
STATUTORY INSTRUMENTS

1997 No. 869 (N.I. 6)

NORTHERN IRELAND

The Race Relations (Northern Ireland) Order 1997

*Made - - - - 19th March 1997
Coming into operation on days to be appointed under
Article 1(2)*

At the Court at Buckingham Palace, the 19th day of March 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Race Relations (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“access” shall be construed in accordance with Article 39;

“act” includes a deliberate omission;

“advertisement” includes every form of advertisement or notice, whether to the public or not;

“the Commission” means the Commission for Racial Equality for Northern Ireland;

“Commissioner” means a member of the Commission;

“the Department” means the Department of Economic Development;

“discrimination” and related terms shall be construed in accordance with paragraph (4);

“education” includes any form of training or instruction;

“employment” means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and 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;

“final” shall be construed in accordance with paragraph (3);

“formal investigation” means an investigation under Article 46;

“general notice”, in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

“genuine occupational qualification” shall be construed in accordance with Article 8;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“nationality” includes citizenship;

“non-discrimination notice” means a notice under Article 55;

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

“notice” means a notice in writing;

“premises” includes land of any description;

“prescribed” means prescribed by regulations made by the Department;

“profession” includes any vocation or occupation;

“racial grounds” and “racial group” have the meaning given by Article 5;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“trade” includes any business;

“training” includes any form of education or instruction.

(3) For the purposes of this Order a non-discrimination notice or a finding by a court or tribunal becomes final when—

- (a) an appeal against the notice or finding is dismissed, withdrawn or abandoned; or
- (b) the time for appealing expires without an appeal having been brought;

and for the purposes of sub-paragraph (a) an appeal against a non-discrimination notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under Article 56(3).

(4) In this Order—

- (a) references to discrimination are to any discrimination falling within Article 3 or 4; and
 - (b) references to racial discrimination are to any discrimination falling within Article 3;
- and related expressions shall be construed accordingly.

Racial discrimination

3.—(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Order if—

- (a) on racial 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 racial group as that other but—
 - (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
 - (iii) which is to the detriment of that other because he cannot comply with it.

(2) For the purposes of this Order segregating a person from other persons on racial grounds is treating him less favourably than they are treated.

(3) A comparison of the case of a person of a particular racial group with that of a person not of that group under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

Discrimination by way of victimisation

4.—(1) A person (“A”) discriminates against another person (“B”) in any circumstances relevant for the purposes of any provision of this Order if—

- (a) he treats B less favourably than he treats or would treat other persons in those circumstances; and
- (b) he does so for a reason mentioned in paragraph (2).

(2) The reasons are that—

- (a) B has—
 - (i) brought proceedings against A or any other person under this Order; or
 - (ii) given evidence or information in connection with such proceedings brought by any person; or
 - (iii) otherwise done anything under this Order in relation to A or any other person; or
 - (iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or
- (b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.

(3) Paragraph (1) 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.

Meaning of “racial grounds” “racial group” etc.

5.—(1) Subject to paragraphs (2) and (3), in this Order—

“racial grounds” means any of the following grounds, namely colour, race, nationality or ethnic or national origins;

“racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person’s racial group refer to any racial group into which he falls.

(2) In this Order “racial grounds”—

(a) includes the grounds of belonging to the Irish Traveller community, that is to say the community of people commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland; and

(b) does not include the grounds of religious belief or political opinion.

(3) In this Order “racial group”—

(a) includes the Irish Traveller community;

(b) does not include a group of persons defined by reference to religious belief or political opinion.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Order.

(5) In this Article references to religious belief or political opinion shall be construed in accordance with section 57(2) and (3) of the Fair Employment (Northern Ireland) Act 1976.

PART II

DISCRIMINATION IN THE EMPLOYMENT FIELD

Discrimination by employers

Discrimination against applicants and employees

6.—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against another—

(a) in the arrangements he makes for the purpose of determining who should be offered that employment; or

(b) in the terms on which he offers him that employment; or

(c) by refusing or deliberately omitting to offer him that employment.

(2) It is unlawful for a person, in the case of a person employed by him at an establishment in Northern Ireland, to discriminate against that employee—

(a) in the terms of employment which he affords him; or

(b) in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(c) by dismissing him, or subjecting him to any other detriment.

(3) Except in relation to discrimination falling within Article 4, paragraphs (1) and (2) do not apply to employment for the purposes of a private household.

(4) Paragraph (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees; or
- (b) the provision of the benefits, facilities or services to the employee in question is regulated by his contract of employment; or
- (c) the benefits, facilities or services relate to training.

(5) Paragraphs (1) and (2) do not render unlawful any act done by an employer for the benefit of a person not ordinarily resident in Northern Ireland in or in connection with employing him at an establishment in Northern Ireland, where the purpose of that employment is to provide him with training in skills which he appears to the employer to intend to exercise wholly outside Northern Ireland.

Discrimination by persons with statutory power to select employees for others

7. It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person, in relation to employment at an establishment 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.

Exceptions for genuine occupational qualifications

8.—(1) In relation to racial discrimination—

- (a) Article 6(1)(a) or (c) does not apply to any employment where being of a particular racial group is a genuine occupational qualification for the job; and
- (b) Article 6(2)(b) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being of a particular racial group is a genuine occupational qualification for a job only where—

- (a) the job involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity; or
- (b) the job involves participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that racial group is required for reasons of authenticity; or
- (c) the job involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity; or
- (d) the holder of the job provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.

(3) Paragraph (2) applies where some only of the duties of the job fall within sub-paragraph (a), (b), (c) or (d) as well as where all of them do.

(4) Sub-paragraph (a), (b), (c) or (d) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has employees of the racial group in question—

- (a) who are capable of carrying out the duties falling within that sub-paragraph; and

- (b) whom it would be reasonable to employ on those duties; and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Discrimination against contract workers

9.—(1) This Article applies to any work for a person (“the principal”) which is available for doing by individuals (“contract workers”) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this Article 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 any benefits, facilities or services or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

(3) The principal does not contravene paragraph (2)(b) by doing any act in relation to a person not of a particular racial group at a time when, if the work were to be done by a person taken into the principal's employment, being of that racial group would be a genuine occupational qualification for the job.

(4) Nothing in this Article shall render unlawful any act done by the principal for the benefit of a contract worker not ordinarily resident in Northern Ireland in or in connection with allowing him to do work to which this Article applies, where the purpose of his being allowed to do that work is to provide him with training in skills which he appears to the principal to intend to exercise wholly outside Northern Ireland.

(5) Paragraph (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

(6) This Article applies only in relation to work done at an establishment in Northern Ireland; and Article 10 applies for the purposes of this paragraph with appropriate modifications.

Meaning of employment at establishment in Northern Ireland

10.—(1) For the purposes of this Part, employment is to be regarded as being at an establishment in Northern Ireland unless the employee does his work wholly or mainly outside Northern Ireland.

(2) Paragraph (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 registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland other than an aircraft or hovercraft while so operated in pursuance of a contract with a person who has his principal place of business, or is ordinarily resident, outside the United Kingdom,

but for the purposes of this Part such employment is to be regarded as being at an establishment in Northern Ireland unless the employee does his work wholly outside Northern Ireland.

(3) In the case of employment on board a ship registered at a port of registry in Northern Ireland (except where the employee does his work wholly outside Northern Ireland) the ship shall for the purposes of this Part be deemed to be the establishment.

(4) Where work is not done at an establishment it shall be treated for the purposes of this Part as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

(5) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department may by order provide that paragraphs (1), (2) and (3) 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 in which the law of Northern Ireland applies.

(6) An order under paragraph (5) may provide that, in relation to employment to which the order applies, this Part is to have effect with such modifications as are specified in the order.

(7) The Department shall not make an order under paragraph (5) unless a draft of the order has been laid before and approved by resolution of the Assembly.

Exception for seamen recruited abroad

11.—(1) Nothing in Article 6 shall render unlawful any act done by an employer in or in connection with employment by him on any ship in the case of a person who applied or was engaged for that employment outside Northern Ireland.

(2) Nothing in Article 9 shall, as regards work to which that Article applies, render unlawful any act done by the principal in or in connection with such work on any ship in the case of a contract worker who was engaged outside Northern Ireland by the person by whom he is supplied.

(3) Paragraphs (1) and (2) do not apply to employment or work concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 in which the law of Northern Ireland applies.

(4) For the purposes of paragraph (1) a person brought to Northern Ireland with a view to his entering into an agreement in Northern Ireland to be employed on any ship shall be treated as having applied for the employment outside Northern Ireland.

Discrimination by other bodies

Partnerships

12.—(1) It is unlawful for a firm consisting of 6 or more partners, in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining who should be offered that position; or
- (b) in the terms on which they offer him that position; or
- (c) by refusing or deliberately omitting to offer him that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) Paragraph (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Paragraph (1)(a) and (c) do not apply to a position as partner where, if it were employment, being of a particular racial group would be a genuine occupational qualification for the job.

(4) In this Article—

- (a) “firm” has the meaning given by section 4 of the Partnership Act 1890; and
- (b) references to a partner shall, in the case of a limited partnership, be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907.

Trade unions etc.

13.—(1) This Article applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) It is unlawful for an organisation to which this Article applies, in the case of a person who is not a member of the organisation, to discriminate against him—

- (a) in the terms on which it is prepared to admit him to membership; or
- (b) by refusing, or deliberately omitting to accept, his application for membership.

(3) It is unlawful for an organisation to which this Article applies, in the case of a person who is a member of the organisation, to discriminate against him—

- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

Qualifying bodies

14.—(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a person—

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

(2) In this Article—

- (a) “authorisation or qualification” includes recognition, registration, enrolment, approval and certification;
- (b) “confer” includes renew or extend.

(3) Paragraph (1) does not apply to discrimination which is rendered unlawful by Article 18 or 19.

Persons concerned with provision of vocational training

15.—(1) It is unlawful, in the case of an individual seeking or undergoing training which would help fit him for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against him —

- (a) in the terms on which that person affords him access to any training course or other facilities concerned with such training; or
- (b) by refusing or deliberately omitting to afford him such access; or
- (c) by terminating his training; or

- (d) by subjecting him to any detriment during the course of his training.
- (2) Paragraph (1) does not apply to—
 - (a) discrimination which is rendered unlawful by Article 6(1) or (2) or Article 18 or 19; or
 - (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Order.

Employment agencies

- 16.**—(1) It is unlawful for an employment agency to discriminate against a person—
- (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 paragraph (1) to the services of an employment agency include guidance on careers and any other services related to employment.
- (3) This Article does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person in question.
- (4) An employment agency shall not be subject to any liability under this Article 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 paragraph (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 paragraph (4)
- (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Police

Police

- 17.**—(1) For the purposes of this Part, 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 compensation or costs awarded against a chief officer of police in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
 - (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Order if the settlement is approved by the police authority.
- (3) The police authority may make arrangements for the legal representation of the chief officer of police in any proceedings under this Order.
- (4) In this Article—
- “chief officer of police”—
- (a) in relation to a person appointed, or an appointment falling to be made, to the police 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 in question;

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, to the police 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 force” has the same meaning as in the Police Act (Northern Ireland) 1970.

PART III

DISCRIMINATION IN OTHER FIELDS

Education

Discrimination by bodies in charge of educational establishments

18.—(1) It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a pupil; or
- (b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil; or
- (c) where he is a pupil of the establishment—
- (i) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (ii) by excluding him from the establishment or subjecting him to any other detriment.

TABLE

<i>Establishment</i>	<i>Responsible body</i>
1. Educational establishment which is grant-aided.	Education and library board or managers or governing body according to which of them has the function in question.
2. Independent school.	Proprietor.
3. University.	Governing body.
4. An establishment providing facilities for further education in respect of which contributions are paid to a body other than an education and library board under Article 100(8)(b) of the Education Reform (Northern Ireland) Order 1989.	Governing body.
5. A college of education—	(a) (a) The Department of Education.
(a) maintained in pursuance of arrangements made by the	(b) The managers.

<i>Establishment</i>	<i>Responsible body</i>
Department of Education under Article 66(1) of the Education and Libraries (Northern Ireland) Order 1986; (b) in respect of which grants are paid by the Department of Education under Article 66(2) or (3) of that Order.	

(2) Subject to paragraph (3), words and expressions used in this Article, Article 19 or Article 20 to which a meaning is assigned by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning as in the 1986 Order.

(3) In this Article “pupil” includes any person who receives education at an establishment to which this Article applies.

Other discrimination by education and library boards

19. It is unlawful for—

- (a) an education and library board, in carrying out such of its functions under the Education Orders as do not fall under Article 18; and
- (b) the Council for Catholic Maintained Schools, in carrying out its functions under the Education Orders,

to do any act which constitutes racial discrimination.

General duty in public sector of education

20.—(1) Without prejudice to its obligation to comply with any other provision of this Order, a body to which this paragraph applies shall be under a general duty to secure that facilities for education provided by it, and any ancillary benefits or services, are provided without racial discrimination.

(2) Article 101 of the Education and Libraries (Northern Ireland) Order 1986 (power of Department of Education to give directions) shall apply to the performance by a body to which paragraph (1) applies of the duties imposed by Articles 18 and 19 and shall also apply to the performance of the general duty imposed by paragraph (1), as it applies to the performance by an education and library board of a duty imposed by the Education Orders.

(3) The sanctions in paragraph (2) shall be the only sanctions for breach of the general duty in paragraph (1), but without prejudice to the enforcement of Articles 18 and 19 under Article 54 or otherwise (where the breach is also a contravention of either of those Articles).

(4) Paragraph (1) applies to—

- (a) an education and library board; and
- (b) any other body which is a responsible body in relation to an establishment falling within paragraph 1, 4 or 5(b) of the table in Article 18(1).

*Goods, facilities, services and premises***Discrimination in provision of goods, facilities or services**

21.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services—

- (a) by refusing or deliberately omitting to provide him with any of them; or
 - (b) by refusing or deliberately omitting to provide him with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section.
- (2) The following are examples of the facilities and services mentioned in paragraph (1)—
- (a) access to and use of any place which members of the public are permitted to enter;
 - (b) accommodation in a hotel, boarding house or other similar establishment;
 - (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
 - (d) facilities for education;
 - (e) facilities for entertainment, recreation or refreshment;
 - (f) facilities for transport or travel;
 - (g) the services of any profession or trade, or any local or other public authority.

Discrimination in disposal or management of premises

22.—(1) It is unlawful for a person with power to dispose of any premises to discriminate against another—

- (a) in the terms on which he offers him those premises; or
 - (b) by refusing his application for those premises; or
 - (c) in his treatment of him in relation to any list of persons in need of premises of that description.
- (2) Paragraph (1) does not apply to a person who owns an estate in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he—
- (a) uses the services of an estate agent; or
 - (b) publishes an advertisement or causes an advertisement to be published.
- (3) It is unlawful for a person managing any premises to discriminate against a person occupying those premises—
- (a) in the way he affords him access to any benefits or facilities, or by refusing or deliberately omitting to afford him access to them; or
 - (b) by evicting him, or subjecting him to any other detriment.
- (4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in a tenancy to discriminate against a person by withholding his licence or consent for the disposal of the premises to that person.
- (5) Paragraph (4) applies to tenancies created before as well as after the coming into operation of this Article.
- (6) In this Article—

“dispose”, in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in a tenancy, includes—

- (a) assigning the tenancy, and
 - (b) sub-letting or parting with possession of the premises or any part of the premises;
- and “disposal” shall be construed accordingly;

“estate agent” means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises; and

“tenancy” means a tenancy created—

- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease,
- (c) by a tenancy agreement, or
- (d) in pursuance of any statutory provision.

(7) This Article applies only in relation to premises in Northern Ireland.

Exception from Articles 21(1) and 22: small dwellings

23.—(1) Where the conditions mentioned in paragraph (2) are satisfied—

- (a) Article 21(1) does not apply to the provision by a person of accommodation in any premises;
- (b) Article 22(1) does not apply to the disposal by a person of any premises;
- (c) Article 22(4) does not apply to the withholding of any consent or licence.

(2) The conditions are that—

- (a) the relevant occupier resides, and intends to continue to reside, on the premises;
- (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;
- (c) the shared accommodation is not storage accommodation or a means of access; and
- (d) the premises are small premises.

(3) For the purposes of this Article, premises are “small premises” if they fall within paragraph (4) or (5).

(4) Premises fall within this paragraph if—

- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him;
- (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household;
- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
- (d) there are not normally more than two such other households.

(5) Premises fall within this paragraph if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

(6) For the purposes of this Article “the relevant occupier” means—

- (a) in a case falling within Article 21(1), the person providing the accommodation or a near relative of his;

(b) in a case falling within Article 22(1), the person with power to dispose of the premises, or a near relative of his;

(c) in a case falling within Article 22(4) the person whose licence or consent is required for the disposal of the premises, or a near relative of his.

(7) For the purposes of this Article “near relative” means a person’s spouse, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity).

Further exceptions from Articles 21(1) and 22

24.—(1) Articles 21(1) and 22 do not apply—

(a) to discrimination which is rendered unlawful by any provision of Part II or Article 18 or 19; or

(b) to discrimination which would be rendered unlawful by any provision of Part II but for any of the following provisions, namely Articles 6(3) and (5), 8(1)(b), 9(4), 11 and 16(3).

(2) Article 21(1) does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or persons requiring a special degree of care and attention.

Discrimination: associations not within Article 13

25.—(1) This Article applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if—

(a) it has 25 or more members; and

(b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of Article 21(1); and

(c) it is not an organisation to which Article 13 applies.

(2) It is unlawful for an association to which this Article applies, in the case of a person who is not a member of the association, to discriminate against him—

(a) in the terms on which it is prepared to admit him to membership; or

(b) by refusing or deliberately omitting to accept his application for membership.

(3) It is unlawful for an association to which this Article applies, in the case of a person who is a member or associate of the association, to discriminate against him—

(a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(b) in the case of a member, by depriving him of membership, or varying the terms on which he is a member; or

(c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights; or

(d) in either case, by subjecting him to any other detriment.

(4) For the purposes of this Article—

(a) a person is a member of an association if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly;

(b) a person is an associate of an association to which this Article applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members

(or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).

(5) Nothing in this Article shall render unlawful any act not involving discrimination on the ground of colour done by an association to which paragraph (6) applies.

(6) This paragraph applies to an association if the main object of the association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour.

(7) In determining whether that is the main object of an association regard shall be had to the essential character of the association and to all relevant circumstances including, in particular, the extent to which the affairs of the association are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question.

Barristers

Discrimination by, or in relation to, barristers

26.—(1) It is unlawful for a barrister, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing, or deliberately omitting, to take a person as his pupil.

(2) It is unlawful for a barrister, in relation to a person who is a pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits, facilities or services which are afforded or denied to him; or
- (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person.

(4) In this Article “pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.

Extent

Extent of Part III

27.—(1) Articles 18 to 20 do not apply to benefits, facilities or services outside Northern Ireland except—

- (a) travel on a ship registered at a port of registry in Northern Ireland; and
- (b) benefits, facilities or services provided on a ship so registered.

(2) Article 21(1)—

- (a) does not apply to goods, facilities or services outside Northern Ireland except as provided in paragraphs (3) and (4); and

- (b) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Northern Ireland.
- (3) Article 21(1) applies to the provision of facilities for travel outside Northern Ireland where the refusal or omission occurs in Northern Ireland or on a ship, aircraft or hovercraft within paragraph (4).
- (4) Article 21(1) applies on and in relation to—
 - (a) any ship registered at a port of registry in Northern Ireland; and
 - (b) any aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland,
 even if the ship, aircraft or hovercraft is outside Northern Ireland.
- (5) This Article shall not render unlawful an act done in or over a country outside the United Kingdom, or in or over that country's territorial waters, for the purpose of complying with the laws of that country.

PART IV

OTHER UNLAWFUL ACTS

Discriminatory practices

- 28.**—(1) In this Article “discriminatory practice” means the application of a requirement or condition which—
- (a) results in an act of discrimination which is unlawful by virtue of any provision of Part II or III taken with Article 3(1)(b); or
 - (b) would be likely to result in such an act of discrimination if the persons to whom it is applied included persons of any particular racial group as regards which there has been no occasion for applying it.
- (2) A person acts in contravention of this Article if and so long as—
- (a) he applies a discriminatory practice; or
 - (b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.
- (3) Proceedings in respect of a contravention of this Article shall be brought only by the Commission in accordance with Articles 55 to 59.

Discriminatory advertisements

- 29.**—(1) It is unlawful to publish or to cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an act of discrimination, whether the doing of that act by him would be lawful or, by virtue of Part II or III, unlawful.
- (2) Paragraph (1) does not apply to an advertisement—
- (a) if the intended act would be lawful by virtue of any of Articles 6(5), 8, 9(3) and (4), 12(3), 25(5), 34(3)(b), 35 to 38 and 40; or
 - (b) if the advertisement relates to the services of an employment agency (within the meaning of Article 16(1)) and the intended act only concerns employment which the employer could by virtue of Article 6(5), 8 or 9(3) or (4) lawfully refuse to offer to persons against whom the advertisement indicates an intention to discriminate.

(3) Paragraph (1) does not apply to an advertisement which indicates that persons of any class defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside Northern Ireland.

(4) The publisher of an advertisement made unlawful by paragraph (1) shall not be subject to any liability under that paragraph 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 paragraph (2) or (3), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is mentioned in paragraph (4)(a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Instructions to discriminate

30. It is unlawful for a person—

- (a) who has authority over another person; or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of Part II or III, or procure or attempt to procure the doing by him of any such act.

Pressure to discriminate

31.—(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III.

(2) An attempted inducement is not prevented from falling within paragraph (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

Liability of employers and principals

32.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Order 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 of that other person shall be treated for the purposes of this Order as done by that other person as well as by him.

(3) Paragraph (2) applies whether the authority was—

- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) Paragraphs (1) and (2) do not apply in relation to offences under this Order.

(5) In proceedings brought under this Order 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—

- (a) doing that act, or
- (b) doing, in the course of his employment, acts of that description.

Aiding unlawful acts

33.—(1) A person who knowingly aids another person to do an act made unlawful by this Order shall be treated for the purposes of this Order as himself doing the same kind of unlawful act.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 32 (or would be so liable but for Article 32(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this Article, a person does not 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 Order, 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 mentioned in paragraph (3)(a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART V CHARITIES

Charities

34.—(1) A provision which is contained in a charitable instrument and which provides for conferring benefits on persons of a class defined by reference to colour shall have effect for all purposes as if it provided for conferring the same benefits—

- (a) on persons of the class which results if the restriction by reference to colour is disregarded; or
- (b) where the original class is defined by reference to colour only, on persons generally.

(2) Nothing in paragraph (1) shall be taken to alter the effect of any provision as regards any time before the coming into operation of that paragraph.

(3) Nothing in Parts II to IV shall—

- (a) affect any provision which is contained in a charitable instrument and which provides for conferring benefits on persons of a class defined otherwise than by reference to colour (including a class resulting from the operation of paragraph (1));
- (b) render unlawful an act which is done in order to give effect to such a provision.

(4) In this Article “charitable instrument” means a statutory provision or other instrument (whenever taking effect) so far as it relates to purposes which are exclusively charitable according to the law of Northern Ireland.

PART VI

GENERAL EXCEPTIONS FROM PARTS II TO IV

Special needs of racial groups in regard to education, training or welfare

35. Nothing in Parts II to IV shall render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits.

Provision of education or training for persons not ordinarily resident in Northern Ireland

36. Nothing in Parts II to IV shall render unlawful any act done by a person for the benefit of persons not ordinarily resident in Northern Ireland in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Northern Ireland after their period of education or training there.

Discriminatory training etc.

37.—(1) Nothing in Parts II to IV shall render unlawful any act done in relation to particular work by any person in or in connection with—

- (a) affording only persons of a particular racial group access to facilities for training which would help to fit them for that work; or
- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work,

where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act—

- (i) there were no persons of that group among those doing that work in Northern Ireland; or
- (ii) the proportion of persons of that group among those doing that work in Northern Ireland was small in comparison with the proportion of persons of that group among the population of Northern Ireland.

(2) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of paragraph (1) is not met for the whole of Northern Ireland it is met for an area within Northern Ireland, nothing in Parts II to IV shall render unlawful any act done by that person in or in connection with—

- (a) affording persons who are of the racial group in question, and who appear likely to take up that work in that area, access to facilities for training which would help to fit them for that work; or
- (b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

(3) Paragraphs (1) and (2) do not apply to any discrimination which is rendered unlawful by Article 6(1) or (2).

(4) Nothing in Parts II to IV shall render unlawful any act done by an employer in relation to particular work in his employment at a particular establishment in Northern Ireland, being an act done in or in connection with—

- (a) affording only those of his employees working at that establishment who are of a particular racial group access to facilities for training which would help to fit them for that work; or
- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work at that establishment,

where any of the conditions in paragraph (5) was satisfied at any time within the 12 months immediately preceding the doing of the act.

(5) Those conditions are—

- (a) that there are no persons of the racial group in question among those doing that work at that establishment; or
- (b) that the proportion of persons of that group among those doing that work at that establishment is small in comparison with the proportion of persons of that group—
 - (i) among all those employed by that employer there; or
 - (ii) among the population of the area from which that employer normally recruits persons for work in his employment at that establishment.

(6) Nothing in Article 13 shall render unlawful any act done by an organisation to which that Article applies in or in connection with—

- (a) affording only members of the organisation who are of a particular racial group access to facilities for training which would help to fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular racial group to take advantage of opportunities for holding such posts in the organisation,

where either of the conditions in paragraph (7) was satisfied at any time within 12 months immediately preceding the doing of the act.

(7) Those conditions are—

- (a) that there are no persons of the racial group in question among persons holding such posts in that organisation; or
- (b) that the proportion of persons of that group among those holding such posts in that organisation is small in comparison with the proportion of persons of that group among the members of the organisation.

(8) Nothing in Parts II to IV shall render unlawful any act done by an organisation to which Article 13 applies in or in connection with encouraging only persons of a particular racial group to become members of the organisation where at any time within the 12 months immediately preceding the doing of the act—

- (a) no persons of that group were members of the organisation; or
- (b) the proportion of persons of that group among members of the organisation was small in comparison with the proportion of persons of that group among those eligible for membership of the organisation.

(9) Article 10 (meaning of employment at establishment in Northern Ireland) shall apply for the purposes of this Article as if this Article were contained in Part II.

Sports and competitions

38. Nothing in Parts II to IV shall render unlawful any act whereby a person discriminates against another on the basis of that other's nationality or place of birth or the length of time for which he has been resident in a particular area or place, if the act is done—

- (a) in selecting one or more persons to represent a country, place or area, or any related association, in any sport or game; or
- (b) in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game.

Indirect access to benefits etc.

39.—(1) References in this Order to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person’s power to facilitate access to benefits, facilities or services provided by any other person (the “actual provider”).

(2) Where by any provision of this Order the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Order of any actual provider.

Acts done under statutory authority etc.

40.—(1) Nothing in Parts II to IV shall render unlawful any act of discrimination done—

- (a) in pursuance of any statutory provision; or
- (b) in order to comply with any condition or requirement imposed by a Minister of the Crown or government department by virtue of any statutory provision.

(2) Nothing in Parts II to IV shall render unlawful any act whereby a person discriminates against another on the basis of that other’s nationality or place of ordinary residence or the length of time for which he has been present or resident in or outside the United Kingdom or an area within the United Kingdom, if that act is done—

- (a) in pursuance of any arrangement made by or with the approval of, or for the time being approved by, a Minister of the Crown or government department; or
- (b) in order to comply with any condition imposed by a Minister of the Crown or government department.

(3) This Article applies whether the statutory provision, condition, requirement or arrangement in question was passed, made or imposed (as the case may be) before or after the making of this Order.

Acts safeguarding national security

41. Nothing in Parts II to IV shall render unlawful an act done for the purpose of safeguarding national security or of protecting public safety or public order.

PART VII

THE COMMISSION FOR RACIAL EQUALITY FOR NORTHERN IRELAND

General

Establishment and duties of Commission

42.—(1) There shall be a body of Commissioners named the Commission for Racial Equality for Northern Ireland consisting of at least 5 but not more than 7 individuals each appointed by the Head of the Department on a full-time or part-time basis.

(2) It shall be the duty of the Commission—

- (a) to work towards the elimination of discrimination;
- (b) to promote equality of opportunity, and good relations, between persons of different racial groups generally; and

- (c) to keep under review the working of this Order and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending this Order.
- (3) The Head of the Department shall appoint—
 - (a) one of the Commissioners to be chairman of the Commission; and
 - (b) either one or more of the Commissioners (as the Head of the Department thinks fit) to be deputy chairman or deputy chairmen of the Commission.
- (4) The Department may by order amend paragraph (1) so far as it regulates the number of Commissioners.
- (5) Schedule 1 shall have effect with respect to the Commission.

Assistance to organisations

43.—(1) The Commission may give financial or other assistance to any organisation appearing to the Commission to be concerned with the promotion of equality of opportunity, and good relations, between persons of different racial groups.

(2) The Commission shall not give any financial assistance under paragraph (1) out of money appropriated by Measure except with the approval of the Department given with the consent of the Department of Finance and Personnel.

Research and education

44.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of Article 42(2).

(2) The Commission may make charges for educational or other facilities or services made available by it,

Codes of practice

Codes of practice

45.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for all or any of the following purposes, namely—

- (a) the elimination of discrimination in the field of employment;
- (b) the promotion of equality of opportunity in the field of employment between persons of different racial groups;
- (c) the elimination of discrimination in the field of housing;
- (d) the promotion of equality of opportunity in the field of housing between persons of different racial groups.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this Article may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Order.

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

(4) In the course of preparing any draft code of practice relating to the field of employment for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; and
- (b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) In the course of preparing any draft code of practice relating to the field of housing for eventual publication under paragraph (3), the Commission shall consult with such organisations or bodies as appear to the Commission to be appropriate having regard to the content of the proposed code.

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

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

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

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

(9) The Commission may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code, and paragraphs (3) to (8) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(10) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings, but in any proceedings under this Order before an industrial tribunal or a county court—

- (a) any code of practice issued under this Article shall be admissible in evidence; and
- (b) any provision of the code which appears to the tribunal or court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Investigations

Power to conduct formal investigations

46.—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under Article 42(2), the Commission may if it thinks fit, and shall if required by the Department, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the Department, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

Terms of reference

47.—(1) The Commission shall not embark on a formal investigation unless the requirements of this Article have been complied with.

(2) Terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

(4) Where the terms of reference of the investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by this Order which it believes that a person so named may have done, the Commission shall—

- (a) inform that person of its belief and of its proposal to investigate the act in question; and
- (b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit).

(5) A person who avails himself of an opportunity under paragraph (4) of making oral representations may be represented—

- (a) by counsel or a solicitor; or
- (b) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.

(6) The Commission or, if the Commission was required by the Department to conduct the investigation, the Department after consulting the Commission may from time to time revise the terms of reference; and paragraphs (1) and (3) to (5) shall apply to the revised investigation and terms of reference as they applied to the original.

Power to obtain information

48.—(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner—

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;
- (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by Article 57, a notice shall be served under paragraph (1) only where—

- (a) service of the notice was authorised by an order made by the Department; or
- (b) the terms of reference of the investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—
 - (i) unlawful discriminatory acts;
 - (ii) contraventions of Article 28; and
 - (iii) contraventions of Articles 29,30 or 31, and confine the investigation to those acts.

(3) A notice under paragraph (1) shall not require a person—

- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court; or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order.

(5) If a person fails, without reasonable excuse, to comply with an order made by the county court under paragraph (4), he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.

(6) A person who—

- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this Article to produce; or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Proceedings for an offence under paragraph (6) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted—

- (a) against any person at any place at which he has an office or other place of business;
- (b) against an individual at any place where he resides, or at which he is for the time being.

Recommendations and reports on formal investigations

49.—(1) If in the light of any of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion—

- (a) to make to any person, with a view to promoting equality of opportunity between persons of different racial groups who are affected by any of his activities, recommendations for changes in his policies or procedures, or as to any other matters; or
- (b) to make to the Department any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Department—

- (a) the Commission shall deliver the report to the Department; and
- (b) the Department shall cause the report to be published,

and, unless required by the Department, the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Department, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).

(5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

- (a) to inspect the report during ordinary office hours and take copies of all or any part of the report; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may, if it thinks fit, determine that the right conferred by paragraph (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give general notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

Restriction on disclosure of information

50.—(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except—

- (a) on the order of any court; or
- (b) with the informant’s consent; or
- (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates; or
- (d) in a report of the investigation published by the Commission or made available for inspection under Article 49(5); or
- (e) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (f) for the purpose of any civil proceedings under this Order to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private affairs of any individual or the business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

PART VIII ENFORCEMENT

General

Restriction on proceedings for breach of Order

51.—(1) Except as provided by this Order no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Order.

(2) Paragraph (1) does not preclude the making of an application for judicial review.

Enforcement in employment field

Jurisdiction of industrial tribunals

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

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Part II; or

(b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the complainant, may be presented to an industrial tribunal.

(2) Paragraph (1) does not apply to a complaint under Article 14(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any statutory provision.

(3) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment (Northern Ireland) Act 1976)—

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

the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken under that Act in respect of the act have been disposed of.

Remedies on complaint under Article 52

53.—(1) Where an industrial tribunal finds that a complaint presented to it under Article 52 is well-founded, the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court to pay to the complainant if the complaint had fallen to be dealt with under Article 54;
- (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 act of discrimination to which the complaint relates.

(2) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so—

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

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

(4) The Department may by order make provision—

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

*Enforcement of Part III***Claims under Part III**

54.—(1) A claim by any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the claimant,

may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) Proceedings under paragraph (1) shall be brought only in a county court; but all such remedies shall be obtainable in such proceedings as, apart from this paragraph and Article 51(1), would be obtainable in the High Court.

(3) As respects an unlawful act of discrimination falling within Article 3(1)(b), no award of damages 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 racial grounds.

(4) Damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.

(5) Civil proceedings in respect of a claim by any person that he has been discriminated against in contravention of Article 18 or 19 by a body to which Article 20(1) applies shall not be instituted unless—

- (a) the claimant has given notice of the claim to the Department of Education; and
- (b) either—
 - (i) the Department of Education has by notice informed the claimant that it does not require further time to consider the matter; or
 - (ii) the period of 2 months has elapsed since the claimant gave notice to the Department of Education.

(6) Nothing in paragraph (5) applies—

- (a) to a claim against the Department of Education; or
- (b) to a counterclaim.

(7) For the purposes of proceedings under paragraph (1)—

- (a) Article 33(1) (power of judge to appoint assessors) of the County Courts (Northern Ireland) Order 1980 shall apply with the omission of the words “on the application of any party”, and
- (b) the remuneration of assessors appointed under that Article shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and may be defrayed as part of the expenses of the Lord Chancellor.

(8) A county court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its division, including such an act done outside Northern Ireland.

*Non-discrimination notices***Issue of non-discrimination notice**

55.—(1) This Article applies to—

- (a) an unlawful discriminatory act; and
- (b) an act contravening Article 28; and
- (c) an act contravening Article 29, 30 or 31,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form (“a non-discrimination notice”) requiring him—

- (a) not to commit any such acts; and
- (b) where compliance with sub-paragraph (a) involves changes in any of his practices or other arrangements—
 - (i) to inform the Commission that he has effected those changes and what those changes are; and
 - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than 5 years after the notice has become final.

(5) The Commission shall not serve a non-discrimination notice in respect of any person unless it has first—

- (a) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so; and
- (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice; and
- (c) taken account of any representations so made by him.

(6) Paragraph (2) does not apply to any acts in respect of which the Department of Education could exercise the powers conferred on it by Article 20(2); but if the Commission becomes aware of any such acts it shall give notice of the acts to the Department of Education.

(7) Article 48(4) shall apply to requirements under paragraph (2)(b), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under Article 48(1).

Appeal against non-discrimination notice

56.—(1) Not later than 6 weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice—

- (a) to an industrial tribunal, so far as the requirement relates to acts which are within the jurisdiction of the tribunal;
- (b) to a county court, so far as the requirement relates to acts which are within the jurisdiction of the court and are not within the jurisdiction of an industrial tribunal.

(2) Where the tribunal or court considers a requirement in respect of which an appeal is brought under paragraph (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the tribunal or court shall quash the requirement.

(3) On quashing a requirement under paragraph (2) the tribunal or court may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Paragraph (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under paragraph (3).

Investigation as to compliance with non-discrimination notice

57.—(1) If—

- (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination notice are being or have been carried out, but Article 48(2)(b) does not apply; and
- (b) Article 47(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of 5 years beginning when the non-discrimination notice became final,

the Commission may within the period referred to in paragraph (2) serve notices under Article 48(1) for the purposes of the investigation without the authorisation mentioned in Article 48(2)(a).

(2) The said period begins on the commencement date and ends on the later of the following dates—

- (a) the date on which the period of 5 years mentioned in paragraph (1)(b) expires;
- (b) the date 2 years after the commencement date.

Register of non-discrimination notices

58.—(1) The Commission shall establish and maintain a register (“the register”) of non-discrimination notices which have become final.

(2) Any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by paragraph (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

Persistent discrimination

59.—(1) If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely—

- (a) a non-discrimination notice served on him, or
- (b) a finding by a tribunal or court under Article 52 or 54 that he has done an unlawful discriminatory act,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within sub-paragraph (b), or contravening Article 28, the Commission may apply to a county court for

an injunction restraining him from doing so; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(2) In proceedings under this Article the Commission shall not allege that the person to whom the proceedings relate has done an act falling within paragraph (1)(b) or contravening Article 28 which is within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

Enforcement of Articles 29 to 31

60.—(1) Proceedings in respect of a contravention of Article 29, 30 or 31 shall be brought only by the Commission in accordance with the following provisions of this Article.

(2) The proceedings shall be—

- (a) an application for a decision whether the alleged contravention occurred; or
- (b) an application under paragraph (4),

or both.

(3) An application under paragraph (2)(a) shall be made—

- (a) in a case based on any provision of Part II, to an industrial tribunal; and
- (b) in any other case, to a county court.

(4) If it appears to the Commission—

- (a) that a person has done an act which by virtue of Article 29, 30 or 31 was unlawful; and
- (b) that unless restrained he is likely to do further acts which by virtue of that Article are unlawful,

the Commission may apply to a county court for an injunction restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.

(5) In proceedings under paragraph (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful under this Order and within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

Preliminary action in employment cases

61.—(1) With a view to making an application under Article 59(1) or 60(4) in relation to a person the Commission may present to an industrial tribunal a complaint that he has done an act within the jurisdiction of an industrial tribunal.

(2) If the tribunal considers that the complaint is well-founded it —

- (a) shall make a finding to that effect; and
- (b) if it thinks it just and equitable to do so in the case of an act contravening any provision of Part II, may also (as if the complaint had been presented by the person discriminated against) make an order such as is referred to in Article 53(1)(a), or a recommendation such as is referred to in Article 53(1)(c), or both.

(3) Paragraphs (1) and (2) are without prejudice to the jurisdiction conferred by Article 60(2).

(4) In Articles 59 and 60 and this Article, the acts “within the jurisdiction of an industrial tribunal” are those in respect of which such jurisdiction is conferred by Articles 52 and 60.

Undertakings by persons contravening this Order

62.—(1) This Article applies to—

- (a) an unlawful discriminatory act;
- (b) an act contravening Article 28;
- (c) an act contravening Article 29, 30 or 31,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If the Commission is satisfied that a person is committing or has committed any such act the Commission may, for the purpose of preventing the commission by that person of any further such act, seek to obtain from that person an undertaking—

- (a) that he will do, or refrain from doing, certain acts specified in the undertaking;
- (b) that he will institute certain practices or arrangements so specified; or
- (c) that he will change his existing practices or arrangements in a manner so specified.

(3) An undertaking given by any person under this Article shall—

- (a) be in writing;
- (b) be in such terms as may be agreed between that person and the Commission;
- (c) contain such terms as appear to the Commission to be necessary or appropriate for the purpose mentioned in paragraph (2); and
- (d) have effect for such period as may be specified therein.

(4) If it appears to the Commission that a person who has given an undertaking under this Article has, at any time within the period specified therein by virtue of paragraph (3)(d), failed to comply with the undertaking, the Commission may apply to the county court for a decision as to whether that person has failed to comply with the undertaking.

(5) Paragraph (2) does not apply to any act in respect of which the Department of Education could exercise the powers conferred on it by Article 20(2); but if the Commission becomes aware of any such act it shall give notice of the act to the Department of Education.

Help for persons suffering discrimination

Help for aggrieved persons in obtaining information etc.

63.—(1) With a view to helping a person (“the person aggrieved”) who considers he may have been discriminated against in contravention of this Order 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 order 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 an order under paragraph (1) or not)—

- (a) the question, and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this Article, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply is evasive or equivocal, the court or 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 order—

- (a) prescribe the period within which questions must be duly served in order to be admissible under paragraph (2)(a); and
- (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.

(4) County court rules may enable the court entertaining a claim under Article 54 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this Article or not.

(5) This Article is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(6) In this Article “respondent” includes a prospective respondent.

Assistance by Commission

64.—(1) Where, in relation to proceedings or prospective proceedings under this Order, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this Article, the Commission shall consider the application and may grant it if it thinks fit to do so—

- (a) on the ground that the case raises a question of principle; or
- (b) on the ground that it is unreasonable, having regard to the complexity of the case, or to 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
- (c) by reason of any other special consideration.

(2) Assistance by the Commission under this Article may include—

- (a) giving advice;
- (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;
- (e) any other form of assistance which the Commission may consider appropriate,

but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.

(3) Where under paragraph (1) an application for assistance under this Article is made in writing, the Commission shall, within the period of 2 months beginning when the application is received—

- (a) consider the application after making such enquiries as it thinks fit;
- (b) decide whether or not to grant it; and
- (c) inform the applicant of its decision, stating whether or not assistance under this Article is to be provided by the Commission and, if so, what form it will take.

(4) If, in a case where paragraph (3) applies, the Commission within the period of 2 months there mentioned gives notice to the applicant that, in relation to his application—

- (a) the period of 2 months allowed it by that paragraph is by virtue of the notice extended to 3 months; and
- (b) the reference to 2 months in Article 65(3) is by virtue of the notice to be read as a reference to 3 months,

paragraph (3) and Article 65(3) shall have effect accordingly.

(5) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this Article, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission—

- (a) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(6) The charge conferred by paragraph (5) is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(7) In this Article “respondent” includes a prospective respondent and “rules or regulations”—

- (a) in relation to county court proceedings, means county court rules;
- (b) in relation to industrial tribunal proceedings, means industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996.

Period within which proceedings to be brought

Period within which proceedings to be brought

65.—(1) An industrial tribunal shall not consider a complaint under Article 52 unless it is presented to the tribunal before the end of—

- (a) the period of 3 months beginning when the act complained of was done; or
- (b) in a case to which Article 71(7) applies, the period of 6 months so beginning.

(2) A county court shall not consider a claim under Article 54 unless proceedings in respect of the claim are instituted before the end of—

- (a) the period of 6 months beginning when the act complained of was done; or
- (b) in a case to which Article 54(5) applies, the period of 8 months so beginning.

(3) Where, in relation to proceedings or prospective proceedings by way of a claim under Article 54, an application for assistance under Article 64 is made to the Commission before the end of the period of 6 or, as the case may be, 8 months mentioned in sub-paragraph (a) or (b) of paragraph (2), the period allowed by that sub-paragraph for instituting proceedings in respect of the claim shall be extended by 2 months.

(4) An industrial tribunal or county court shall not consider an application under Article 60(2)(a) unless it is made before the end of the period of 6 months beginning when the act to which it relates was done; and a county court shall not consider an application under Article 60(4) unless it is made before the end of the period of 5 years so beginning.

(5) An industrial tribunal shall not consider a complaint under Article 61(1) unless it is presented to the tribunal before the end of the period of 6 months beginning when the act complained of was done.

(6) A county court shall not consider an application under Article 62(4) in relation to an undertaking under that Article unless it is made before the end of the period specified in the undertaking by virtue of paragraph (3)(d) of that Article.

(7) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

- (8) For the purposes of this Article—
- (a) when 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 decided upon it.
- (9) In the absence of evidence establishing the contrary a person shall be taken for the purposes of this Article to decide upon an omission—
- (a) when he does an act inconsistent with doing the omitted act; or
 - (b) 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 was to be done.

Evidence

Evidence

66.—(1) Any finding by a court or industrial tribunal under this Order in respect of any act shall, if it has become final, be treated as conclusive in any proceedings under this Order.

(2) In any proceedings under this Order—

- (a) a certificate signed by or on behalf of a Minister of the Crown or a government department and certifying that any condition, requirement or arrangement specified in the certificate was imposed, made or approved by that Minister or that department (as the case may be) and was in operation at a time or throughout a time so specified; or
- (b) a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security or of protecting public safety or public order,

shall be conclusive evidence of the matters certified.

(3) A document purporting to be a certificate such as is mentioned in paragraph (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

PART IX

SUPPLEMENTAL

District councils: general statutory duty

67. Without prejudice to its obligation to comply with any other provision of this Order, it shall be the duty of a district council to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need—

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity, and good relations, between persons of different racial groups.

Validity and revision of contracts

68.—(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Order; or
- (b) it is included in furtherance of an act rendered unlawful by this Order; or

(c) it provides for the doing of an act which would be rendered unlawful by this Order.

(2) Paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.

(3) On the application of any person interested in a contract to which paragraph (2) applies, a county court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice of the application (except where under county court rules notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(4) An order under paragraph (3) may include provision as respects any period before the making of the order.

(5) A term in a contract which purports to exclude or limit any provision of this Order is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(6) Paragraph (5) does not apply—

- (a) to a contract settling a complaint to which Article 52(1) applies where the contract is made with the assistance of the Labour Relations Agency; or
- (b) to a contract settling a complaint to which Article 52(1) applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which Article 54 applies.

(7) The conditions regulating compromise contracts under this Order are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.

(8) In paragraph (7)—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party and “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(9) For the purposes of paragraph (7) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.

Power to amend certain provisions of Order

69.—(1) The Department may by order—

- (a) amend Article 5;
- (b) amend or repeal Article 11;
- (c) amend Part II, III or IV so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 6(1) or (2), 21(1), 22 or 25;

- (d) amend Article 12(1) or 25(1)(a) so as to alter the number of partners or members specified in that provision.
- (2) The Department may by order provide that Articles 10(5) and 11(3) shall have effect—
 - (a) with the substitution for the words from “exploration” to “natural resources” of the words “any activity falling within section 23(2) of the Oil and Gas (Enterprise) Act 1982”; and
 - (b) with the insertion after “1964” of the words “or specified under section 22(5) of the Oil and Gas (Enterprise) Act 1982”.
- (3) The Department shall not make an order under paragraph (1) unless a draft of the order has been laid before and approved by a resolution of the Assembly.
- (4) The Department shall not lay before the Assembly the draft of an order under paragraph (1) unless it has consulted the Commission about the contents of the draft.

Regulations and orders

- 70.**—(1) All regulations made by the Department under this Order shall be subject to negative resolution.
- (2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to an order under Article 48(2)(a); but any document purporting to be such an order shall be received in evidence and shall, unless the contrary is proved, be deemed to be made by the Department.
 - (3) Except as provided by paragraph (4), all other orders made by the Department under this Order shall be subject to negative resolution.
 - (4) Paragraph (3) does not apply to an order under—
 - (a) Article 1(2) (commencement orders); or
 - (b) Article 10(5) or 69(1) (orders subject to approval in draft by Assembly).
 - (5) Regulations and orders under this Order may contain incidental, supplementary, consequential and transitional provisions.

Application to Crown etc.

- 71.**—(1) This Order applies—
 - (a) to an act done by or for purposes of a Minister of the Crown or government department; or
 - (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,as it applies to an act done by a private person.
- (2) Parts II and IV apply to—
 - (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or
 - (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
 - (c) service in the armed forces,as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.
 - (3) Paragraphs (1) and (2) have effect subject to Article 17.
 - (4) Paragraph (2) of Article 10 and paragraph (4) of Article 27 shall 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 as it has effect in relation to a ship, aircraft or hovercraft such as is mentioned in sub-paragraph (a) or (b) of the paragraph in question; and Article 10(3) shall apply accordingly.

(5) Nothing in this Order shall—

- (a) invalidate any rules (whether made before or after the making of this Order) restricting employment in the service of the Crown or by any public body prescribed for the purposes of this paragraph by regulations made by the Department of Finance and Personnel to persons of particular birth, nationality, descent or residence; or
- (b) render unlawful the publication, display or implementation of any such rules, or the publication of advertisements stating the gist of any such rules.

In this paragraph “employment” includes service of any kind, and “public body” means a body of persons, whether corporate or unincorporate, carrying on a service or undertaking of a public nature.

(6) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Order 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 this Order section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(7) This paragraph applies to any complaint by a person (“the complainant”) that another person—

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 6; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

(8) No complaint to which paragraph (7) applies shall be presented to an industrial tribunal under Article 52 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council has made a determination with respect to the complaint.

(9) The Secretary of State may by regulations make provision enabling a complaint to which paragraph (7) applies to be presented to an industrial tribunal under Article 52 in such circumstances as may be prescribed by the regulations, notwithstanding that paragraph (8) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(10) Where a complaint is presented to an industrial tribunal under Article 52 by virtue of regulations under paragraph (9), the service redress procedures may continue after the complaint is so presented.

(11) Regulations under paragraph (9) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(12) In this Article—

“armed forces” means any of the naval, military or air forces of the Crown;

“service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957; and

“statutory body” means a body set up by or in pursuance of a statutory provision and “statutory office” means an office so set up.

Government appointments outside Article 6

72.—(1) This Article applies to any appointment by a Minister of the Crown or government department to an office or post where Article 6 does not apply in relation to the appointment.

(2) In making the appointment, and in making the arrangements for determining who should be offered the office or post, the Minister of the Crown or government department shall not do an act which would be unlawful under Article 6 if the Crown were the employer for the purposes of this Order.

Amendments

73. The statutory provisions specified in Schedule 2 shall have effect subject to the amendments specified in that Schedule.

N.H. Nicholls
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 42.

THE COMMISSION FOR RACIAL EQUALITY FOR NORTHERN IRELAND

Incorporation and status

1. On the appointment of the first members of the Commission, the Commission shall come into existence as a body corporate to which, subject to the provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

2.—(1) The Commission is not an emanation of the Crown, and shall not act or be treated as the servant or agent of the Crown.

(2) Accordingly—

- (a) neither the Commission nor any of its members or members of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown;
- (b) the members of the Commission and members of its staff as such are not civil servants; and
- (c) the Commission's property is not property of, or held on behalf of, the Crown.

Tenure of office of chairman, deputy chairmen and Commissioners

3.—(1) A person shall hold and vacate his office as chairman, deputy chairman or other member of the Commission in accordance with the terms of his appointment; but no such appointment shall be for a period exceeding 5 years in the case of the chairman and 3 years in the case of another member.

(2) With the consent of the Commissioner concerned, the Head of the Department may alter the terms of an appointment so as to make a full-time Commissioner into a part-time Commissioner or vice versa, or for any other purpose.

(3) A person may at any time resign office as chairman, deputy chairman or other member of the Commission by notice to the Head of the Department.

(4) Past service as chairman, deputy chairman or other member of the Commission is no bar to re-appointment.

Remuneration

4. The Department may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of the chairman, deputy chairmen and other members of the Commission, or any of them, as, with the approval of the Department of Finance and Personnel, it may determine.

Additional Commissioners

5.—(1) Paragraphs 2(2) and 3(1) and (4) shall apply to additional Commissioners appointed under Article 46(2) as they apply to Commissioners.

(2) The Commission may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of an additional Commissioner as the Department, with the consent of the Department of Finance and Personnel, may determine.

(3) With the approval of the Department and the consent of the additional Commissioner concerned, the Commission may alter the terms of appointment of an additional Commissioner so as to make a full-time additional Commissioner into a part-time additional Commissioner or vice versa, or for any other purpose.

(4) An additional Commissioner may resign by notice to the Commission.

(5) The appointment of an additional Commissioner shall terminate at the conclusion of the investigation for which he was appointed, if not sooner.

Staff

6.—(1) The Commission may with the approval of the Department and the Department of Finance and Personnel as to numbers and as to remuneration and other terms and conditions of employment—

- (a) employ such officers and servants as the Commission considers necessary;
- (b) employ the services of such other persons as the Commission considers expedient for any particular purpose.

(2) The Commission may, in the case of such persons employed by it as may be determined by the Commission with the approval of the Department and the Department of Finance and Personnel, pay to or in respect of them such allowances (including allowances for expenses), pensions or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), or contributory or other pension arrangements, as may be so determined.

Proceedings

7.—(1) The Commission may regulate its own procedure and business including the formalities for affixing its common seal to any document and, subject to sub-paragraph (2), its quorum.

(2) The quorum for meetings of the Commission shall, in the first instance, be determined by a meeting of the Commission attended by not less than 4 members.

8. The validity of any proceedings of the Commission shall not be affected by any vacancy in the office of chairman, deputy chairman or other member of the Commission or by any defect in the appointment of the chairman, deputy chairman or any other member.

Instruments

9. A document purporting to be duly executed under the common seal of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

10. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission to act for that purpose, and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

Discharge of functions

11.—(1) The functions of the Commission—

Status: This is the original version (as it was originally made).

- (a) under Article 43(1); and
- (b) in relation to matters connected with the giving of such financial or other assistance as is mentioned in Article 43(1),

shall be discharged under the general direction of the Commission by a group of members of the Commission selected by the chairman and consisting of at least 3 but not more than 5 Commissioners, of whom one shall be the deputy chairman or one of the deputy chairmen of the Commission.

(2) Without prejudice to Article 46(3), the Commission may authorise the discharge, under the general direction of the Commission, of any of its other functions by either a member or a group of members of the Commission selected by the chairman.

(3) Anything done by or in relation to a member or group of members in or in connection with the discharge of functions he or they are authorised to discharge under sub-paragraph (1) or (2) shall have the same effect as if done by or in relation to the Commission.

(4) A group of members authorised to discharge any functions under sub-paragraph (1) or (2) may regulate their own procedure and business, including their quorum.

(5) The validity of any proceedings of a member or group of members so authorised shall not be affected by any defect in his appointment or any of their appointments; and the validity of the proceedings of any such group shall not be affected by any vacancy in their number.

(6) The chairman may select himself as the member, or as one of the group of members, mentioned in this paragraph.

Expenses

12. All expenditure incurred by or on behalf of the Commission—

- (a) within the terms of any general authorisation in writing given by the Department and the Department of Finance and Personnel; or
- (b) with the approval of those Departments;

may be defrayed as expenses of the Department.

Annual report and accounts

13.—(1) The Commission shall prepare in respect of the period ending on 31st March 1998 and in respect of each subsequent financial year a report on the Commission's activities during that period or year ("the annual report").

(2) The annual report shall include a general survey of developments, during the period to which it relates, in respect of matters falling within the scope of the Commission's functions.

14.—(1) The Commission shall keep proper accounts in such form as may be approved by the Department, and proper records in relation to the accounts, and shall prepare in respect of the period ending on 31st March 1998 and in respect of each subsequent financial year a statement of accounts in such form as the Department, with the approval of the Department of Finance and Personnel, may direct.

(2) The accounts of the Commission shall be audited by auditors appointed by the Commission with the approval of the Department and shall be vouched to the satisfaction of the auditors.

15.—(1) The Commission shall, before 31st May in each year, transmit to the Department and the Comptroller and Auditor-General a document (referred to below as "the annual report and accounts of the Commission") containing—

- (a) a copy of the annual report prepared under paragraph 13; and 0

- (b) a copy, certified by the auditors, of the annual statement of accounts prepared under paragraph 14.
- (2) The Comptroller and Auditor-General—
 - (a) shall examine the copy of the annual statement of accounts of the Commission;
 - (b) may, in connection with such examination, examine any accounts kept by the Commission and any records relating to the accounts; and
 - (c) shall make a report on the copy of the annual statement of accounts and send the report to the Department.
- (3) Subject to sub-paragraph (4), a copy of—
 - (a) the annual report and accounts of the Commission; and
 - (b) the report of the Comptroller and Auditor-General under sub-paragraph (2)(c),shall be laid by the Department before the Assembly.
- (4) During the interim period (as defined in section 1(4) of the Northern Ireland Act 1974) the copies mentioned in sub-paragraph (3) shall, instead, be sent by the Department to the Secretary of State and laid by him before Parliament.
- (5) The Department, or where sub-paragraph (4) applies, the Secretary of State shall cause the annual report and accounts of the Commission to be published.

SCHEDULE 2

Article 73

AMENDMENTS

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

1.—(1) In Part II of Schedule 1 (bodies of which all members are disqualified), insert at the appropriate place in alphabetical order—

“The Commission for Racial Equality for Northern Ireland”.

(2) In Part III of Schedule 1 (other disqualifying offices) insert at the appropriate place in alphabetical order—

“Additional Commissioner of the Commission for Racial Equality for Northern Ireland.”.

The Estate Agents Act 1979 (c. 38)

2.—(1) In section 5(3) (provisions not affecting power of Director to make orders) after “Order 1976” insert “or Article 51 of the Race Relations (Northern Ireland) Order 1997” and for “that Order” substitute “those Orders”.

(2) In Schedule I in paragraph 5 for the words from “and there shall he” to the end substitute—

“6. In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1976 Act shall be construed as references to the Race Relations (Northern Ireland) Order 1997, and in particular the references to sections 29, 30, 31, 57, 62, 63(2)(a) and (4) and 78(1) and (4) of the 1976 Act shall be construed as references to Articles 29, 30, 31, 54, 59, 60(2)(a) and (4) and 2(2) and (3) respectively of that Order.”.

Status: This is the original version (as it was originally made).

The Fair Employment (Northern Ireland) Act 1989 (c. 32)

3.—(1) In section 6(1) (matters relating to unfair dismissal or sex discrimination to be heard and determined by the Fair Employment Tribunal)—

(a) in paragraph (a) after sub-paragraph (ii) add—

“(iii) a person has committed an act of discrimination against the complainant which is unlawful by virtue of Part II of the Race Relations (Northern Ireland) Order 1997; or”;

(b) in paragraph (b) after “Order 1976” insert “or the Race Relations (Northern Ireland) Order 1997”.

(2) In section 6(3)(b) for the words from the beginning to “shall apply” substitute “none of the following, namely—

(i) Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976;

(ii) Article 11(5) of the Industrial Tribunals (Northern Ireland) Order 1996;

(iii) Article 52(3) of the Race Relations (Northern Ireland) Order 1997,
shall apply”.

The Broadcasting Act 1990 (c. 42)

4. In section 108(2) (requirement of national licence as to promotion of equality of opportunity in employment) at the end add “or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997”.

The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 (NI 2)

5. After Article 13 (exemption of Sikhs from requirements as to wearing of safety helmets on construction sites) insert—

“Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets

13A.—(1) Where—

(a) any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site; and

(b) at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,

then, for the purpose of determining whether the application of the requirement or condition to the Sikh constitutes an act of discrimination falling within Article 3(1)(b) of the Race Relations (Northern Ireland) Order 1997 (indirect racial discrimination), the requirement or condition shall be taken to be one which cannot be shown to be justifiable as mentioned in Article 3(1)(b)(ii) of that Order.

(2) Any special treatment afforded to a Sikh in consequence of Article 13(1) or (2) shall not be regarded for the purposes of the Race Relations (Northern Ireland) Order 1997 as giving rise, in relation to any other person, to any discrimination falling within Article 3 of that Order.

(3) Paragraphs (7) and (8) of Article 13 shall apply for the purposes of this Article as they apply for the purposes of that Article.”.

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

6.—(1) In Article 19(1) after “Article 20” insert “, 20A”.

(2) After Article 20 insert—

“Race relations matters

20A.—(1) Except to the extent permitted by paragraph (2) Article 67 of the Race Relations (Northern Ireland) Order 1997 (councils to have regard to need to eliminate unlawful racial discrimination and promote equality of opportunity, and good relations, between persons of different racial groups) shall not require or authorise a council to exercise any function regulated by Article 19 by reference to a non-commercial matter.

(2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—

- (a) asking approved questions seeking information or undertakings relating to workforce matters and considering the responses to them, or
- (b) including in a draft contract or draft tender for a contract terms or provisions relating to workforce matters and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the term is reasonably necessary to secure compliance with Article 67 of the 1997 Order.

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, an approved request for evidence in support of an answer to the question.

(5) The Department may specify—

- (a) questions which are to be approved questions for the purposes of this Article; and
- (b) descriptions of evidence which, in relation to approved questions, are to be approved descriptions of evidence for those purposes.

(6) Any specification under paragraph (5)—

- (a) shall be in writing; and
- (b) may include such transitional and consequential provisions as appear to the Department to be necessary or expedient.

(7) In this Article—

“approved question” means a question for the time being specified by the Department under paragraph (5);

“approved request for evidence” means a request for evidence of a description for the time being specified by the Department under paragraph (5) in relation to an approved question;

“workforce matters” means matters falling within sub-paragraph (a), but no other sub-paragraph, of Article 19(4).”.

The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)

7. In Schedule 2 (bodies subject to investigation) at the appropriate place in alphabetical order insert—

“The Commission for Racial Equality for Northern Ireland”.

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

8.—(1) In Article 15(3) (reinstatement or re-engagement of dismissed employee) at the end add “or

(d) a complaint under Article 52 of the Race Relations (Northern Ireland) Order 1997 arising out of a dismissal.”.

(2) In Article 15(4)(a) (relevant compromise contracts) at the end of head (i) insert “or” and after head (iii) add—

“(iv) Article 68(6)(b) of the Race Relations (Northern Ireland) Order 1997, or”.

(3) In Article 151(6) (cases where employer may incur higher additional award) at the end add “and

(c) a dismissal which is an act of discrimination within the meaning of the Race Relations (Northern Ireland) Order 1997 which is unlawful by virtue of that Order.”.

(4) In Article 160 (acts which are both unfair dismissal and discrimination) for paragraph (1) substitute—

“(1) Where compensation falls to be awarded in respect of any act both under—

(a) the provisions of this Order relating to unfair dismissal, and

(b) either or both of the Sex Discrimination (Northern Ireland) Order 1976 and the Race Relations (Northern Ireland) Order 1997,

an industrial tribunal shall not award compensation under any one of those two or three Orders in respect of any loss or other matter which is or has been taken into account under the other, or any of the others, by the tribunal (or another industrial tribunal) in awarding compensation on the same or another complaint in respect of that act.”.

The Broadcasting Act 1996 (c. 55)

9. In section 34(2) (requirement of certain licences as to promotion of equality of opportunity in employment) after “1976” insert “or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997”.

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

10. In Article 20(1)(a) (conciliation) at the end add

“or

(iv) Article 52 of the Race Relations (Northern Ireland) Order 1997;”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision with respect to discrimination on racial grounds. It also provides for the establishment and functions of the Commission for Racial Equality for Northern Ireland.