contravention of Article 29, 30 or 31 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 II, to an industrial tribunal; and

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- (b) in any other case, to a county court.
- (4) If it appears to the Commission—
 - (a) that a person has done an act which by virtue of Article 29, 30 or 31 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 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 under this Order and within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

Preliminary action in employment cases

61.—(1) With a view to making an application under Article 59(1) or 60(4) in relation to a person the Commission may present to an industrial tribunal a complaint that he has done an act within the jurisdiction of an industrial tribunal.

- (2) If the tribunal considers that the complaint is well-founded it —
 - (a) shall make a finding to that effect; and
 - (b) if it thinks it just and equitable to do so in the case of an act contravening any provision of Part II, may also (as if the complaint had been presented by the^{F66} the person concerned]) make an order such as is referred to in Article 53(1)(a), or a recommendation such as is referred to in Article 53(1)(c), or both.
- (3) Paragraphs (1) and (2) are without prejudice to the jurisdiction conferred by Article 60(2).

(4) In Articles 59 and 60 and this Article, the acts “within the jurisdiction of an industrial tribunal” are those in respect of which such jurisdiction is conferred by Articles 52 and 60.

F66 SR 2003/341

Undertakings by persons contravening this Order

- 62.**—(1) This Article applies to—
- (a) an unlawful discriminatory act;
 - (b) an act contravening Article 28;
 - (c) an act contravening Article 29, 30 or 31,

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 or arrangements so specified; or
- (c) that he will change his existing practices or arrangements 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.

(5) Paragraph (2) does not apply to any act in respect of which the Department of Education could exercise the powers conferred on it by Article 20(2); but if the Commission becomes aware of any such act it shall give notice of the act to the Department of Education.

Help for persons suffering discrimination

Help for aggrieved persons in obtaining information etc.

63.—(1) With a view to helping a person (“the person aggrieved”) who considers he may have been discriminated against^{F67} or subjected to harassment] in contravention of this Order 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 order prescribe—

(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 an order under paragraph (1) or not)—

(a) the question, and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this Article, 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 a reasonable period^{F67} or, where the question relates to discrimination on grounds of race or ethnic or national origins, or to harassment, the 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 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 order—

(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 54 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 industrial 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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F67 SR 2003/341

Assistance by Commission

64.—(1) Where, in relation to proceedings or prospective proceedings under this Order, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this Article, 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 Article 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) Where under paragraph (1) an application for assistance under this Article is made in writing, the Commission shall, within the period of 2 months beginning when the application is received—

- (a) consider the application after making such enquiries as it thinks fit;
- (b) decide whether or not to grant it; and
- (c) inform the applicant of its decision, stating whether or not assistance under this Article is to be provided by the Commission and, if so, what form it will take.

(4) If, in a case where paragraph (3) applies, the Commission within the period of 2 months there mentioned gives notice to the applicant that, in relation to his application—

- (a) the period of 2 months allowed it by that paragraph is by virtue of the notice extended to 3 months; and
- (b) the reference to 2 months in Article 65(3) is by virtue of the notice to be read as a reference to 3 months,

paragraph (3) and Article 65(3) shall have effect accordingly.

(5) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this Article, 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.

(6) The charge conferred by paragraph (5) is subject to any charge^{F68} under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to any provision in^{F69} that Order for payment of any sum^{F68} into the legal aid fund.

(7) In this Article “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.

[^{F70}(8) This Article (except for paragraph (4)) applies to proceedings or prospective proceedings under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002 so far as they relate to acts which may be unlawful by virtue of Article 20A as it applies to proceedings or prospective proceedings under this Order.

(9) In this Article as it applies by virtue of paragraph (8) “rules and regulations” means—

- (a) in relation to proceedings under the Act of 1997, rules under that Act;
- (b) in relation to proceedings under Part 5 of the Act of 2002, rules under that Act.]

F68 prosp. subst. by 2003 NI 10
F69 prosp. inserted by 2003 NI 10
F70 SR 2003/341

Period within which proceedings to be brought

Period within which proceedings to be brought

65.—(1) An industrial tribunal shall not consider a complaint under Article 52 unless it is presented to the tribunal before the end of —

- (a) the period of 3 months beginning when the act complained of was done; or
- (b) in a case to which Article 71(7) applies, the period of 6 months so beginning.

(2) [^{F71}subject to paragraph (2A)] A county court shall not consider a claim under Article 54 unless proceedings in respect of the claim are instituted before the end of—

- (a) the period of 6 months beginning when the act complained of was done; or
- (b) in a case to which Article 54(5) applies, the period of 8 months so beginning.

[^{F71}(2A) In relation to an immigration claim within the meaning of Article 54A, the period of six months mentioned in paragraph (2)(a) begins on the expiry of the period during which, by virtue of Article 54A(1)(a), no proceedings may be brought under Article 54(1) in respect of the claim.]

(3) Where, in relation to proceedings or prospective proceedings by way of a claim under Article 54, an application for assistance under Article 64 is made to the Commission before the end of the period of 6 or, as the case may be, 8 months mentioned in sub-paragraph (a) or (b) of paragraph (2), the period allowed by that sub-paragraph for instituting proceedings in respect of the claim shall be extended by 2 months.

(4) An industrial tribunal or county court shall not consider an application under Article 60(2)(a) unless it is made before the end of the period of 6 months beginning when the act to which it relates was done; and a county court shall not consider an application under Article 60(4) unless it is made before the end of the period of 5 years so beginning.

(5) An industrial tribunal shall not consider a complaint under Article 61(1) unless it is presented to the tribunal before the end of the period of 6 months beginning when the act complained of was done.

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(6) A county court shall not consider an application under Article 62(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.

(7) A court or 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.

(8) 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 decided upon it.

(9) In the absence of evidence establishing the contrary a person shall be taken for the purposes of this Article to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) 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.

F71 SR 2003/341

Evidence

Evidence

66.—(1) Any finding by a court or industrial tribunal under this Order in respect of any act shall, if it has become final, be treated as conclusive in any proceedings under this Order.

(2) In any proceedings under this Order^{F72} or any statutory provision mentioned in Article 20C(5)]

- (a) a certificate signed by or on behalf of a Minister of the Crown or a government department and certifying that any condition, requirement or arrangement specified in the certificate was imposed, made or approved by that Minister or that department (as the case may be) and was in operation at a time or throughout a time so specified;^{F73} . . .

Sub-para.(b) rep. by 1998 NI 21

- (b) a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security or of protecting public safety or public order,

shall be conclusive evidence of the matters certified.

(3) 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.

F72 SR 2003/341

F73 1998 NI 21

PART IX SUPPLEMENTAL

District councils: general statutory duty

67. Without prejudice to its obligation to comply with any other provision of this Order, it shall be the duty of a district council to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need—

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity, and good relations, between persons of different racial groups.

Validity and revision of contracts

68.—(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Order; or
- (b) it is included in furtherance of an act rendered unlawful by this Order; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Order.

(2) Paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against^{F74} or harassment of,] a party to the contract, but the term shall be unenforceable against that party.

(3) On the application of any person interested in a contract to which paragraph (2) applies, a county court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice of the application (except where under county court rules notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(4) An order under paragraph (3) may include provision as respects any period before the making of the order.

(5) A term in a contract which purports to exclude or limit any provision of this Order is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(6) Paragraph (5) does not apply—

- (a) to a contract settling a complaint to which Article 52(1) applies where the contract is made with the assistance of the Labour Relations Agency; or
- (b) to a contract settling a complaint to which Article 52(1) applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which Article 54 applies.

(7) The conditions regulating compromise contracts under this Order are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received^{F75} advice from a relevant independent adviser] as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a^{F76} 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;

Status: Point in time view as at 22/04/2007.

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- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.

[^{F77}(8) A person is a relevant independent adviser for the purposes of paragraph (7)(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) ^{F78} if he is a person of a description specified in an order made by the Department.

(8A) But a person is not a relevant independent adviser for the purposes of paragraph (7)(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 (8)(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 (8)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (8)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(8B) In paragraph (8)(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.

(8C) In paragraph (8)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(9) For the purposes of paragraph (8A) 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.]

[^{F79}(10) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of paragraph (6)(a) and
- (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; 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 a contract in any other case.]

F74 SR 2003/341

F75 1998 NI 8

F76 1998 NI 8

F77 1998 NI 8

F78 functions transf. by SR 1999/481

F79 1998 NI 8

[^{F80}Collective agreements and rules of undertakings

68A.—(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 13 (trade organisations) applies, or by a body to which Article 14 (qualifying bodies) applies, for application to—
 - (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this Article applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful on grounds of race or ethnic or national origins, by virtue of a provision referred to in Article 3(1B);
- (b) the term or rule is included or made in furtherance of an act which is unlawful on such grounds 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 19th July 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 68B, “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 (meaning of trade dispute), 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.]

F80 SR 2003/341

[^{F81}68B.—(1) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of Article 68A 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 68(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 on grounds of race or ethnic or national origins by a provision referred to in Article 3(1B) 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;

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(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, within the meaning of Article 68A(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 or body to which Article 68A(1)(c) applies, paragraph (1) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, or body;
- (b) on whom the organisation, or body has conferred an authorisation or qualification, or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, or body has power to confer.

(4) When an industrial 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.

(5) An order under paragraph (4) may include provision as respects any period before the making of the order (but after 19th July 2003).

(6) The avoidance by virtue of Article 68A(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.]

F81 SR 2003/341

Power to amend certain provisions of Order

69.—(1) The Department may by order—

- (a) amend Article 5;
- (b) amend or repeal Article 11;
- (c) amend Part II, III or IV so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 6(1) or (2), 21(1), 22 or 25;
- (d) amend Article 12(1) or 25(1)(a) so as to alter the number of partners or members specified in that provision.

(2) The Department may by order provide that Articles 10(5) and 11(3) shall have effect—

- (a) with the substitution for the words from “exploration” to “natural resources” of the words “ any activity falling within [F82section 11(2) of the Petroleum Act 1998] ”; and
- (b) with the insertion after “1964” of the words “ or specified under [F82section 10(8) of the Petroleum Act 1998] ”.

(3) The Department shall not make an order under paragraph (1) unless a draft of the order has been laid before and approved by a resolution of the Assembly.

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(4) 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.

F82 1998 c.17

Regulations and orders

70.—(1) All regulations made by the Department under this Order shall be subject to negative resolution.

(2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to an order under Article 48(2)(a); but any document purporting to be such an order shall be received in evidence and shall, unless the contrary is proved, be deemed to be made by the Department.

(3) Except as provided by paragraph (4), all other orders made by the Department under this Order shall be subject to negative resolution.

(4) Paragraph (3) does not apply to an order under—

- (a) Article 1(2) (commencement orders); or
- (b) Article 10(5) or 69(1) (orders subject to approval in draft by Assembly).

(5) Regulations and orders under this Order may contain incidental, supplementary, consequential and transitional provisions.

Application to Crown etc.

71.—(1) This Order applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department; or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Parts II and IV apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
- (c) service in the armed forces,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

[^{F83}(2A) Paragraphs (1) and (2) do not apply in relation to the provisions mentioned in paragraph (2B).

(2B) Articles 20A to 20D bind the Crown and the other provisions of this Order so far as they relate to those provisions shall be construed accordingly (including, in particular, references to employment in Part IV).]

(3) Paragraphs (1)[^{F83} to (2B)] have effect subject to [^{F84} Articles 72A and 72B].

(4) Paragraph (2) of Article 10 and paragraph (4) of Article 27 shall 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 as it has effect in relation to a ship, aircraft or hovercraft such as is mentioned in sub-paragraph (a) or (b) of the paragraph in question; and Article 10(3) shall apply accordingly.

(5) Nothing in this Order shall—

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- (a) invalidate any rules (whether made before or after the making of this Order) restricting employment in the service of the Crown or by any public body prescribed for the purposes of this paragraph by regulations made by the Department of Finance and Personnel to persons of particular birth, nationality, descent or residence; or
- (b) render unlawful the publication, display or implementation of any such rules, or the publication of advertisements stating the gist of any such rules.

In this paragraph “employment” includes service of any kind, and “public body” means a body of persons, whether corporate or unincorporate, carrying on a service or undertaking of a public nature.

(6) 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 in their application to proceedings under this Order section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(7) This paragraph applies to any complaint by a person (“the complainant”) that another person—

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 6; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

(8) No complaint to which paragraph (7) applies shall be presented to an industrial tribunal under Article 52 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council has made a determination with respect to the complaint.

(9) The Secretary of State may by regulations make provision enabling a complaint to which paragraph (7) applies to be presented to an industrial tribunal under Article 52 in such circumstances as may be prescribed by the regulations, notwithstanding that paragraph (8) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(10) Where a complaint is presented to an industrial tribunal under Article 52 by virtue of regulations under paragraph (9), the service redress procedures may continue after the complaint is so presented.

(11) Regulations under paragraph (9) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(12) In this Article—

“armed forces” means any of the naval, military or air forces of the Crown; “service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the

House of Commons Disqualification Act 1975;

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957; and

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“statutory body” means a body set up by or in pursuance of a statutory provision and “statutory office” means an office so set up.

F83 SR 2003/341

F84 2000 c.32

Government appointments outside Article 6

72.—(1) This Article applies to any appointment by a Minister of the Crown or government department to an office or post where Article 6^[F85] or 72ZA] does not apply in relation to the appointment.

(2) In making the appointment, and in making the arrangements for determining who should be offered the office or post, the Minister of the Crown or government department shall not do an act which would be unlawful under Article 6 if the Crown were the employer for the purposes of this Order.

F85 SR 2003/341

^[F86]Other office holders

72ZA.—(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 on the grounds of race or ethnic or national origins—

- (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 on the grounds of race or ethnic or national origins—

- (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 on grounds of race or ethnic or national origins—

- (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;

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- (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 7A (exception for genuine occupational requirement); and paragraph (2) 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 7A 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 (including the First Minister and deputy First Minister) or a government department,

but not a political office or a case where Article 6 (applicants and employees), 9 (contract workers), 12 (partnerships) or 26 (barristers) 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;

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- (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 council within the meaning of section 1(3) of the Local Government Act (Northern Ireland) 1972 held by a member of it, or
 - (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.]

F86 SR 2003/341

[^{F87}The Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve

72A.—(1) For the purposes of Part II, 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 32—

- (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—

- (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; and
- (b) 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—

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- (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^[F88]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.]

F87 2000 c. 32

F88 Words in art. 72A(6)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005](#) (c. 15), ss. 59, 178, Sch. 4 para. 108; S.I. 2006/378, art. 4(1), Sch.

^[F89]Other police bodies

72B.—(1) For the purposes of Part II, 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 32—
- (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—
- (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; and
 - (b) 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—

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- (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).
- [^{F90}(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.]

F89 2000 c. 32

F90 Art. 72B(6) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 109](#); S.I. 2006/ 378, {art. 4(1)}, Sch.

Art. 73—Amendments

Status: Point in time view as at 22/04/2007.

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Schedule 1 rep. by 1998 c.47

Schedule 2—Amendments

Status:

Point in time view as at 22/04/2007.

Changes to legislation:

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