

SCHEDULES

SCHEDULE 1

Article 9(4).

CODES OF PRACTICE

PART I

ISSUE OF CODE OF PRACTICE UNDER ARTICLE 9(3)

1.—(1) Where the Commission proposes to issue a code of practice under Article 9(3), it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(2) In the course of preparing any draft code of practice for publication under sub-paragraph (1) the Commission shall consult with such persons as it thinks fit.

(3) If the Commission determines to proceed with the draft, it shall send the draft to the Department which shall—

(a) if it approves of the draft, lay it before the Assembly; and

(b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(4) If, within the statutory period beginning with the day on which the draft of the code of practice is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(5) If no such resolution is passed as is referred to in sub-paragraph (4), the Commission shall issue the code of practice in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

PART II

CODES OF PRACTICE – GENERAL

Revision of a code of practice

2.—(1) The Commission may from time to time revise the whole or any part of a code of practice under Article 9.

(2) If the Commission proposes to revise a code of practice, it shall publish a draft of the revised code or of the amendments to the existing code.

(3) The Commission shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft for publication under sub-paragraph (2) the Commission shall consult with such persons as the Commission thinks fit.

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(5) Where the Commission determines to proceed with the revision of a code of practice after publishing the draft under sub-paragraph (2), the Commission shall send a draft of the revised code to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which the draft of the revised code is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in sub-paragraph (6), the Commission shall issue the revised code of practice in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

Publication

3. The Commission shall—

- (a) publish a code of practice under Article 9 as for the time being in force; and
- (b) take such other steps as it considers necessary to publicise any such code.

Effect of code of practice

4. The Commission and the Department shall each take such steps as they consider necessary to encourage the adoption of the policies and practices recommended in a code of practice under Article 9.

5. A failure on the part of any person to observe any provision of a code of practice under Article 9 shall not of itself render him liable to any proceedings, but in any proceedings under this Order before the Tribunal or a court—

- (a) any code of practice shall be admissible in evidence; and
- (b) if any provision of a code appears to the Tribunal or the court to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

SCHEDULE 2

Article 11(3).

CONDUCT OF INVESTIGATIONS BY THE COMMISSION

Preliminary

1. In this Schedule “the investigation” means an investigation under Article 11 or 71.

Notices

2. Before holding the investigation, the Commission shall—

- (a) serve on every person whose practices it intends to investigate notice of the Commission’s intention to hold the investigation; and
- (b) furnish to each such person, in writing, particulars of the scope and purpose of the investigation.

Procedure

3. The Commission shall afford to every person such as is mentioned in paragraph 2(a) an opportunity to comment on the matters which are the subject of the investigation and to furnish oral or other evidence respecting them.
4. The investigation shall be conducted in private.
5. Subject to paragraphs 3 and 4, the procedure for conducting the investigation shall be such as the Commission considers appropriate in the circumstances of the case.

Information and evidence

6. For the purposes of the investigation, the Commission may obtain information from such persons and (subject to paragraph 4) in such manner and may make such inquiries and call for such reports (including reports by officers of the Commission on inquiries or interviews conducted by them on the Commission's behalf) as the Commission thinks fit.

7.—(1) For the purposes of the investigation the Commission may require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For those purposes the Commission shall have the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths and the examination of witnesses abroad; and
 - (b) the production of documents.
- (3) A person shall not be compelled for the purposes of the investigation—
- (a) to give any information or produce any document which he could not be compelled to give in evidence or produce in civil proceedings before the High Court; or
 - (b) to give any information or produce any document which discloses, or from which there can be deduced, his religious belief, if he informs the Commission that he objects to doing so; or
 - (c) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

8. For the purposes of the investigation the Commission may also require an employer or vocational organisation to take such reasonable action as the Commission specifies for communicating to his or its employees or members (as the case requires), or to employees or members of any class, any written material provided for the purposes by the Commission.

Obstruction and contempt

9.—(1) If any person, without lawful authority or reasonable excuse, obstructs the Commission or any member or officer of the Commission in the performance of its or his functions in connection with the investigation, or is guilty of any act in relation to the investigation which, if the investigation were a proceeding in the High Court, would constitute contempt of court, the Commission may certify the offence to the High Court.

(2) Where an offence is certified under this paragraph, the High Court may inquire into the matter and after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and

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(b) any statement that may be offered in defence,
may deal with the person charged with the offence in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

Expenses

10. Without prejudice to paragraph 7(3)(c), the Commission may, if it thinks fit, pay to any person who attends, or furnishes information for the purposes of, the investigation, sums in respect of expenses properly incurred by him and allowances by way of compensation for the loss of his time in accordance with such scales and subject to such conditions as the Department with the approval of the Department of Finance and Personnel may determine.

SCHEDULE 3

Article 105(1).

AMENDMENTS

The Parliamentary Commissioner Act 1967 (c. 13)

In section 5 after subsection (2) insert—

“(2A) Subsection (2)(a) of this section shall have effect in relation to the right of a person to make a complaint of unlawful discrimination under the Fair Employment and Treatment (Northern Ireland) Order 1998 as if it were such a right of appeal, reference or review as is mentioned in that subsection.”.

The Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969 (c. 7 (N.I.))

In section 2(1) for paragraph (b) substitute—

- “(b) the holder of any of the following offices who is remunerated, apart from any allowances, on an annual basis, that is to say—
- (i) President or Vice-President of the Industrial Tribunals and the Fair Employment Tribunal; and
 - (ii) member of a panel of chairmen established by regulations under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996 or appointed under Article 82(1)(c) of the Fair Employment and Treatment (Northern Ireland) Order 1998;”.

The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)

In Article 49 after paragraph (3) add—

“(4) Any act which by virtue of this Article or Article 48 could not be unlawful under any provision of Parts III to V (or, in the case of an act falling within paragraph (3), under Article 15) is not by virtue of Article 3(2)(b) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (indirect discrimination on the grounds of religious belief or political opinion) unlawful under any provision of Parts III to V of that Order.”.

In Article 53A for paragraphs (a) and (b) substitute “Articles 52, 52A and 53ZA”.

In Article 63 after paragraph (2) add—

“(3) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful

discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998)—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part VI of that Order; or
- (b) such a complaint has been made, but the proceedings under that Order have not been disposed of,

the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken under the Fair Employment and Treatment (Northern Ireland) Order 1998 in respect of the act have been disposed of.”.

The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 (NI 6)

In Article 20—

- (a) in paragraph (1) for “section 41 of the Fair Employment (Northern Ireland) Act 1989” substitute “Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a) for “section 41 of that Act of 1989” substitute “Article 64 of that Order of 1998”; and
 - (ii) for “section 41”, where it twice occurs, substitute “Article 64”;
- (c) in paragraph (4) for “section 41 of that Act of 1989” substitute “Article 64 of that Order of 1998”; and
- (d) in paragraph (5) for “sections 38 and 39 of the Fair Employment (Northern Ireland) Act 1989” substitute “Articles 62 and 63 of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Judicial Pensions and Retirement Act 1993 (c. 8)

In Part II of Schedule 1, in the entry relating to the office of President or Vice-President of the Industrial Tribunals and the Fair Employment Tribunal, for “section 3 of the Fair Employment (Northern Ireland) Act 1989” substitute “Article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

In the following provisions, namely—

- (a) in Part II of Schedule 1, in the entry relating to the office of chairman of industrial tribunals or of the Fair Employment Tribunal;
- (b) in Schedule 5, in the entry relating to the chairman of the Fair Employment Tribunal; and
- (c) in Schedule 7, in paragraph 5(2)(h) and (5)(viii),

for “section 3(1)(c) of the Fair Employment (Northern Ireland) Act 1989” substitute “Article 82(1)(c) of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Education and Libraries (Northern Ireland) Order 1993 (NI 12)

In Article 21—

- (a) in paragraphs (1) and (2)(a) for “section 41 of the Act of 1989” substitute “Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998”; and
- (b) in paragraph (2) for “that section”, where it twice occurs, substitute “that Article”.

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The Ombudsman (Northern Ireland) Order 1996 (NI 8)

In Schedule 3 in the entry relating to the Fair Employment Tribunal for Northern Ireland, for “section 2 of the Fair Employment (Northern Ireland) Act 1989” substitute “Article 81 of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Employment Rights (Northern Ireland) Order 1996 (NI 16)

In Article 151(6)(b)—

- (a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”; and
- (b) for “that Act” substitute “that Order”.

In Article 160(2)—

- (a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”; and
- (b) for “that Act” substitute “the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)

In Article 6(7) for “section 3(6) of the Fair Employment (Northern Ireland) Act 1989” substitute “Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

In Article 11(5)—

- (a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”;
- (b) in sub-paragraph (a) for “Part III of that Act” substitute “Part VI of the Fair Employment and Treatment (Northern Ireland) Order 1998”; and
- (c) for “under that Act”, where it twice occurs, substitute “under the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Race Relations (Northern Ireland) Order 1997 (NI 6)

In Article 5(5) for “section 57(2) and (3) of the Fair Employment (Northern Ireland) Act 1976” substitute “Article 2(2) and (3) of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

In Article 52(3)—

- (a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”;
- (b) in sub-paragraph(a) for “Part III of that Act” substitute “Part VI of that Order”; and
- (c) for “under that Act”, where it twice occurs, substitute “under the Fair Employment and Treatment (Northern Ireland) Order 1998”.

The Northern Ireland Act 1998 (c. 47)

In section 24(2)—

- (a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”; and
- (b) for “Part V of that Act” substitute “Part VIII of that Order”.

In section 76(4)—

(a) for “Fair Employment (Northern Ireland) Act 1976” substitute “Fair Employment and Treatment (Northern Ireland) Order 1998”; and

(b) for “Part V of that Act” substitute “Part VIII of that Order”.

In section 98(1), in the definition of “political opinion” and “religious belief” for “section 57(2) and (3) of the Fair Employment (Northern Ireland) Act 1976” substitute “Article 2(3) and (4) of the Fair Employment and Treatment (Northern Ireland) Order 1998”.

SCHEDULE 4

Article 105(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Article 26 and Part IV

1.—(1) Article 26 of this Order shall not apply in relation to any act done before that Article comes into operation.

(2) Part IV of this Order shall not apply in relation to any act done before that Part comes into operation.

National security certificates

2. In relation to any act done before the coming into operation of Article 79—

(a) Article 79 shall have effect as if paragraph (b) of that Article were omitted; and

(b) Article 80 shall have effect as if paragraphs (1)(b)(ii) and (3)(b) of that Article were omitted.

3. In relation to any act done before the coming into operation of Article 96—

(a) Article 53 of the Sex Discrimination (Northern Ireland) Order 1976 (as substituted by Article 96) shall have effect as if paragraph (b) were omitted; and

(b) Article 53ZA of the Sex Discrimination (Northern Ireland) Order 1976 (as substituted by Article 96) shall have effect as if paragraphs (1)(b)(ii) and (3)(b) were omitted.

4. In relation to any act done before the coming into operation of Article 98—

(a) Article 41 of the Race Relations (Northern Ireland) Order 1997 (as substituted by Article 98) shall have effect as if paragraph (b) were omitted; and

(b) Article 41A of the Race Relations (Northern Ireland) Order 1997 (as substituted by Article 98) shall have effect as if paragraphs (1)(b)(ii) and (3)(b) were omitted.

Devolution order under section 3 of the Northern Ireland Act 1998

5. If provisions of this Order come into operation before the day appointed by an Order in Council under section 3 of the Northern Ireland Act 1998 for the commencement of Parts II and III of that Act, then until the day so appointed—

(a) references in those provisions to an Act of the Assembly shall be read as references to a Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973; and

(b) references in those provisions to a Northern Ireland Minister shall be read as references to the head of a Northern Ireland department.

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The Commission

6.—(1) If provisions of this Order come into operation before the day appointed under section 101(3) of the Northern Ireland Act 1998 for the coming into operation of section 73(1) of that Act, then until the day so appointed—

- (a) references in those provisions to the Commission shall be read as references to the Fair Employment Commission for Northern Ireland; and
- (b) section 1 of, and Schedule 1 to, the Fair Employment (Northern Ireland) Act 1976 (as amended by the Fair Employment (Northern Ireland) Act 1989) shall, notwithstanding the repeal of those Acts by this Order, continue to have effect in relation to that Commission.

The Police (Northern Ireland) Act 1998 (1998 c. 32)

7. If Article 94 comes into operation before the day appointed under section 75(1) of the Police (Northern Ireland) Act 1998 for the coming into operation of section 10(5) of that Act, then until the day so appointed, Article 94 shall have effect—

- (a) as if paragraph (5) were omitted; and
- (b) as if the reference to the Police (Northern Ireland) Act 1998 were a reference to the Police Act (Northern Ireland) 1970.

SCHEDULE 5

Article 105(4).

REPEALS

Chapter or Number	Short title	Extent of repeal
1976 c. 25.	The Fair Employment (Northern Ireland) Act 1976.	The whole Act.
1979 NI 12.	The Statutory Rules (Northern Ireland) Order 1979.	In Schedule 4, paragraph 18.
1986 NI 3.	The Education and Libraries (Northern Ireland) Order 1986.	In Schedule 18, the amendments to the Fair Employment (Northern Ireland) Act 1976.
S.I. 1988 No. 249.	The Sex Discrimination (Amendment) Order 1988.	Article 3.
1989 c. 32.	The Fair Employment (Northern Ireland) Act 1989.	The whole Act.
1991 NI 18.	The Fair Employment (Amendment) (Northern Ireland) Order 1991.	The whole Order.
1992 NI 5.	The Industrial Relations (Northern Ireland) Order 1992.	Article 106.
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 6, paragraph 28(1).

Chapter or Number	Short title	Extent of repeal
1995 NI 4.	The Fair Employment (Amendment) (Northern Ireland) Order 1995.	The whole Order.
1996 c. 23.	The Arbitration Act 1996.	In Schedule 3, paragraph 51.
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	In Schedule 1, the amendments to the Fair Employment (Northern Ireland) Act 1989.
1996 NI 18.	The Industrial Tribunals (Northern Ireland) Order 1996.	In Schedule 1, paragraphs 2, 4 and 7.
1997 NI 6.	The Race Relations (Northern Ireland) Order 1997.	In Article 66(2), subparagraph (b) and the word “or” immediately preceding it. In Schedule 2, the amendments to the Fair Employment (Northern Ireland) Act 1989.
1997 NI 15.	The Further Education (Northern Ireland) Order 1997.	In Schedule 4, the amendment to the Fair Employment (Northern Ireland) Act 1976.
1998 c. 17.	The Petroleum Act 1998.	In Schedule 4, paragraph 10.
1998 c. 32.	The Police (Northern Ireland) Act 1998.	In Schedule 4, paragraph 10.
1998 c. 47.	The Northern Ireland Act 1998.	In Schedule 13, paragraphs 1 and 10.