

## SCHEDULES

### SCHEDULE 2

Articles 23(9) and 31(6) [F1, 37A(6)]

#### ENFORCEMENT AND PROCEDURE

**F1** Words in Sch. 2 sidenote inserted (23.4.2008) by Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 (S.R. 2008/177), reg. 4(2)

### PART I

#### DISCRIMINATION IN SCHOOLS

##### *Restriction on proceedings for breach of Chapter I of Part III*

**1.**—(1) Except as provided by Articles 22 and 24, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter I of Part III of this Order.

(2) Sub-paragraph (1) does not prevent—

- (a) the making of an application for judicial review;
- (b) the bringing of proceedings in respect of an offence under Article 23(7).

##### *Period within which proceedings must be brought*

**2.**—(1) The Tribunal shall not consider a claim under Article 22 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 22, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.

(3) The Tribunal may consider any claim under Article 22 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) But sub-paragraph (3) does not permit the Tribunal to decide to consider a claim if a decision not to consider that claim has previously been taken under that sub-paragraph.

(5) For the purposes of sub-paragraph (1)—

- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (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.

**Changes to legislation:** The Special Educational Needs and Disability (Northern Ireland) Order 2005, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(6) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph 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.

### *Evidence*

3.—(1) In any proceedings under Article 22 or 24, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by that Minister or that department (as the case may be), and
- (b) were in operation at a time or throughout a time so specified,

shall be conclusive evidence of the matters certified.

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

## PART II

### DISCRIMINATION IN FURTHER AND HIGHER EDUCATION INSTITUTIONS

#### *Restriction on proceedings for breach of Chapter II of Part III*

4.—(1) Except as provided by [<sup>F2</sup>Chapter II of Part III] , no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under [<sup>F3</sup>that Chapter] of this Order.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

**F2** Words in Sch. 2 Pt. 2 para. 4(1) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332), regs. 1, **15(2)(a)**

**F3** Words in Sch. 2 Pt. 2 para. 4(1) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332), regs. 1, **15(2)(b)**

#### *Period within which proceedings must be brought*

5.—(1) A county court shall not consider a claim under Article 31 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 31, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.

(3) A court may consider any claim under Article 31 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

**Changes to legislation:** The Special Educational Needs and Disability (Northern Ireland) Order 2005, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) For the purposes of sub-paragraph (1)—
- (a) if an unlawful act <sup>F4</sup> . . . is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (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.
- (5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph 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.

**F4** Words in Sch. 2 Pt. 2 para. 5(4)(a) omitted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by virtue of Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332), regs. 1, **15(3)**

#### *Compensation for injury to feelings*

**6.** In any proceedings under Article 31, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

#### *Evidence*

**7.—(1)** In any proceedings under Article 31, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by that Minister or that department (as the case may be), and
  - (b) were in operation at a time or throughout a time so specified,
- is conclusive evidence of the matters certified.

**(2)** A document purporting to be such a certificate is to be—

- (a) received in evidence; and
- (b) deemed to be such a certificate unless the contrary is proved.

## **[<sup>F5</sup>Part III**

### **Discrimination in General Qualifications Bodies**

**F5** Sch. 2 Pt. III inserted (23.4.2008) by Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 (S.R. 2008/177), reg. **4(3)**

#### *Restriction on proceedings for breach of Chapter III of Part III*

**8.—(1)** Except as provided by Article 37A, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter III of Part III.

**Changes to legislation:** The Special Educational Needs and Disability (Northern Ireland) Order 2005, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought*

**9.—**(1) A county court shall not consider a claim under Article 37A unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 37A, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period of six months allowed by that sub-paragraph shall be extended by two months.

(3) A court may consider any claim under Article 37A which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)—

- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (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.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph 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.

*Evidence*

**10.—**(1) In any proceedings under Article 37A, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by that Minister or that department (as the case may be), and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate is to be—

- (a) received in evidence; and
- (b) deemed to be such a certificate unless the contrary is proved.]

**Changes to legislation:**

The Special Educational Needs and Disability (Northern Ireland) Order 2005, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 22(1)(i)-(ii) substituted for words by [2016 c. 8 \(N.I.\) s. 12\(1\)](#)