

STATUTORY INSTRUMENTS

**1998 No. 3162**

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

**PART VI**

**ENFORCEMENT OF PARTS III TO V**

*Enforcement of Part III*

**Complaint to Tribunal**

**38.**—(1) A complaint by any person (“the complainant”) that another person (“the respondent”)

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of any provision of Part III; or
- (b) by virtue of Article 35 or 36 is to be treated as having committed such an act of discrimination<sup>F1</sup> or harassment] against the complainant,

may be presented to the Tribunal.

<sup>F2</sup>(1A) .....

(2) The Tribunal shall not consider a complaint relating to an act which is unlawful by virtue of Article 25 if the act is one in respect of which an appeal, or proceedings in the nature of an appeal, may be brought to a court under any statutory provision.

**F1** SR 2003/520

**F2** [Art. 38\(1A\)](#) repealed (27.1.2020) by [Employment Act \(Northern Ireland\) 2016](#) (c. 15), s. 29(2), [Sch. 3](#); [S.R. 2020/1](#), art. 2(o)

**[<sup>F3</sup>Burden of proof: Tribunal**

**38A.** Where, on the hearing of a complaint under Article 38, the complainant proves facts from which the Tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed an act of unlawful discrimination or unlawful harassment against the complainant, or
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the complainant,

the Tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.]

F3 SR 2003/520

### Remedies on complaint under Article 38

**39.**—(1) Where the Tribunal finds that a complaint presented to it under Article 38 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court to pay to the complainant if the complaint had fallen to be dealt with under Article 40;
- (c) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any unlawful discrimination<sup>[F4]</sup> or unlawful harassment] to which the complaint relates;
- (d) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on a person other than the complainant of any unlawful discrimination<sup>[F4]</sup> or unlawful harassment] to which the complaint relates.

(2) In applying Article 40 for the purposes of paragraph (1)(b), no account shall be taken of paragraph (3) of that Article.

(3) As respects an act of unlawful discrimination falling within<sup>[F4]</sup> Article 3(2A)(b)], if the respondent proves that the<sup>[F4]</sup> provision, criterion or practice] in question was not applied with the intention of treating the complainant unfavourably on the ground of his religious belief or political opinion as the case may be, an order may be made under paragraph (1)(b) only if the Tribunal—

- (a) makes such order under paragraph (1)(a) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.

(4) Compensation awarded to a person under paragraph (1)(b) may include compensation for injury to feelings whether or not it includes compensation under any other head.

(5) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under paragraph (1)(c), then, if it considers it just and equitable to do so—

- (a) the Tribunal may increase the amount of any compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
- (b) if an order under paragraph (1)(b) was not made, the Tribunal may make such an order.

(6) Where compensation falls to be awarded in respect of any act both under the provisions of this Article and under any other statutory provision, the Tribunal shall not award compensation under this Article in respect of any loss or other matter which has been taken into account under that other statutory provision by a court or tribunal in awarding compensation in an action or complaint in respect of that act.

(7) The Department may by order make provision—

- (a) for enabling the Tribunal, where an amount of compensation falls to be awarded under paragraph (1)(b) to include in the award interest on that amount; and
- (b) specifying, for cases where the Tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.

(8) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under paragraph (1)(d), the President or Vice-President may—

- (a) certify the failure to the High Court; or
- (b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £40,000.

(9) Where the President or Vice-President has certified a failure under paragraph (8)(a), the High Court may deal with the respondent as if the recommendation of the Tribunal had been an order of the High Court.

(10) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under paragraph (8)(b) as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).

(11) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in paragraph (8)(b) such other sum as appears to it to be justified by the change.

(12) In paragraph (11) “the relevant date” means—

- (a) in relation to the first order under that paragraph, the coming into operation of this Article; and
- (b) in relation to each subsequent order, the last occasion when the sum specified in paragraph (8)(b) was altered.

(13) The Department shall pay into the Consolidated Fund any sums received in respect of penalties under this Article.

[<sup>F4</sup>(14) This Article has effect subject to paragraph 7 of Schedule 2A.]

<b>F4</b> SR 2003/520
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**Changes to legislation:**

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, Cross Heading: Enforcement of Part III.