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STATUTORY INSTRUMENTS

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**1998 No. 3162**

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

**PART VIII  
EXCEPTIONS**

**Excepted employments, etc.**

**70.**—(1) This Order does not apply to or in relation to—

- (a) any employment or occupation as a clergyman or minister of a religious denomination; or
- (b) employment for the purposes of a private household.

(2) Part VII does not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.

(3) So far as they relate to discrimination on the ground of religious belief, Parts III and V do not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.

(4) So far as they relate to discrimination on the ground of political opinion, Parts III and V do not apply to or in relation to an employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular political opinion.

(5) Paragraphs (2) to (4) do not apply to employment mentioned in Article 71(1).

**School teachers**

**71.**—(1) Subject to paragraph (2), this Order does not apply to or in relation to employment as a teacher in a school.

(2) The Commission shall keep under review the exception contained in paragraph (1) with a view to considering whether, in the opinion of the Commission, it is appropriate that any steps should be taken to further equality of opportunity in the employment of teachers in schools.

(3) For the purpose of assisting it in the discharge of its duty under paragraph (2), the Commission may conduct investigations—

- (a) into the composition, by reference to religious beliefs, of the staff employed as teachers, or teachers of any class, in schools generally, schools of any class or particular schools; and
- (b) into practices—
  - (i) affecting the recruitment or access to benefits of, or the terms of employment applicable to, such staff; or
  - (ii) involving any detriment to such staff,

including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the staff at that time.

(4) The Commission may, and shall whenever the Department so directs, report to the Department upon the exercise of its functions under this Article; and a report under this paragraph may make recommendations as to any action which the Commission considers ought to be taken to further equality of opportunity in the employment of teachers, or teachers of any class, in schools, or in schools of any class (including action by way of the exercise of the power conferred by paragraph (6) to remove or limit the exception contained in paragraph (1)).

(5) Schedule 2 shall have effect with respect to the conduct of investigations under this Article.

(6) The Department may by order provide that paragraph (1)—

(a) shall cease to have effect; or

(b) shall, on and after such day or days as may be specified in the order, have effect only in relation to particular classes of teachers or particular classes of schools or for particular purposes of this Order.

### **Provision of training in pursuance of affirmative action**

**72.**—(1) This Article applies where, in pursuance of affirmative action, persons are afforded access to facilities for training which would help to fit them for employment, for employment in a particular capacity or for a particular employment or occupation, but—

(a) the facilities are provided only at a particular place in Northern Ireland or the training is confined to persons of a particular class, not being a class framed by reference to religious belief or political opinion; and

(b) by providing the facilities only there or by so confining the training, access to the facilities by persons of a particular religious belief or political opinion is excluded or restricted.

(2) For the purpose of determining whether any act done in, or in connection with, affording those facilities is by virtue of Article 3(2) unlawful under any provision of Parts III and V, the fact that, by providing the facilities only there or by so confining the training, their access to the facilities is thereby excluded or restricted is to be disregarded.

### **Redundancy**

**73.**—(1) This Article applies where—

(a) a practice relating to the selection of employees who may be dismissed as redundant is followed by an employer in pursuance of affirmative action; and

(b) the practice does not involve the application of any condition or requirement framed by reference to religious belief or political opinion, but has or may have the effect that the proportion of employees of a particular religious belief or political opinion who are selected is smaller than the proportion of employees not of that religious belief or, as the case may be, not of that political opinion who are selected.

(2) The dismissal of an employee in pursuance of the practice is not by virtue of Article 3(2) unlawful under any provision of Parts III and V.

### **Measures to encourage applications, etc. from under-represented community**

**74.** Nothing in Part III or V shall render unlawful any act done by—

(a) an employer;

(b) an employment agency;

(c) a vocational organisation; or

(d) a person providing services as mentioned in Article 24(1),

in or in connection with encouraging members of the Roman Catholic, or members of the Protestant, community in Northern Ireland to consider or to apply for a particular employment or particular training or to consider a particular occupation, where the act is done in pursuance of affirmative action.

### **Selection of unemployed persons**

75.—(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 by virtue of Article 3(2) unlawful under any provision of Parts III and V.

(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.

### **Religion specific training**

76.—(1) Subject to paragraph (3), nothing in Parts III to V shall render unlawful any act done by—

- (a) an employer; or
- (b) a person who provides training services in connection with the training of persons for employment and is acting on behalf of an employer,

in relation to employment with the employer at a particular establishment in Northern Ireland, being an act done in or in connection with affording only persons of a particular religious belief access to training which would help to fit them for that employment where the conditions in paragraph (2) are satisfied at any time within the 12 months immediately preceding the doing of that act.

(2) The conditions referred to in paragraph (1) are—

- (a) that it appears to the Commission that—
  - (i) there are no persons of the religious belief in question among those engaged in that employment at the establishment; or
  - (ii) that the proportion of persons of that belief among those engaged in that employment at that establishment is small in comparison with the proportion of persons of that belief among all those employed by the employer there or among the population of the area from which that employer might reasonably be expected to recruit persons for employment at that establishment; and
- (b) that the Commission has given its approval to the act.

(3) Paragraph (1) does not apply in relation to any act done by an employer, or a person providing training services on behalf of an employer, in relation to any person who is employed by the employer at the time when the act is done.

### **Charities**

77.—(1) Nothing in this Order shall—

- (a) be construed as affecting a provision to which this paragraph applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(2) Paragraph (1) applies to a provision for conferring benefits on persons of a particular religious belief or a particular political opinion (disregarding any benefits to persons not of that belief or opinion which are exceptional or are relatively insignificant), being a provision—

- (a) which is contained in a statutory provision or other instrument; and
- (b) which has been enacted or made for purposes which are exclusively charitable according to the law of Northern Ireland.

#### **Acts done under statutory authority**

**78.**—(1) Nothing in this Order renders unlawful anything done in order to comply with a requirement—

- (a) of primary legislation passed or made before the date on which this Order is made;
  - (b) of an instrument made or approved (whether before or after that date) under primary legislation passed or made before that date.
- (2) In paragraph (1) “primary legislation” means—
- (a) an Act of Parliament; or
  - (b) Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978.

(3) Where primary legislation passed or made on or after the date on which this Order is made re-enacts (with or without modification) a provision of primary legislation passed or made before that date, paragraph (1) shall apply to that provision as re-enacted as if it continued to be contained in primary legislation passed or made before that date.

#### **Acts safeguarding national security, etc.**

**79.** No act done by any person shall be treated for the purposes of any provision of Parts III to V 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 the act is justified by that purpose.

#### **Effect of certificates by Secretary of State**

**80.**—(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 III to V; 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 1998 c. 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.