
STATUTORY INSTRUMENTS

1997 No. 869

The Race Relations (Northern Ireland) Order 1997

**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 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 independent legal advice from a qualified lawyer 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 policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
 - (e) the contract must identify the adviser; and
 - (f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.
- (8) In paragraph (7)—
- “independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party and
- “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (9) For the purposes of paragraph (7) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.

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 section 23(2) of the Oil and Gas (Enterprise) Act 1982”; and
 - (b) with the insertion after “1964” of the words “or specified under section 22(5) of the Oil and Gas (Enterprise) Act 1982”.
- (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.
- (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.

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.

(3) Paragraphs (1) and (2) have effect subject to Article 17.

(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—

- (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

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

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 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.

Amendments

73. The statutory provisions specified in Schedule 2 shall have effect subject to the amendments specified in that Schedule.