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## STATUTORY INSTRUMENTS

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# 1997 No. 869

## The Race Relations (Northern Ireland) Order 1997

### 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<sup>[F1]</sup> 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.

**F1** SR 2003/341

##### **[F2]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)<sup>[F3]</sup> 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.]

**F2** 1998 NI 21

**F3** 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

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- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work,

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—

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- (a) that there are no persons of the racial group in question among persons holding such posts in that organisation; or
- (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) [<sup>F4</sup>Articles 10 and 11 apply] (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.

<p><b>F4</b> Words in art. 37(9) substituted (9.7.2012) by <a href="#">The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/263)</a>, arts. 1(3), 6</p>
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### **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.

[<sup>F5</sup>(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).]

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(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—

- [<sup>F5</sup>(a) in pursuance of any statutory provision; or
- (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.

**F5** SR 2003/341

#### [<sup>F6</sup>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 [<sup>F7</sup>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 [<sup>F8</sup>section 46(5) to (5F)] of the Police (Northern Ireland) Act 2000 (selection of persons for certain posts in police support staff).]

**F6** 2000 c.32

**F7** 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)**

**F8** 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**

#### [<sup>F9</sup>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.]

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**F9** 1998 NI 21

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

**F10** 1998 NI 21

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**Changes and effects yet to be applied to :**

- Instrument am. (prosp.) by [1998 c. 17 s.50 Sch.4 para.41](#)
- Instrument am. (prosp.) by [1998 c. 32 s.74\(1\)Sch.4 para.24](#)