



# Fair Employment (Northern Ireland) Act 1989

## 1989 CHAPTER 32

### PART III

#### DISCRIMINATION

#### 49 Meaning of “discrimination”

(1) In section 16 of the Fair Employment (Northern Ireland) Act 1976 (meaning in that Act of “discrimination” and “unlawful discrimination”) for subsection (2) there is substituted—

“(2) A person discriminates against another person on the grounds of religious belief or political opinion in any circumstances relevant for the purposes of this Act if—

- (a) on either of those grounds he treats that other less favourably than he treats or would treat other persons, or
- (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—

- (i) which is such that the proportion of persons of the same religious belief or of the same political opinion as that other who can comply with it is considerably smaller than the proportion of persons not of that religious belief or, as the case requires, not of that political opinion who can comply with it, and

- (ii) which he cannot show to be justifiable irrespective of the religious belief or political opinion of the person to whom it is applied, and

- (iii) which is to the detriment of the other because he cannot comply with it.”

(2) After subsection (4) of that section there is inserted—

“(4A) A comparison of the cases of persons of different religious belief or political opinion under subsection (2) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”

## **50 Complaints of unlawful discrimination**

(1) For sections 24 to 31 of the Fair Employment (Northern Ireland) Act 1976 there is substituted—

### **“24 Jurisdiction of the Fair Employment Tribunal**

- (1) A complaint by any person (“the complainant”) that another person (“the respondent”) has committed unlawful discrimination against him may be presented to the Tribunal.
- (2) Subject to subsection (3), the Tribunal shall not consider a complaint unless it is brought before whichever is the earlier of—
  - (a) the end of the period of three months beginning with 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) the end of the period of six months beginning with the day on which the act was done.
- (3) The Tribunal may consider a complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) The Tribunal 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.

### **25 Conciliation**

- (1) Where a complaint is presented to the Tribunal under section 24, the Tribunal shall send a copy of the complaint to the Labour Relations Agency and it shall be the duty of the Agency—
  - (a) in any case where it is requested to do so by both the complainant and the respondent, or
  - (b) in any other case where it considers that it could act under this subsection with a reasonable prospect of success,
 to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.
- (2) Where, before a complaint such as is mentioned in subsection (1) has been presented to the Tribunal, a request is made to the Labour Relations Agency to make its services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, subsection (1) applies as if the complaint had been so presented and a copy of it had been sent to the Agency.

- (3) In proceeding under subsection (1) or (2), the Labour Relations Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (4) Anything communicated to the Labour Relations Agency in connection with the performance of its functions under this section shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.

## **26 Remedies on complaint under section 24**

- (1) Where the Tribunal finds that a complaint presented to it under section 24 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—
  - (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates,
  - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered to pay by the High Court if the complaint had been a claim in tort, and
  - (c) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any unlawful discrimination to which the complaint relates.
- (2) As respects an act of unlawful discrimination falling within section 16(2)(b) no award of compensation shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of his religious belief or political opinion as the case may be.
- (3) Compensation awarded to a person under subsection (1)(b) may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (4) The amount of compensation awarded to a person under subsection (1)(b) shall not exceed £30,000.
- (5) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under subsection (1)(c), then, if it considers it just and equitable to do so—
  - (a) the Tribunal may (subject to the limit in subsection (4)) increase the amount of any compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b), or
  - (b) if an order under subsection (1)(b) could have been made but was not, the Tribunal may make such an order.
- (6) Where compensation falls to be awarded in respect of any act both under the provisions of this section and under any other enactment, the Tribunal shall not award compensation under this section in respect of any loss or other matter which has been taken into account under that other enactment by a court or tribunal in awarding compensation in an action in respect of that act.

- (7) Paragraphs (3) to (6) of Article 61 of the Industrial Relations (Northern Ireland) Order 1976 (which enables the Department to provide by order that sums payable in pursuance of decisions of industrial tribunals shall carry interest) shall apply with the necessary modifications in relation to an award of compensation under subsection (1)(b) as they apply in relation to a sum payable in pursuance of a decision of an industrial tribunal.
- (8) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to an award of compensation under subsection (1)(b) as it applies to a sum due under a money judgment (within the meaning of that Order).
- (9) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in subsection (4) such other sum as appears to it to be justified by the change.
- (10) In subsection (9) “the relevant date” means—
- (a) in relation to the first order under that subsection, the commencement of section 50 of the Fair Employment (Northern Ireland) Act 1989, and
  - (b) in relation to each subsequent order, the last occasion when the sum specified in subsection (4) was altered.
- (11) A statutory rule containing an order under subsection (9) shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the order were conferred by a Measure of the Northern Ireland Assembly.
- (12) It is hereby declared that the limit imposed by subsection (4) applies to the amount which the Tribunal would, apart from that subsection, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

## **27 Appeal to Court of Appeal**

- (1) If any party to a complaint under section 24 is dissatisfied in point of law with a decision of the Tribunal, he may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.
- (2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.

### *Help for persons suffering discrimination*

#### **28 Help for aggrieved persons in obtaining information etc**

- (1) With a view to helping a person (“the person aggrieved”) who considers that another person may have unlawfully discriminated against him to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Department shall by regulations prescribe—
  - (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant, and
  - (b) forms by which the respondent may if he so wishes reply to any questions.
- (2) Where the person aggrieved questions the respondent (whether in accordance with regulations under subsection (1) or not)—
  - (a) the question, and any reply by the respondent (whether in accordance with the regulations or not) shall, subject to the following provisions of this section, be admissible as evidence in the proceedings, and
  - (b) if it appears to the Tribunal that the respondent deliberately and without reasonable cause omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) The Department may by regulations—
  - (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (2)(a), and
  - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (4) A statutory rule containing regulations under this section shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the regulations were conferred by a Measure of the Northern Ireland Assembly.
- (5) In this section “respondent” includes a prospective respondent.

#### **29 Advice and assistance by Commission**

- (1) Where a prospective complainant requests the Commission in writing for advice in relation to prospective proceedings under this Part, the Commission shall give him such advice unless it considers that the request is frivolous.
- (2) Where, in relation to proceedings or prospective proceedings under this Part, an individual who is an actual or prospective complainant applies to the Commission for assistance under this subsection, the Commission shall consider the application and may grant it if it thinks fit to do so on the ground that—

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- (a) the case raises a question of principle, or
  - (b) it is unreasonable, having regard to the complexity of the case or the applicant’s position in relation to the respondent, or another person involved, or to any other matter to expect the applicant to deal with the case unaided,
- or by reason of any other special consideration.
- (3) Assistance given by the Commission under subsection (2) may include—
- (a) giving advice to an actual complainant,
  - (b) procuring or attempting to procure the settlement of any matter in dispute,
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel,
  - (d) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, and
  - (e) any other form of assistance which the Commission may consider appropriate.”
- (2) Subsection (1) above, section 51 of this Act and the repeal by this Act of Schedule 5 to the Fair Employment (Northern Ireland) Act 1976 do not apply—
- (a) in relation to any complaint that was made to the Fair Employment Agency for Northern Ireland under section 24 of that Act but not disposed of before the commencement of this section, or
  - (b) in relation to any act done before the commencement of this section in respect of which a complaint under section 24 of that Act could have been, but was not, made before that time or in relation to any such complaint made in respect of it,
- but in relation to any such complaint or act Part III of that Act has effect as if references to the Agency were references to the Commission.

## **51 Power of High Court to revise contracts**

- (1) In section 32 of the Fair Employment (Northern Ireland) Act 1976 in subsection (1) for the words from “but” onwards there are substituted “but this subsection has effect subject to subsection (1A).”
- (2) After that subsection there is inserted—
- “(1A) Where a complaint has been presented to the Tribunal under section 24, the complainant or respondent may apply to the High Court to revise the contract or any of its terms.”

## **52 Discriminatory advertisements**

- (1) In section 33 of the Fair Employment (Northern Ireland) Act 1976 (discriminatory advertisements) after subsection (2) there is inserted—

“(2A) Subsection (1) does not apply to the publisher of an advertisement in respect of the publication of the advertisement if the intended act would not be unlawful by virtue of Part III but for section 16(2)(b).”

(2) In section 36 of that Act (enforcement of section 33) for subsection (1) there is substituted—

“(1) If it appears to the Commission—

(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 Commission may apply to the High Court for an injunction restraining him from doing such acts.”

### 53 Provision of training

After section 37 of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

#### “37A Provision of training in pursuance of affirmative action

(1) This section applies where, in pursuance of affirmative action, persons are afforded access to facilities for training which would help to fit them for employment, for employment in a particular capacity or for a particular employment or occupation, but—

(a) the facilities are provided only at a particular place in Northern Ireland or the training is confined to persons of a particular class, not being a class framed by reference to religious belief or political opinion, and

(b) by providing the facilities only there or by so confining the training, access to the facilities by persons of a particular religious belief or political opinion is excluded or restricted.

(2) For the purpose of determining whether any act done in, or in connection with, affording those facilities is by virtue of section 16(2) unlawful under any provision of Parts III and IV, the fact that, by providing the facilities only there or by so confining the training, their access to the facilities is thereby excluded or restricted is to be disregarded.”

### 54 Redundancy

After section 37A of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

#### “37B Redundancy

(1) This section applies where—

(a) a practice relating to the selection of employees who may be dismissed as redundant is followed by an employer in pursuance of affirmative action and in accordance with an agreed procedure, and

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- (b) the practice does not involve the application of any condition or requirement framed by reference to religious belief or political opinion, but has or may have the effect that the proportion of employees of a particular religious belief or political opinion who are selected is smaller than the proportion of employees not of that religious belief or, as the case may be, not of that political opinion who are selected.

(2) The dismissal of an employee in pursuance of the practice is not by virtue of section 16(2) unlawful under any provision of Parts III and IV.”

## **55 Measures to encourage applications etc. from under-represented community**

After section 37B of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

### **“37C Measures to encourage applications etc. from under-represented community**

Nothing in Parts III or IV shall render unlawful any act done by—

- (a) an employer,
- (b) an employment agency,
- (c) a vocational organisation, or
- (d) a person providing services as mentioned in section 22(1),

in or in connection with encouraging members of the Roman Catholic, or members of the Protestant, community in Northern Ireland to consider or to apply for a particular employment or particular training or to consider a particular occupation, where the act is done in pursuance of affirmative action.”