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## STATUTORY INSTRUMENTS

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# 1997 No. 869

## The Race Relations (Northern Ireland) Order 1997

### PART II

#### [<sup>F1</sup>DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD]

F1 SR 2003/341

#### *[<sup>F2</sup>Discrimination and harassment by employers]*

F2 SR 2003/341

#### <sup>F3</sup> . . . 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.

[<sup>F3</sup>(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[<sup>F3</sup> 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—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees; or

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- (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.

[<sup>F3</sup>(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[<sup>F3</sup>, 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.

**F3** SR 2003/341

### **Discrimination by persons with statutory power to select employees for others**

7.—[<sup>F4</sup>(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.

[<sup>F4</sup>(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.]

**F4** SR 2003/341

### **[<sup>F5</sup>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;
- (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.]

F5 SR 2003/341

### Exceptions for genuine occupational qualifications

- 8.—(1) In relation to racial discrimination]<sup>F6</sup> 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.

F6 SR 2003/341

### <sup>F7</sup> . . . 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—
- (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

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- (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<sup>[F7]</sup>, 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<sup>[F7]</sup> or of that race or those origins] would be a genuine occupational qualification<sup>[F7]</sup> or, as the case may be, that act would be lawful by virtue of Article 7A] for the job.

<sup>[F7(3A)]</sup> 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<sup>[F7]</sup> 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.

F7 SR 2003/341
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### 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<sup>[F8]</sup> 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.]

<sup>[F8(1A)]</sup> 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.]

<sup>[F9(2)]</sup> 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<sup>[F9]</sup> 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.

**F8** SR 2003/341  
**F9** 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<sup>[F10]</sup> 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<sup>[F10]</sup> 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.

<sup>[F10]</sup>(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.]

**F10** 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.

[<sup>F11</sup>(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) [<sup>F11</sup>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, [<sup>F11</sup>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.

[<sup>F11</sup>(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.]

<p><b>F11</b> SR 2003/341</p>
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### **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

(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.

[<sup>F12</sup>(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.]

F12 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.

[<sup>F13</sup>(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.

[<sup>F13</sup>(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.]

F13 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.

[<sup>F14</sup>(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.]

**F14** 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.

[<sup>F15</sup>(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 [<sup>F15</sup> 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.

**F15** SR 2003/341

### *Police*

*Art. 17 rep. by 2000 c. 32*



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