



# Fair Employment (Northern Ireland) Act 1976

## 1976 CHAPTER 25

### PART I

#### THE FAIR EMPLOYMENT AGENCY FOR NORTHERN IRELAND

#### **1 Constitution and general duties of the Agency**

(1) There shall be a body named the Fair Employment Agency for Northern Ireland ("the Agency"), consisting of a chairman and at least five but not more than eleven other members all appointed by the head of the Department of Manpower Services for Northern Ireland ("the Department"), which shall have the duties of—

- (a) promoting equality of opportunity in Northern Ireland ; and
- (b) working for the elimination of discrimination which is unlawful by virtue of this Act,

and for the purposes of discharging those duties shall have the functions conferred on it by this Act.

(2) Schedule 1 shall have effect with respect to the Agency and its affairs.

#### **2 Educational functions**

(1) In order to assist the Agency in discharging its duties the Agency may—

- (a) establish services for giving advice on matters connected with equality of opportunity ;
- (b) provide training courses ;
- (c) hold conferences;
- (d) undertake research which appears to the Agency to be necessary or expedient for purposes of its functions; and

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- (e) disseminate (subject to the safeguard in Schedule 5, paragraph 12(4)) information about the Agency's activities or anything to which those activities relate ;  
or it may arrange for, or assist (financially or otherwise), any of those things to be done.
- (2) The Agency may make charges for training or other facilities or services made available by it.

## PART II

### EQUALITY OF OPPORTUNITY

#### *General*

### 3 Meaning of " equality of opportunity "

- (1) In this Act " equality of opportunity " means equality of opportunity between persons of different religious beliefs.
- (2) For the purposes of this Act a person of any religious belief has equality of opportunity with a person of any other religious belief if, being—
  - (a) a person who is seeking employment or in employment, or
  - (b) a person who is seeking to become engaged in, or is engaged in, any occupation,
 he has in any circumstances the same opportunity of a kind mentioned in subsection (3) as that other person has or would have in those circumstances, due allowance being made for any material difference in their suitability.
- (3) The kinds of opportunity referred to in subsection (2) are—
  - (a) in relation to an employment, the opportunity to be considered, and to be submitted for consideration, for the employment, and to have and hold it on any terms, with access to all benefits connected with it and without being subjected to any detriment; and
  - (b) in relation to an employment or an occupation.—
    - (i) the opportunity to become, and be, on any terms a member of any vocational organisation which exists for purposes of the employment or the occupation (or for purposes of employments or occupations of any class which includes the employment or occupation), with access to all the benefits of membership and without being subjected to any detriment, and
    - (ii) where services in connection with training for the employment are provided by a person other than the employer, or where services in connection with training for the occupation are provided by any person, the opportunity to have those services on any terms, with access to all benefits connected with them, and
    - (iii) the opportunity to have conferred on him, and to hold, on any terms any qualification which is needed for, or facilitates, his engagement in the employment or the occupation.

#### **4 The Fair Employment Appeals Board**

- (1) There shall be a body named the Fair Employment Appeals Board (" the Appeals Board "), consisting of a chairman and two other members all appointed by the head of the Department, which shall have the functions of hearing and determining the appeals which are authorised by this Part to be made to the Appeals Board.
- (2) At least one of the members of the Appeals Board shall be a barrister or solicitor of not less than seven years' standing.
- (3) Schedule 2 shall have effect with respect to the Appeals Board and its affairs.

*Encouragement of commitment to standards and principle of equality of opportunity*

#### **5 Guide to manpower policy and practice**

- (1) The Department, after consultation with the Standing Advisory Commission on Human Rights and the Agency, with such organisations appearing to it to be representative of employers, of organisations of workers, and of persons engaged in occupations in Northern Ireland as it thinks fit, and with such other persons as it thinks fit, shall prepare and cause to be published a guide to good manpower policy and practice containing recommendations as to policies and practices which, if adopted by employers and vocational organisations, would, in the opinion of the Department, promote equality of opportunity.
- (2) The Department shall take such steps as it considers necessary to publicise the guide and to encourage employers and vocational organisations in Northern Ireland to adopt the policies and practices recommended in it.
- (3) The Department shall keep the contents of the guide under review and, when necessary, revise it and cause it to be published in its revised form.
- (4) In carrying out its functions under this Act, the Agency, when considering whether equality of opportunity is or is not being afforded, shall have such regard to the recommendations contained in the guide as it considers proper in all the circumstances.

#### **6 Declaration of commitment to, and intent to implement, principle of equality of opportunity**

- (1) As soon as reasonably practicable after the commencement of this Act the Agency shall invite such organisations as appear to it to be representative of employers, of organisations of workers, and of persons engaged in occupations in Northern Ireland to subscribe to a declaration of commitment to the principle of equality of opportunity, to be known as " the Declaration of Principle and Intent", and to encourage their members to subscribe to it.
- (2) The Agency shall also use its best endeavours to encourage all employers and all vocational organisations to subscribe to the Declaration.
- (3) The Declaration shall be in the form set out in Schedule 3 or in such other form to the like effect as the Agency specifies as being appropriate for any particular declarant.

## **7 The Register of Equal Opportunity Employers and Organisations**

- (1) The Agency shall keep a register of those who have subscribed to the Declaration of Principle and Intent; and each employer or organisation whose name is for the time being on the register shall be entitled to receive from the Agency, and to hold, a certificate describing him or it as an " Equal Opportunity Employer" or, as the case may be, an " Equal Opportunity Organisation ", and so to describe himself or itself.
- (2) The power of the Agency to keep the register includes power to fix its form and to rectify it; and in particular the Agency may—
  - (a) require a declarant, as a condition of remaining on the register, to reaffirm, at such intervals and in such manner as the Agency may determine, his intention to adhere to the Declaration ;
  - (b) remove from the register the name of any declarant who—
    - (i) fails to comply with a requirement imposed under paragraph (a), or
    - (ii) has declared that he no longer adheres to the Declaration, or
    - (iii) is found by the Agency in consequence of an investigation under section 12 or section 24 to have acted in a manner inconsistent with adhering to the Declaration; and
  - (c) restore to the register the name of any declarant which has been removed, where the declarant reaffirms his intention to adhere to the Declaration and it appears to the Agency that he is likely to do so.
- (3) When the Agency removes the name of any declarant from the register for any of the reasons mentioned in subsection (2)(b), it shall serve on him notice of the fact, stating the reason and requiring him to return to the Agency the certificate issued under subsection (1).
- (4) Where a name is removed from the register under subsection (2)(b)(i) or (iii), the notice under subsection (3) shall inform the declarant of the right of appeal conferred by section 8.
- (5) The register shall be open to public inspection during normal office hours free of charge; and any person shall be entitled to obtain from the Agency a copy of the register, or of any entry in it, upon payment of such reasonable fee as the Agency may fix.

## **8 Appeal against removal of name from, or refusal to restore name to, the register in certain circumstances**

- (1) A declarant aggrieved—
  - (a) by the removal of his name from the register under section 7(2)(b)(i) or (iii), or
  - (b) by the Agency's refusal to restore his name to the register upon his reaffirming the intention mentioned in section 7(2)(c),may appeal to the Appeals Board against the removal or refusal.
- (2) An appeal against the removal of a declarant's name from the register under section 7(2)(M(i)) may be made on the ground that in all the circumstances it was unreasonable of the Agency to require the declarant to reaffirm his intention to adhere to the Declaration of Principle and Intent, or to do so after any particular interval or in any particular manner.
- (3) Schedule 4 shall have effect with respect to the conduct of an appeal under this section.

- (4) Where, on an appeal under this section, the question arises whether a person has acted in a manner inconsistent with adhering to the Declaration of Principle and Intent, the Appeals Board shall have such regard as it considers proper in all the circumstances to the recommendations contained in the guide to good manpower policy and practice prepared by the Department under section 5.
- (5) The Appeals Board may give such directions for the rectification of the register as it considers necessary for giving effect to its decision.

## **9 Publication of names of Equal Opportunity Employers and Organisations**

- (1) The Agency shall take such steps as it considers necessary to publicise the names of employers and organisations on the register, and in particular the Agency shall, within six months from the commencement of this Act and thereafter at yearly intervals, notify the public authorities mentioned in subsection (2) of the names of employers' currently on the register.
- (2) The public authorities referred to in subsection (1) are—
  - (a) every authority and body listed in the following enactments (as for the time being in force)—
    - (i) the Parliamentary Commissioner Act (Northern Ireland) 1969, Schedule 1, and
    - (ii) the Commissioner for Complaints Act (Northern Ireland) 1969, Schedule 1 ;
  - (b) such of the authorities or bodies listed in the Parliamentary Commissioner Act 1967, Schedule 2, (as for the time being in force) as the Agency considers appropriate;
  - (c) the Police Authority for Northern Ireland ; and
  - (d) the Post Office.
- (3) When any employer's name is removed from the register, the Agency shall, as soon as reasonably practicable, notify each of those public authorities of the fact.
- (4) Where a public authority notified of an employer's name under subsection (1) is of the opinion that the employer has acted in the course of performing a contract entered into with the authority in a manner inconsistent with the terms of the Declaration of Principle and Intent and his name has not already been removed from the register, the authority shall forthwith inform the Agency of the opinion, stating the reasons for it.

## **10 Offences in relation to s. 7**

- (1) If—
  - (a) any employer who is not the holder of a certificate under section 7(1) for the time being in force describes himself or causes or permits himself to be described,
  - (b) any person acting on behalf of—
    - (i) such an employer, or
    - (ii) an organisation which is not the holder of such a certificate,describes that employer or organisation, or causes or permits him or it to be described,

as an Equal Opportunity Employer or an Equal Opportunity Organisation or by any other words calculated to give the impression that the employer or organisation has subscribed to the Declaration of Principle and Intent or is registered under section 7, that employer or, as the case may be, that person shall be guilty of an offence.

- (2) Where an individual or a body corporate is required by a notice under section 7(3) to return a certificate to the Agency and fails without reasonable excuse to do so, he or it shall be guilty of an offence.
- (3) Where an unincorporated body is required by a notice under section 7(3) to return a certificate to the Agency, the proper officer of the body shall be under a duty to ensure that the certificate is duly returned, and, if he fails without reasonable excuse to do so, he shall be guilty of an offence.
- (4) An offence under subsection (1), (2) or (3) shall be punishable on summary conviction by a fine not exceeding £100.
- (5) In any proceedings for any offence under this section a document purporting to be a certificate or other document issued by the Agency and to be signed by a duly authorised officer of the Agency which states—
  - (a) that a particular name was removed from the register on a particular day, or
  - (b) that a particular name was not for the time being registered in the register on a particular day,

shall, until the contrary is proved, be deemed to be such a certificate or document and to be properly issued and shall be evidence of the facts stated in it.

*Identification of patterns and trends of employment, etc.*

## **11 Survey of employment, etc., patterns**

It shall be the duty of the Agency to identify and keep under review patterns and trends of employment in Northern Ireland and of occupations in Northern Ireland for the purposes of—

- (a) considering whether they reveal the existence or absence of equality of opportunity ; and
- (b) assisting the Agency in forming an opinion about—
  - (i) the manner in which equality of opportunity can best be achieved, or
  - (ii) where such equality is absent, the reasons for its absence.

*Investigation and remedying of practices which fail to afford equality of opportunity*

## **12 Investigation of employment, etc., practices**

- (1) For the purpose of assisting the Agency in—
  - (a) ascertaining the existence, nature and extent of failures to afford equality of opportunity ; and
  - (b) considering what action, if any, for promoting equality of opportunity ought to be taken by any of the following persons (" the person concerned "), that is to say.—
    - (i) any employer, or

- (ii) any person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person, or
- (iii) any employment agency, or
- (iv) any vocational organisation, or
- (v) any person who provides services in connection with training for employment in any capacity, or for any particular employment, (not being services provided by the employer of a person who is seeking to obtain or is receiving those services) or any person who provides services in connection with training for a particular occupation, or
- (vi) any person who has power to confer a qualification which is needed for, or facilitates, engagement in employment in any capacity, or in a particular employment or occupation,

the Agency may conduct the investigations mentioned in subsection (2).

(2) Those investigations are investigations—

- (a) into the composition, by reference to religious beliefs, of any of the following classes of person (or of any class of person within such a class), that is to say—

- (i) the employees of, or other persons who have applied for employment by, any employer or employers of any class, or
- (ii) the persons who have applied for or obtained the services of any employment agency, or
- (iii) the members of, or other persons who have applied for membership of, any vocational organisation or the members of such organisations of any class, or
- (iv) the persons who have sought (or on whose behalf there have been sought) or who have obtained the services of a person such as is mentioned in subsection (1)(b)(v), or
- (v) the persons who have applied to have, or have had, conferred on them any qualification such as is mentioned in subsection (1)(b)(vi); and

- (b) into practices—

- (i) affecting the recruitment, admission to membership or access to benefits or services of persons belonging to any class referred to in paragraph (a), or the terms of employment or membership or provision of services applicable to such persons, or
- (ii) involving any detriment to such persons, or
- (iii) affecting the conferring or holding of any qualification such as is mentioned in subsection (1)(b)(vi). including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the class of person in question at that time.

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

### **13 Undertaking or directions for remedying of certain practices**

- (1) Where, following an investigation under section 12, the Agency is of the opinion that the person concerned has failed to afford equality of opportunity, either generally or in relation to any class of person, the Agency shall use its best endeavours—

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- (a) to ensure that he takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate; and
  - (b) where appropriate, to secure a satisfactory written undertaking by him that such action will be taken.
- (2) Where the Agency asks the person concerned for an undertaking such as is mentioned in subsection (1)(b), but—
- (a) the undertaking is not given, or
  - (b) the undertaking, although given, is not complied with,
- the Agency, unless it decides that no further action by it is appropriate.—
- (i) where paragraph (a) applies, shall serve on the person concerned a notice containing directions such as are mentioned in subsection (3), or
  - (ii) where paragraph (b) applies, shall either serve on him such a notice (whose directions shall supersede the undertaking) or make an application to the county court under section 15 for enforcement of the undertaking.
- (3) The directions contained in a notice served under subsection (2) (i) or (ii) shall be those which the Agency considers to be, in all the circumstances, reasonable and appropriate for promoting equality of opportunity, and the directions may in particular include—
- (a) directions for the abandonment, or for the modification in accordance with any instructions given in the directions, of any practice which results or may result in failure to afford equality of opportunity, or for the substitution or adoption of new practices specified by the Agency; and
  - (b) such directions as the Agency considers necessary to ensure that other directions are duly carried out;
- but the terms of directions contained in a notice served under subsection (2)(ii) which supersede an undertaking shall be such as, in the opinion of the Agency, are not more onerous than the terms of the undertaking.
- (4) A notice served under subsection (2)(i) or (ii) shall inform the person concerned of the right of appeal against the directions which is conferred by section 14.
- (5) The Agency, on the written application of the person concerned, may—
- (a) revoke all of the directions; or
  - (b) modify the directions in accordance with the application—
    - (i) by revoking any of them, or
    - (ii) by substituting new directions for all or any of them;
- and, in substitution for any directions which are revoked under paragraph (a), may accept from that person an undertaking such as is mentioned in subsection (1)(b).
- (6) The Agency shall serve notice of the revocation or modification on the person concerned.
- (7) Any reference in the succeeding provisions of this Act to directions given by the Agency—
- (a) does not include directions revoked under subsection (5) (a); and
  - (b) where the directions have been modified under subsection (5)(b), is to them as so modified.
- (8) The directions shall be binding on the person concerned (except to the extent that they are quashed, or other directions are substituted for them, by the Appeals Board under section 14) and shall be enforceable only in accordance with section 15.



*Appeals and legal proceedings in relation to the remedying of practices***14 Appeal to Appeals Board against directions under s. 13**

- (1) Where, under section 13, the Agency serves on the person concerned a notice containing directions (not being directions substituted for others in accordance with an application made by him under section 13(5)), he may, within 21 days from the date of service, appeal to the Appeals Board against the directions.
- (2) The appeal may be brought on any of the following grounds—
  - (a) that in all the circumstances it is unreasonable to expect the appellant to comply with the directions;
  - (b) that in all the circumstances the directions are not appropriate for promoting equality of opportunity; or
  - (c) that the appellant is already affording equality of opportunity, and the directions are, therefore, unnecessary.
- (3) Schedule 4 shall have effect with respect to the conduct of the appeal.
- (4) On hearing the appeal the Appeals Board may—
  - (a) dismiss the appeal; or
  - (b) quash the directions or any of them ; or
  - (c) substitute for the directions or any of them such other directions (of a kind that the Agency could have given) as the Appeals Board considers reasonable and appropriate in all the circumstances.
- (5) Directions substituted under subsection (4)(c) shall be binding on the person concerned and shall be enforceable only in accordance with section 15.
- (6) In coming to its decision the Appeals Board shall have such regard as it considers proper in all the circumstances to the recommendations contained in the guide to good manpower policy and practice prepared by the Department under section 5.

**15 Enforcement by county court of undertaking or directions**

- (1) Where, within such period as the Agency considers reasonable.—
  - (a) an undertaking to take action for promoting equality of opportunity—
    - (i) which has been given to the Agency under section 13(1) and has not been superseded by directions given by the Agency, or
    - (ii) which has been given to the Agency under section 13(5),  
has not been complied with ; or
  - (b) directions given by the Agency have not been complied with,  
or steps have not been taken to the Agency's satisfaction to comply with it or them, the Agency may, subject to subsection (2), make an application to the county court under this section for enforcement of the undertaking or the directions.
- (2) Notice of an application for the enforcement of directions shall not be given—
  - (a) until the expiration of the period allowed by section 14(1) for an appeal to the Appeals Board against the directions; or
  - (b) if notice of such an appeal is served within that period—
    - (i) unless the appeal is abandoned or dismissed, or

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- (ii) where the Appeals Board quashes, or makes substitutions for, some only of the directions, except in relation to directions which have not been quashed or for which no substitution has been made.
- (3) On such an application the court shall have power to make an order (to which section 46 shall apply) directing the person concerned to do any act which he ought to do in order to fulfil all or any of his commitments under the undertaking or comply with all or any of his obligations under the directions.
- (4) This section (except subsection (2)) applies also to directions substituted by the Appeals Board under section 14(4)(c) for directions given by the Agency.

### PART III

#### UNLAWFUL DISCRIMINATION

##### *General*

#### **16 Meaning of " discrimination " and " unlawful discrimination "**

- (1) In this Act " discrimination " means—
  - (a) discrimination on the ground of religious belief or political opinion; or
  - (b) discrimination by way of victimisation ;
 and " discriminate " shall be construed accordingly.
- (2) For the purposes of this Act a person discriminates against another person on the ground of religious belief or political opinion if, on either of those grounds, he treats that other person less favourably in any circumstances than he treats or would treat any other person in those circumstances.
- (3) For the purposes of this Act a person discriminates against another person (" the person victimised ") by way of victimisation if he treats that other person less favourably in any circumstances than he treats or would treat any other person in those circumstances, and does so by reason that the person victimised has—
  - (a) made a complaint against him or any other person under this Act of unlawful discrimination, or
  - (b) given evidence or information in connection with any such complaint or any investigation, legal proceedings or appeal under this Act, or
  - (c) alleged that he or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or
  - (d) otherwise done anything under or by reference to this Act in relation to him or any other person,
 or by reason that he knows the person victimised intends to do any of these things, or that he suspects the person victimised has done, or intends to do any of them.
- (4) Subsection (3) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.
- (5) For the purposes of this Act a person commits unlawful discrimination against another if he does an act in relation to that other which is unlawful by virtue of this Part, or if he is treated by virtue of any provision of Part IV as doing such an act.

### *Acts of unlawful discrimination*

#### **17 Discrimination by employers**

It shall be unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland.— '

- (a) where that person is seeking employment—
  - (i) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
  - (ii) by refusing or deliberately omitting to offer that person employment for which he applies, or
  - (iii) in the terms on which he offers him employment ; or
- (b) where that person is employed by him—
  - (i) in the terms of employment which he affords him, or
  - (ii) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
  - (iii) by dismissing him, or
  - (iv) by subjecting him to any other detriment.

#### **18 Discrimination against contract workers**

- (1) This section applies to any work for a person (" the principal ") which is available to be done by individuals (" contract workers ")—
  - (a) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal, and
  - (b) who, if they were instead employed by the principal to do that work, would be in his employment in Northern Ireland.
- (2) It shall be unlawful for the principal, in relation to work to which this section 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
  - (c) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
  - (d) by subjecting him to any other detriment.

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

It shall be unlawful for a person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person to discriminate against a person, in relation to employment 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.

## **20 Discrimination by employment agencies**

- (1) It shall be unlawful for an employment agency to discriminate against a person, in relation to employment in Northern Ireland.—
  - (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.
- (2) References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.
- (3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person concerned.
- (4) An employment agency shall not be subject to any liability under this section 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 subsection (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 subsection (4) (a) which in a material respect is false or misleading shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400.

## **21 Discrimination by vocational organisations**

It shall be unlawful for a vocational organisation to discriminate against a person who is employed or is seeking employment in Northern Ireland, or who is engaged or is seeking to become engaged in an occupation in Northern Ireland.—

- (a) where that person is not a member of the organisation—
  - (i) by refusing or deliberately omitting to accept his application for membership, or
  - (ii) in the terms on which it is prepared to admit him to membership ; or
- (b) where that person is a member of the organisation—
  - (i) in the way it affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
  - (ii) by depriving him of membership, or varying the terms on which he is a member, or
  - (iii) by subjecting him to any other detriment.

## **22 Discrimination by persons providing training services**

- (1) It shall be unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, in Northern Ireland to discriminate against another person—
  - (a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf—
    - (i) by refusing or deliberately omitting to provide those services, or
    - (ii) in the terms on which the person offers to provide those services ; or
  - (b) where that other person is receiving those services—

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- (i) in the way the person provides those services, or
  - (ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them, or
  - (iii) by withdrawing those services from him or varying the terms on which they are provided, or
  - (iv) by subjecting him to any other detriment.
- (2) In subsection (1) "services", in relation to training for employment, means services provided otherwise than by the employer of the person who is seeking to obtain or is receiving the services.

### **23 Discrimination by persons with power to confer qualifications**

It shall be unlawful for a person who has power to confer on another a qualification which is needed for, or facilitates, his engagement in employment in any capacity, or in a particular employment or occupation, in Northern Ireland to discriminate against him—

- (a) by refusing or deliberately omitting to confer that qualification on him on his application, or
- (b) in the terms on which the person is prepared to confer it, or
- (c) by withdrawing it from him or varying the terms on which he holds it.

#### *Complaints of unlawful discrimination*

### **24 Investigation of complaint of unlawful discrimination**

- (1) Subject to the provisions of this section, where a person makes a complaint in writing to the Agency alleging that unlawful discrimination has been committed against him by another person (" the respondent "), the Agency shall investigate the complaint (unless it considers that the complaint is frivolous).
- (2) Where a person against whom unlawful discrimination is alleged to have been committed has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him ; and where a person who has made or continued a complaint dies or becomes unable to act, the complaint may be continued by the personal representative, or a member of the family, of the person against whom the discrimination is alleged to have been committed, or by such other individual as aforesaid.
- (3) A complaint must be made before the expiration of—
- (a) two months from the day on which the complainant first had knowledge, or might reasonably be expected first to have had knowledge, of the act complained of; or
  - (b) six months from the day on which the act was done, whichever first occurs; but the Agency may, if it thinks fit,
- investigate a complaint made after the expiration of that period, if of the opinion that there are special circumstances which make it proper to do so.
- (4) For the purposes of this section—

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- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract, and
  - (b) any act extending over a period shall be treated as done at the end of that period, and
  - (c) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.
- (5) The Agency shall not consider a complaint relating to an act which is unlawful by virtue of section 23, 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 enactment.
- (6) Without prejudice to subsection (5), where the Agency is satisfied that the subject-matter of a complaint has been or is being considered by some other statutory body or by a person holding a statutory office, the Agency shall not be obliged to investigate the complaint; but it may do so, after consultation with that other body or person, if it thinks fit.
- (7) Schedule 5 shall have effect with respect to the conduct of investigations under this section.
- (8) Where the Agency is of the opinion that, by virtue of any provision of Part V, it is precluded from investigating, or continuing the investigation, of a complaint, the Agency shall serve on the complainant and the respondent a notice stating the opinion.

## **25 Finding following investigation; attempts at conciliation**

- (1) On completing its investigation of a complaint the Agency shall—
- (a) form an opinion (its " finding ") whether or not unlawful discrimination has been committed by the respondent against the complainant; and
  - (b) use its best endeavours—
    - (i) to secure a settlement of any difference between the complainant and the respondent which was disclosed by the complaint, and
    - (ii) where the finding is that unlawful discrimination has been committed, to secure, if it is appropriate to do so, a satisfactory written undertaking by the respondent to comply with the terms of the settlement.
- (2) As soon as reasonably practicable after arriving at its finding, the Agency shall serve on the complainant and the respondent a notice stating the finding and the reasons for it; and, if the finding is that unlawful discrimination has been committed, as soon as reasonably practicable thereafter the Agency shall serve on the complainant a notice stating whether or not the Agency has secured a settlement, or a settlement and undertaking, as mentioned in subsection (1)(b), and if so on what terms.
- (3) A notice under subsection (2) stating the Agency's finding shall inform the complainant and the respondent of the right of appeal against the finding which is conferred by section 28.
- (4) A finding that unlawful discrimination has been committed by the respondent against the complainant—



(b) where the recommendations have been modified under subsection (5)(b), is to them as so modified.

(8) Where—

(a) a settlement such as is mentioned in section 25 or this section, or

(b) a recommendation under subsection (1) or (5),

provides for the payment of any sum by the respondent to the complainant, then, if the Agency has made any payment to the complainant in respect of expenses or allowances as mentioned in Schedule 5, paragraph 11, a sum equal to the amount of that payment shall be a first charge for the benefit of the Agency on the sum so provided for, unless the Agency in any particular case waives that charge.

## **27 Remediating of practices excluding equality of opportunity which are disclosed on investigation of complaint**

Where, following its investigation of a complaint, the Agency (whether or not its finding is that unlawful discrimination has been committed by the respondent against the complainant) is of the opinion that the respondent has failed to afford equality of opportunity in relation to persons of any class, the Agency shall use its best endeavours to ensure that action such as is mentioned in section 13(1) is taken and that, where appropriate, an undertaking is given as there mentioned, and, without prejudice to the operation of any provision of this Part in consequence of the Agency's finding, the provisions of this Act shall have effect as if the Agency had formed that opinion following an investigation under section 12.

*Appeal against finding following complaint of unlawful discrimination*

## **28 Appeal to county court against Agency's finding on complaint of unlawful discrimination**

- (1) This section has effect where, following a complaint of unlawful discrimination, the Agency serves a notice under section 25(2) on the complainant and the respondent stating the Agency's finding.
- (2) If the finding is that unlawful discrimination has been committed, the respondent may appeal against the finding.
- (3) If the finding is that such discrimination has not been committed, the complainant may appeal against the finding.
- (4) An appeal under this section shall lie to the county court and notice of the appeal must be given within 21 days from the date of service of the notice stating the finding.
- (5) In an appeal under subsection (2) the parties shall be the respondent and the Agency, and in an appeal under subsection (3) the parties shall be the complainant and the respondent.

## **29 Supplementary provisions as to appeal under s. 28**

- (1) On an appeal under section 28—
  - (a) if the court agrees with the Agency's finding, it shall dismiss the appeal; or
  - (b) if the court disagrees with the Agency's finding, then.—



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- (i) if the court decides that unlawful discrimination has been committed by the respondent against the complainant it shall remit the case to the Agency and thereupon section 25(1)(b) and, if appropriate, section 26 shall have effect as if that were the Agency's finding; or
  - (ii) if the court decides that such discrimination has not been committed, the court shall quash the complaint.
- (2) Where the court disagrees with the Agency's finding it shall state the reasons for its decision.
- (3) Where the court on an appeal under section 28 disagrees with the Agency's finding and decides that unlawful discrimination has been committed by the respondent against the complainant, the court's decree shall be evidence that the unlawful discrimination was committed, if it would not be such evidence apart from this provision, and shall not be questioned, in any legal proceedings under this Act.

*Legal proceedings to secure compensation for, or the remedying of, unlawful discrimination*

### **30 Action in county court following breakdown of attempts at conciliation**

- (1) Where, within such period as the Agency considers reasonable.—
  - (a) an undertaking to comply with the terms of a settlement such as is mentioned in section 25(1)(b), or an undertaking accepted by the Agency under section 26(5) in substitution for revoked recommendations, has not been complied with ; or
  - (b) recommendations made by the Agency have not been complied with,the Agency, on behalf of the injured person (that is to say, the person against whom the unlawful discrimination was committed or, where that person is dead, his personal representative) may institute an action in the county court against the respondent by way of a claim in tort in respect of the unlawful discrimination.
- (2) Such an action shall not be instituted in consequence of failure to comply with recommendations—
  - (a) until the expiration of the period allowed by section 28 for an appeal against the finding which led to the recommendations; or
  - (b) if notice of such an appeal is given within that period,unless the appeal is abandoned or dismissed ; but this subsection does not apply to anything done after a case has been remitted by the court to the Agency under section 29(1)(b)(i).
- (3) Subsection (4) of section 24 (time when certain acts are to be treated as done) shall have effect for determining, for the purposes of the Statute of Limitations (Northern Ireland) 1958, when a cause or right of action under subsection (1) of this section accrued.
- (4) In an action under this section the court shall have power by its decree—
  - (a) to award damages ; or
  - (b) to grant an injunction ; or
  - (c) to award damages and grant an injunction,in accordance with the provisions of section 31, or sections 31 and 46; and the damages may be awarded to the Agency as if it were the injured person, and it shall be for the

Agency to take steps to recover the damages and, subject to section 31(6), to account to the injured person for any damages recovered.

- (5) The court shall state the reasons for its decree.

### **31 Powers of court as to damages and injunctions**

- (1) In an action under section 30, the amount of any damages awarded shall be such as the court considers just in all the circumstances to compensate the injured person for any loss or injury he has suffered in consequence of the act of unlawful discrimination in question, including (without prejudice to the generality of the foregoing provision of this subsection)—

- (a) compensation for expenses reasonably incurred by the injured person in connection with the subject-matter of the complaint which led to the action (which for the purposes of this section shall be taken to include compensation for loss of his time); and
- (b) compensation for loss of opportunity, that is to say for loss of any employment, occupation or benefit which the injured person might reasonably be expected to have had but for the unlawful discrimination ;

but—

- (i) any award of damages for loss of opportunity shall be subject to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law; and
- (ii) compensation shall not be awarded for the same loss both by way of damages under this Act and by way of damages under any other enactment or at common law.

- (2) Where the undertaking or any of the recommendations mentioned in section 30(1) includes provision for the injured person to be given a benefit of any kind by the respondent, and that provision has not been complied with.—

- (a) if the court finds that the reason why the provision was not complied with was that the injured person refused an offer of benefit on the terms stated in that provision, and the court considers that he acted unreasonably in doing so, the court may reduce the assessment of his loss; or
- (b) if the court finds that the reason why the provision was not complied with was that the respondent refused or failed to make such an offer, and the court considers that he acted unreasonably in doing so, the court may increase that assessment,

to such extent (in either case) as in all the circumstances the court considers just and equitable.

- (3) Where it appears to the court in an action under section 30 that justice can be done to the injured person only by directing the defendant in the action to do, or refrain from doing, any particular act or acts, the court, if satisfied that in all the circumstances it is reasonable to do so, may make an order (to which section 46 shall apply) containing such a direction.

- (4) The powers conferred on the county court by subsections (1) and (2) may be exercised by that court notwithstanding anything to the contrary in any enactment which imposes limitations on the jurisdiction of a county court by reference to an amount claimed.

- (5) Where the injured person is the personal representative of the person (" the victim ") against whom the unlawful discrimination was committed, the reference in subsection (1) to any loss or injury the injured person has suffered shall be construed—
  - (a) in relation to any item of damages which compensates for the expenses mentioned in subsection (1)(a), as including a reference to the victim, and
  - (b) in relation to any item of damages which compensates for the loss mentioned in subsection (1)(b), as a reference to the victim.
- (6) An award of damages for expenses incurred as mentioned in paragraph (a) of subsection (1) (including that paragraph as modified by subsection (5)) may include compensation for expenses so incurred which have been defrayed by sums paid by the Agency under Schedule 5, paragraph 11; and so much of the damages as compensates for expenses so defrayed shall be identified by the court's decree as a separate item of damages and shall be retained by the Agency and applied for its benefit.
- (7) Section 26(8) shall apply to sums payable under a compromise or settlement arrived at to avoid or bring an end to an action under section 30 as it applies to a settlement such as is mentioned in section 25 or 26.

### **32 Power of court to revise contracts**

- (1) Where a term is included in or omitted from a contract in contravention of any provision of this Part or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part of it is unenforceable by reason only of the contravention; but in an action under section 30—
  - (a) the Agency on behalf of the injured person ; or
  - (b) the defendant,may apply to the court to revise the contract or any of its terms.
- (2) On such an application the court may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of this Part.
- (3) Where the court makes an order under this section, every party to the contract, whether or not a party in the action, shall be bound by the order; but the court shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.

## **PART IV**

### **OTHER UNLAWFUL ACTS**

### **33 Discriminatory advertisements**

- (1) It shall be unlawful to publish in Northern Ireland, or cause to be published there, an advertisement which indicates, or could reasonably be understood as indicating, an intention by a person to do an act which is unlawful by virtue of Part III.
- (2) Subsection (1) does not apply if the intended act would be prevented from being unlawful by any provision of Part V.

- (3) The publisher of an advertisement which is unlawful by virtue of subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves—
- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful, and
  - (b) that it was reasonable for him to rely on the statement.
- (4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3) (a) which in a material respect is false or misleading shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400.

### **34 Accessories and incitement**

- (1) Any person who—
- (a) knowingly aids or incites, or
  - (b) directs, procures or induces,
- another to do an act which is unlawful by virtue of Part III or section 33 shall be treated for the purposes of this Act as if he, as well as that other, had done that act.
- (2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 35 (or would be so liable but for section 35(3)) shall be deemed to aid the doing of the act by the employer or principal.
- (3) A person does not under this section knowingly aid another to do an unlawful act if—
- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Act, the act which he aids would not be unlawful, and
  - (b) it is reasonable for him to rely on the statement.
- (4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3) (a) which in a material respect is false or misleading shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400.
- (5) An inducement consisting of an offer of benefit or a threat of detriment is not prevented from falling within subsection (1) because the offer or threat was not made directly to the person in question.

### **35 Liability of employers and principals**

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority (whether express or implied and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act as done by that other person as well as by him.
- (3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing in the course of his employment acts of the same description.

### **36 Enforcement of s. 33**

- (1) If it appears to the Agency—
- (a) that a person has done an act which by virtue of section 33 was unlawful, and
  - (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,
- the Agency may apply to the county court for an order restraining him from doing such acts ; and the court, if satisfied that the application is well-founded and that in all the circumstances it is reasonable to do so, may make the order (to which section 46 shall apply).
- (2) Where the act mentioned in subsection (1)(a) is a continuing act, the reference in subsection (1)(b) to further acts shall include a reference to the continuance of that act.

## **PART V**

### **EXCEPTIONS**

### **37 Excepted employments, etc.**

- (1) Parts II to IV shall not apply to or in relation to—
- (a) any employment or occupation as a clergyman or minister of a religious denomination ;
  - (b) employment for the purposes of a private household; or
  - (c) employment as a teacher in a school.
- (2) Part II shall not apply to or in relation to any employment or occupation, other than one mentioned in subsection (1), where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.
- (3) Parts III and IV, so far as they relate to discrimination on the ground of religious belief, shall not apply to or in relation to any employment or occupation, other than one mentioned in subsection (1), where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief; nor, so far as they relate to discrimination on the ground of political opinion, shall they 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.
- (4) No provision of Parts II to IV shall apply—
- (a) during the two years beginning with the commencement of this Act, to, or to employment by, an employer who employs not more than 25 persons in addition to any employed for the purposes of his private household; and
  - (b) during the year following those two years, to, or to employment by, an employer who employs not more than 10 persons in addition to any employed for the purposes of his private household.
- (5) Subsection (1) is subject to the power conferred by section 39 to remove or limit the exception made by paragraph (c) of that subsection.

### **38 Review of exception of school-teachers**

- (1) The Agency shall keep under review the exception contained in section 37(1)(c) relating to the employment of teachers in schools, with a view to considering whether, in the Agency's opinion, it is appropriate that any steps should be taken to further equality of opportunity in the employment of such teachers.
- (2) For the purpose of assisting it in the discharge of its duty under subsection (1), the Agency 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.
- (3) The Agency may from time to time, and shall whenever the Secretary of State so directs, report to the Secretary of State upon the exercise of its functions under this section; and a report under this subsection may make recommendations as to any action which the Agency 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 section 39 to remove or limit the exception contained in section 37(1)(c)).
- (4) Schedule 5 shall have effect with respect to the conduct of investigations under this section.

### **39 Power to remove or limit exception of school-teachers**

- (1) The Secretary of State may by order provide that section 37(1)(c)—
  - (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 Act.
- (2) An order under subsection (1) may make all or any of the provisions mentioned in paragraph (b) of that subsection, and may do so by way of exception or otherwise.
- (3) An order under subsection (1) may include transitional provisions.
- (4) The power to make an order under subsection (1)(b) includes power to vary or revoke the order.
- (5) The Secretary of State shall not make an order under subsection (1) unless a draft of the order has been laid before, and has been approved by, both Houses of Parliament.

### **40 Charities**

- (1) Nothing in this Act shall—
  - (a) be construed as affecting a provision to which this subsection applies, or
  - (b) render unlawful an act which is done in order to give effect to such a provision.

- (2) Subsection (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 an enactment or instrument, and
  - (b) which has been enacted or made for purposes which are exclusively charitable according to the law of Northern Ireland.
- (3) In subsection (2) "enactment" includes an enactment contained in a local or personal Act (including an Act of the Parliament of Northern Ireland).

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

- (1) Nothing in this Act shall render unlawful anything done in order to comply with a requirement—
  - (a) of an enactment enacted before the passing of this Act; or
  - (b) of an instrument made or approved (whether before or after the passing of this Act) under an enactment enacted before the passing of this Act.
- (2) Where an enactment enacted after the passing of this Act re-enacts (with or without modification) a provision of an enactment enacted before the passing of this Act, subsection (1) shall apply to that provision as re-enacted as if it continued to be contained in an enactment enacted before the passing of this Act.

#### **42 Acts done to safeguard national security, etc.**

- (1) This Act shall not apply to an act done for the purpose of safeguarding national security or of protecting public safety or public order.
- (2) A certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for a purpose mentioned in subsection (1) shall be conclusive evidence that it was done for that purpose.
- (3) A document purporting to be a certificate such as is mentioned in subsection (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

### **PART VI**

#### **MISCELLANEOUS**

##### *Restriction on proceedings*

#### **43 Restriction on proceedings for contravention of Act**

- (1) Except as provided by this Act, no proceedings, whether civil or criminal, shall be brought against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Act.
- (2) Nothing in subsection (1) prevents the making of an application for an order of certiorari, mandamus or prohibition.

*Supplementary provisions as to the county court***44 Jurisdiction as to acts done on ships, etc, 45. County court rules and orders**

Without prejudice to any jurisdiction exercisable by the county court by virtue of section 45 or any other enactment, the county court shall have jurisdiction to hear and determine an application, appeal or action under this Act with respect to an act done or to be done on a ship, aircraft or hovercraft outside the division for which the court sits, including such an act done or to be done outside Northern Ireland.

**45** County court rules and county court orders made under section 146 of the County Courts Act (Northern Ireland) 1959 may make such provision as appears to the authority having for the time being power to make those rules and orders to be necessary for regulating the practice and procedure of county courts in the exercise of the jurisdiction conferred by this Act, and (without prejudice to the generality of any power to make such rules or orders) those rules or orders may in particular provide for—

- (a) an application made under section 15 to be made to a county court sitting for the division in which the person concerned carried on business or, as the case may be, had an office at the time when the undertaking sought to be enforced was given or the notice containing the direction sought to be enforced was served ;
- (b) an appeal under section 28 or an action under section 30 to be brought in a county court sitting for the division in which the person alleged to have been injured by the act of unlawful discrimination is resident, or was resident at the time when the act was done ;
- (c) the service of process on persons outside Northern Ireland.

**46 Powers of county court as to injunctions**

- (1) For the purposes of an order under section 15(3), section 31(3) or section 36 the county court shall have the like jurisdiction as the High Court to grant any mandatory or other injunction.
- (2) Section 141(4) of the County Courts Act (Northern Ireland) 1959 (enforcement by committal) applies to the enforcement of an order made in exercise of the jurisdiction conferred by any of the provisions mentioned in subsection (1) in conjunction with this section.
- (3) Where an application is made for such an order (including an application in the course of an action under section 30) the court may make the order in the terms applied for or in more limited terms.

**47 Execution of order for damages or costs**

Where in an action under section 30 the county court, in exercise of the jurisdiction conferred on it by virtue of this Act, makes an order for the payment of a sum in respect of damages or costs, or both damages and costs, by a person who was domiciled in England and Wales or in Scotland at the time of the commencement of the action, that sum shall be recoverable under the Inferior Courts Judgments Extension Act 1882 notwithstanding that the whole cause of action had not arisen, or the obligation to which the order relates had not been due to be fulfilled, within the division for which the court sits, or that the civil bill commencing the action had not been served upon



the defendant personally within that division; and section 9 of that Act (saving as to limits of local jurisdiction) shall not apply to such an order.

#### **48 Appeal from county court**

Without prejudice to section 2 of the County Court Appeals Act (Northern Ireland) 1964 (appeal to Court of Appeal in Northern Ireland on point of law) and section 7 of that Act (different modes of appeal to be exclusive), the Agency or the respondent, if dissatisfied with a decree of the county court in an action under section 30, may appeal from that decree, notwithstanding that damages have been claimed or awarded in excess of the amount that could have been claimed or awarded apart from section 31(4), as if the decree had been made in exercise of the jurisdiction conferred by Part III of the County Courts Act (Northern Ireland) 1959 and the appeal were brought under section 1 of that Act of 1964.

*Construction of references to employment or occupation in Northern Ireland*

#### **49 Meaning of " employment in Northern Ireland" and " occupation in Northern Ireland "**

- (1) For the purposes of this Act, employment is to be regarded as being employment in Northern Ireland unless the employee does his work wholly or mainly outside Northern Ireland.
- (2) Subsection (1) does not apply to—
  - (a) employment on board a ship registered at a port of registry in Northern Ireland, or
  - (b) employment on an aircraft or hovercraft operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland ;but for the purposes of this Act such employment is to be regarded as being employment in Northern Ireland unless the employee does his work wholly outside Northern Ireland.
- (3) In relation to employment concerned with the exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department may by order provide that subsections (1) and (2) shall each have effect as if the last reference to Northern Ireland included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964, or any part of such an area, in which the law of Northern Ireland applies.
- (4) An order under subsection (3) may provide that, in relation to employment to which the order applies or any class of such employment, this Act is to have effect with such modifications as are specified in the order.
- (5) The power to make an order under subsection (3) includes power to vary or revoke the order.
- (6) The Department shall not make an order under subsection (3) unless a draft of the order has been laid before, and has been approved by, the Northern Ireland Assembly.
- (7) During the interim period subsection (6) shall not apply, but an order under subsection (3) shall be subject to annulment in pursuance of a resolution of either

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House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

- (8) In this section references to the work an employee does include, in relation to a person who is seeking employment or a person who has ceased to be in employment, references to, respectively, the work he would do if employed or the work he did when employed.
- (9) This section has effect for construing references in this Act to a person's being engaged, or seeking to become engaged, in an occupation in Northern Ireland as if references in this section to employment were references to an occupation and references to an employee were to a person engaged, or seeking to become engaged, in an occupation.

*Application to the Crown, police and public bodies*

**50 Application of Act to the Crown**

- (1) Subject to sections 51 to 54, this Act applies—
- (a) to an act done by or for purposes of a Minister of the Crown or a government department, or
  - (b) to an act done on behalf of the Crown by a statutory body or a person holding a statutory office, or
  - (c) to an act done by a member of Her Majesty's forces acting as such, as it applies to an act done by a private person.
- (2) For the purposes of subsection (1), in this Act—
- (a) references to employment include references to—
    - (i) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, and
    - (ii) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body, and
    - (iii) service as a member of Her Majesty's forces;
  - (b) references to a contract of employment include references to the terms of such service ;
  - (c) references to an employee include references to a person who is seeking to become engaged in such service, who is in such service or who has ceased to be in such service ; and
  - (d) references to an employer, in relation to an employee, include references to (as the case requires) the authority with power to appoint him, to fix his terms of service, to afford him any benefit, to dismiss him or to subject him to any detriment.
- (3) Subsection (2) of section 49 (or that subsection as it has effect by virtue of an order under subsection (3) of that section) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland as it has effect in relation to a ship, aircraft or hovercraft mentioned in paragraph (a) or (b) of that subsection ; and that subsection shall not have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom.

- (4) In this section and sections 51, 52 and 54 references to the Crown include it both in right of the Government of the United Kingdom and in right of the Government of Northern Ireland; and—
- (a) in this section and section 54 references to Her Majesty's forces are references to—
    - (i) the naval, military or air forces of the Crown, and
    - (ii) any women's service administered by the Defence Council,but do not include references to any cadet training corps for the time being administered by the Ministry of Defence; and
  - (b) in this section service " for purposes of " a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 as for the time being in force.

## **51 Proceedings against Crown for unlawful discrimination**

The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under section 30 as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under section 30—

- (a) section 20 of that Act (removal of proceedings from county court to High Court) shall not apply ; and
- (b) section 28 of that Act (discovery) shall have effect subject to section 52(2) of this Act.

## **52 Disclosure of information by Crown for purposes of investigation or proceedings**

- (1) Subject to subsection (2), any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any enactment or by any rule of law, shall not apply to the disclosure of information for the purposes of any investigation, appeal or proceedings under this Act; and the Crown shall not be entitled in relation to any such investigation, appeal or proceedings to any such privilege in respect of the production of documents or the giving of evidence as is allowed to the Crown alone by law in legal proceedings.
- (2) A Minister of the Crown or the head of a Northern Ireland department may by a certificate in writing, with respect to any document or information specified in the certificate, or documents or information of any class so specified, certify that in his opinion the disclosure of that document or information or of documents or information of that class would be prejudicial to the safety of the United Kingdom or any part of it or otherwise contrary to the public interest; and where such a certificate is given nothing in this Act shall be construed as authorising or requiring the communication to any person or for any purpose of any document or information specified in the certificate, or any document or information of a class so specified.
- (3) A document purporting to be a certificate such as is mentioned in subsection (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.
- (4) Where, in consequence of the enactment of subsection (1), any information is disclosed to persons not in the service of the Crown, those persons shall, without

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prejudice to subsections (1) and (2) and subject to subsection (5), be subject to the same restrictions upon the disclosure of the information as if they were in that service, and, in particular, the Official Secrets Act 1911 shall have effect in relation to them as if they were persons holding office under Her Majesty.

- (5) Where a person to whom subsection (4) applies is a member, officer or servant of the Agency or of the Appeals Board, or a person whose services have been made available for purposes of the Appeals Board, that subsection shall not preclude his disclosing the information in question to any other person so far as such disclosure is necessary—
- (a) for the purpose of communicating in accordance with the provisions of this Act—
    - (i) the Agency's finding following an investigation and the reasons for it, or
    - (ii) the Appeals Board's decision on an appeal and the reasons for it; or
  - (b) for the purposes of any criminal proceedings or to comply with the order of a court.
- (6) Any reference in subsection (2) to a Minister of the Crown includes a reference to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

### **53 Application of Act to the police**

- (1) For the purposes of this Act the holding of the office of constable shall be treated as employment—
- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office ;
  - (b) by the police authority as respects any act done by them in relation to a constable or that office.
- (2) There shall be defrayed as expenses of the police authority—
- (a) any damages or costs awarded against a chief officer of police in any proceedings under this Act, any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings, and any costs incurred by him in connection with any investigation under this Act so far as not defrayed by sums paid by the Agency under Schedule 5, paragraph 11 ; and
  - (b) any sum required by a chief officer of police in connection with the settlement of any complaint made or action brought against him under this Act, if the settlement is approved by the police authority.
- (3) Any proceedings under this Act which, by virtue of subsection (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in subsections (2) and (4) to the chief officer of police shall be construed accordingly.
- (4) The police authority may make arrangements for the legal representation of the chief officer of police in any investigation or proceedings under this Act.
- (5) This section applies to a police cadet and appointment as a police cadet as it applies to a constable and the office of constable.
- (6) In this section—
- " chief officer of police "—

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- (a) in relation to a person appointed, or an appointment falling to be made, to the police; force or as a police cadet in relation to that force, means the Chief Constable of the Royal Ulster Constabulary,
- (b) in relation to any other person or appointment means the officer who has the direction and control of the body of constables or cadets in question;  
" police authority "—
- (a) in relation to a person appointed, or an appointment falling to be made, to the police force or as a police cadet in relation to that force, means the Police Authority for Northern Ireland,
- (b) in relation to any other person or appointment, means the authority by whom the person in question is, or on appointment would be, paid ;  
" police cadet " means any person appointed to undergo training with a view to becoming a constable ;  
" police force " has the same meaning as in the Police Act (Northern Ireland) 1970.

**54 Procedure following investigation under s. 12 of Minister, government department, certain statutory bodies or statutory officers and police**

- (1) This section applies where, following an investigation under section 12, the Agency is of the opinion that there has been a failure to afford equality of opportunity by any of the following authorities, namely.—
- (a) a Minister of the Crown or a government department or a person acting for purposes of such a Minister or department; or
  - (b) a member of Her Majesty's forces acting as such ; or
  - (c) any other person acting on behalf of the Crown, being a statutory body or a person holding a statutory office; or
  - (d) the Police Authority for Northern Ireland or the Chief Constable of the Royal Ulster Constabulary ;
- and, accordingly, section 13(2) to (8) and sections 14 and 15 shall not have effect in relation to any such authority.
- (2) Where the Agency asks for an undertaking such as is mentioned in section 13(1)(b), but—
- (a) the undertaking is not given, or
  - (b) the undertaking, although given, is not complied with,
- the Agency shall, subject to subsection (4), send a report of the results of its investigation and of the opinion it has formed in relation to the subject-matter of the investigation (including any recommendations the Agency considers appropriate for action on the part of the authority concerned)—
- (i) where the investigation related to a Minister of the Crown, to that Minister ;
  - (ii) where the investigation related to a government department, to the Minister of the Crown in charge of the department, or in the case of a Northern Ireland department to the head of the department, or
  - (iii) where the investigation related to any other authority, to the Minister of the Crown or the head of the Northern Ireland department generally responsible for matters falling within the scope of the functions of that authority.

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- (3) Where the report is sent to a Minister of the Crown he shall lay it before Parliament; and where the report is sent to the head of a Northern Ireland department he shall lay it before the Northern Ireland Assembly.
- (4) During the interim period any report which is required by subsections (2) and (3) to be sent to the head of a Northern Ireland department and laid before the Northern Ireland Assembly shall, instead, be sent to the Secretary of State and laid by him before Parliament.
- (5) A person who is not in the service of the Crown shall not be regarded as within subsection (1)(a) by reason only of his acting in pursuance of a contract entered into with a Minister of the Crown or a government department.

### *General*

#### **55 Service of documents**

- (1) Any notice or other document which is required or permitted by this Act to be served on a person may—
  - (a) if that person is an individual, be served on him—
    - (i) by delivering it to him, or
    - (ii) by sending it to him by post, addressed to him at his usual or last-known place of residence or business, or
    - (iii) by leaving it for him at that place ; or
  - (b) if that person is a body corporate or unincorporate, be served on the body—
    - (i) by sending it by post to the proper officer of the body at its registered or principal office, or at its principal office in Northern Ireland, or
    - (ii) by addressing it to the proper officer of the body and leaving it at any such office.
- (2) Subsection (1) does not prejudice any other lawful method of service.

#### **56 Orders and reports**

- (1) Any power of the Secretary of State to make an order under section 39(1) or section 59(5) shall be exercisable by statutory instrument.
- (2) An order made by the Department under section 49(3) shall be made by statutory rule for the purposes of the Statutory Rules Act (Northern Ireland) 1958.
- (3) For the purpose of laying before the Northern Ireland Assembly—
  - (a) a draft of an order under section 49(3); or
  - (b) a report under section 54(2); or
  - (c) the Agency's annual report,
 section 41(3) of the Interpretation Act (Northern Ireland) 1954 (laying of statutory documents) shall have effect as if the draft order and the reports were statutory documents within the meaning of that Act.

#### **57 General interpretation**

- (1) In this Act, unless the context otherwise requires.—

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" access " shall be construed in accordance with subsection (7);

" act " includes a deliberate omission, and any reference to an act, action or other thing done shall be construed accordingly;

" advertisement " includes every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display or circulation of notices or circulars, by exhibition of pictures, models or films or in any other way, and references to the publishing of advertisements shall be construed accordingly;

" the Agency " means the Fair Employment Agency for Northern Ireland;

" the Appeals Board " means the Fair Employment Appeals Board;

" benefits " includes all opportunities, services and facilities, and, in particular, includes opportunities for training, transfer or promotion, for betterment of any kind (including more attractive times or conditions of work) or for any financial advantage (including bonuses, advances of money and preferential terms for acquiring property of any kind);

" the commencement of this Act " shall be construed in accordance with section 59(6);

" complainant " means a person making a complaint that unlawful discrimination has been committed against him or, in relation to a complaint made or continued under section 24(2), means—

- (a) subject to paragraph (b) below, in relation to any act which, under this Act, must or may be done by, to or in relation to the complainant, the person making or for the time being continuing the complaint; and
- (b) in relation to the complainant's having, or being expected to have had, knowledge of anything, the person making the complaint or the person against whom the unlawful discrimination is alleged to have been committed, whichever of them first had, or might reasonably be expected to have had, that knowledge; and
- (c) in any other connection, the person against whom the unlawful discrimination is alleged to have been committed;

" complaint " means a complaint of unlawful discrimination made to the Agency under section 24 ;

" confer ", in relation to a qualification, includes renew and extend;

" contract " includes any contract, whether in writing or oral, express or implied ; " contravention ", in relation to any provision, includes a failure to comply with that provision ;

" costs " includes expenses ;

" the county court ", in relation to any proceedings, means a county court sitting for the county court division in Northern Ireland in which those proceedings may be taken by virtue of rules of court;

" the Declaration of Principle and Intent " has the meaning given by section 6(1);

" the Department " means the Department of Manpower Services for Northern Ireland ;

" the Department of Finance " means the Department of Finance for Northern Ireland ;

" discrimination " and " discriminate " shall be construed in accordance with section 16(1) to (4);

" employer " means—

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- (a) in relation to a person who is seeking employment, anybody who has employment available ;
- (b) in relation to a person employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, the person entitled to the benefit of that contract;
- (c) in relation to a person who has ceased to be in employment, his former employer ; and " employee", correspondingly, means such a person as is first mentioned in paragraph (a), (b) or (c) of this definition;

" employment " means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour, and, without prejudice to the definitions of "employer " and " employee " above, related expressions shall be construed accordingly ;

" employment agency " means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

" employment in Northern Ireland " shall be construed in accordance with section 49 ;

" enactment " includes an enactment contained in an Act of the Parliament of Northern Ireland or an Order in Council made under the Northern Ireland (Temporary Provisions) Act 1972, or in a Measure of the Northern Ireland Assembly;

" equality of opportunity " shall be construed in accordance with section 3 ;

" financial year " means a year ending on 31st March ;

" finding ", in relation to the investigation of a complaint, has the meaning given by section 25(1);

" government department " includes a Northern Ireland department;

" the High Court " means the High Court of Justice in Northern Ireland;

" the injured person ", in relation to an action under section 30, has the meaning given by section 30(1);

" the interim period " has the meaning given by section 1(4) of the Northern Ireland Act 1974 for purposes of that Act;

" member ", in relation to a vocational organisation, includes (except in section 21) a person seeking to become a member and a person who has ceased to be a member, and in relation to such an organisation (other than an organisation of workers or employers) also includes any person belonging to a class of person recognised by the organisation as having any particular status in connection with an employment or occupation for the purposes of which the organisation exists, including students and associates, and " membership" shall be construed accordingly ;

" Northern Ireland " includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

" notice " means a notice in writing ;

" occupation " includes any trade, business, profession or vocation, but not any employment;

" occupation in Northern Ireland " shall be construed in accordance with section 49 ;

" organisation " includes any society or association whether corporate or unincorporate;



" the person concerned ", in relation to an investigation under section 12, has the meaning given by subsection (1)(b) of that section ;

" practices " includes procedures and arrangements;

" proper officer ", in relation to any body corporate or unincorporate, means the secretary or other executive officer charged with the conduct of the general affairs of the body;

" qualification " includes authorisation, recognition, registration, enrolment, approval and certification;

" the register " means the Register of Equal Opportunity Employers and Equal Opportunity Organisations;

" the respondent ", in relation to a complaint, has the meaning given by section 24(1);

" satisfactory ", in relation to an undertaking, means appearing to the Agency to be satisfactory, having regard to all the circumstances;

" school " has the same meaning as in the Education and Libraries (Northern Ireland) Order 1972 ;

" the Standing Advisory Commission on Human Rights " means the commission constituted by that name under section 20 of the Northern Ireland Constitution Act 1973 ;

" statutory body " means a body set up by or in pursuance of an enactment, and " statutory office " means an office so set up ;

" training " includes any form of education or instruction, except that in sections 3(3)(M(ii), 12(1)(b)(v) and 22 it does not include education in—

- (a) a school, or
- (b) an institution of further education within the meaning of the Education and Libraries (Northern Ireland) Order 1972 or an institution in respect of which contributions are paid by an Education and Library Board under Article 23(3) of that Order, or
- (c) an institution which is maintained in pursuance of arrangements made by the Department of Education for Northern Ireland under Article 55(1) of that Order of 1972, or in respect of which grants are paid by that Department under Article 55(2) of that Order, or
- (d) the Ulster College, or
- (e) a university;

" unlawful discrimination " shall be construed in accordance with section 16(5);

" vocational organisation " means—

- (a) an organisation of workers, or
- (b) an organisation of employers, or
- (c) any other organisation of persons engaged in a particular employment or occupation, or employments or occupations of any class, for the purposes of which the organisation exists.

- (2) In this Act references to a person's religious belief or political opinion include references to his supposed religious belief or political opinion and to the absence or supposed absence of any, or any particular, religious belief or political opinion.
- (3) In this Act any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political

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ends connected with Northern Irish affairs (including the use of violence for the purpose of putting the public or any section of the public in fear).

- (4) In this Act any reference to failure to afford equality of opportunity includes a reference to unintentional failure.
- (5) For the purposes of this Act a person is seeking employment if he is available for employment, whether or not he is aware of the existence of an opportunity for any particular employment.
- (6) References in this Act to submitting a person for consideration for employment include references to making available to an employer in any way relevant particulars relating to him.
- (7) References in this Act to the affording by any person of access to benefits are not limited to benefits provided by him alone, but include any means by which it is in his power to facilitate access to benefits provided by others.
- (8) Without prejudice to any provision of section 49 or any order under subsection (3) of that section and subject to any other provision of this Act which is limited by its express terms to acts done in Northern Ireland, references (however expressed) in this Act to acts done or to power to do any acts, other than references to acts which may be the subject of criminal proceedings under this Act, include references to acts done or power to do the acts outside Northern Ireland; and references to a contract include references to a contract the proper law of which is not the law of Northern Ireland.
- (9) In this Act any reference to a declarant is a reference to an employer who, or an organisation which, subscribes, or (as the context requires) proposes to subscribe or has subscribed, to the Declaration of Principle and Intent.
- (10) For the purposes of this Act an undertaking is not complied with unless the whole of it is complied with, and directions or recommendations are not complied with unless they are all complied with.
- (11) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.
- (12) In this Act, except where otherwise indicated.—
  - (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
  - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered, and
  - (d) a reference in a paragraph of a section, subsection or Schedule to a numbered sub-paragraph is a reference to the sub-paragraph of that paragraph so numbered.

## **58 Amendments and extension of enactments, and repeal**

- (1) The enactments mentioned in Schedule 6 shall have effect subject to the respective amendments there specified (being amendments consequential on the provisions of this Act).

- (2) The following enactments, namely.—
- (a) section 5(2)(a) of the Parliamentary Commissioner Act 1967;
  - (b) section 5(2)(a) of the Parliamentary Commissioner Act (Northern Ireland) 1969 ; and
  - (c) section 5(3)(a) of the Commissioner for Complaints Act (Northern Ireland) 1969,
- shall have effect in relation to the right of a person to make a complaint of unlawful discrimination under this Act as if it were such a right of appeal, reference or review as is mentioned in those enactments.
- (3) Section 20(1)(b) of the Northern Ireland Constitution Act 1973 is hereby repealed.

## **59 Short title, extent and commencement**

- (1) This Act may be cited as the Fair Employment (Northern Ireland) Act 1976.
- (2) Subject to subsections (3) and (4) and without prejudice to section 57(8) or to the application by virtue of Schedule 4, paragraph 7, or Schedule 5, paragraph 8, of any enactment which extends to the whole of the United Kingdom, this Act extends to Northern Ireland only.
- (3) The amendments, extension and repeal of enactments which are made by section 58(1), (2)(a) and (3) and Schedule 6 have the same extent as the enactments that are so amended, extended or repealed.
- (4) Sections 47 and 52 and so much of section 57 as applies for the interpretation of those sections extend to the whole of the United Kingdom.
- (5) This Act shall come into operation on such day as the Secretary of State may by order appoint.
- (6) An order under subsection (5)—
- (a) may appoint different days for different provisions of this Act or for different purposes of the same provision ; and
  - (b) may be revoked or varied by a subsequent order under that subsection;
- and any reference in a provision of this Act to the commencement of this Act shall be construed—
- (i) where different days are appointed for different provisions, as a reference to the day appointed for the coming into operation of that provision; or
  - (ii) where different days are appointed for different purposes of that provision, as a reference, in relation to each such purpose, to the day appointed for that purpose.