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## STATUTORY INSTRUMENTS

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# 1997 No. 869

## The Race Relations (Northern Ireland) Order 1997

### PART VIII ENFORCEMENT

#### *General*

#### **Restriction on proceedings for breach of Order**

**51.**—(1) Except as provided by this Order<sup>F1</sup> or the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002] 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.

<b>F1</b> SR 2003/341
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#### *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<sup>F2</sup> . . . against the complainant which is unlawful by virtue of Part II<sup>F2</sup>, Article 72ZA or, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26]; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act<sup>F2</sup> . . . 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<sup>F3</sup> Fair Employment and Treatment (Northern Ireland) Order 1998)]—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under<sup>F3</sup> Part VI of that Order]; or
- (b) such a complaint has been made, but the proceedings<sup>F3</sup> under the Fair Employment and Treatment (Northern Ireland) Order 1998] have not been disposed of,

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the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken<sup>F3</sup> under the Fair Employment and Treatment (Northern Ireland) Order 1998] in respect of the act have been disposed of.

**F2** SR 2003/341  
**F3** 1998 NI 21

#### **[<sup>F4</sup>Burden of proof: industrial tribunals**

**52A.**—(1) This Article applies where a complaint is presented under Article 52 and the complaint is that the respondent—

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in Article 3(1B) (a), (e) or (f), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

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

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

**F4** SR 2003/341

#### **Remedies on complaint under Article 52**

**53**<sup>F5</sup>.—(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

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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.

<b>F5</b> functions transf. by SR 1999/481
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### *Enforcement of Part III*

#### **Claims under Part III<sup>F6</sup> etc]**

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

- (a) has committed an act<sup>F6</sup> . . . against the claimant which is unlawful by virtue of Part III<sup>F6</sup> other than, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26]; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act<sup>F6</sup> . . . 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) [<sup>F6</sup>in relation to a claim on grounds of colour or nationality] 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)—

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- (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 <sup>F7</sup>..., including such an act done outside Northern Ireland.

[<sup>F6</sup>(9) A county court shall have jurisdiction to entertain proceedings under this Order with respect to an act done outside the United Kingdom where Article 20A applies in relation to such an act by virtue of Article 27(1A).

(10) This Article has effect subject to Article 54A.]

**F6** SR 2003/341

**F7** Words in [art. 54\(8\)](#) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 113, Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)\(m\)](#) (with [art. 3](#))

#### [<sup>F8</sup>Claims under Article 20A in immigration cases

**54A.—**(1) No proceedings may be brought by a claimant under Article 54(1) in respect of an immigration claim if—

- (a) the act to which the claim relates was done in the taking by an immigration authority of a relevant decision and the question whether that act was unlawful by virtue of Article 20A has been or could be raised in proceedings on an appeal which is pending, or could be brought, under the 1997 Act or Part 5 of the 2002 Act; or
- (b) it has been decided in relevant immigration proceedings that that act was not unlawful by virtue of that Article.

(2) For the purposes of this Article an immigration claim is a claim that a person—

- (a) has committed a relevant act of discrimination against the claimant which is unlawful by virtue of Article 20A; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the claimant.

(3) Where it has been decided in relevant immigration proceedings that an act to which an immigration claim relates was unlawful by virtue of Article 20A, any court hearing that claim under Article 54 shall treat that act as an act which is unlawful by virtue of Article 20A for the purposes of the proceedings before it.

(4) No relevant decision of an immigration authority involving an act to which an immigration claim relates and no relevant decision of an immigration appellate body in relation to such a decision shall be subject to challenge or otherwise affected by virtue of a decision of a court hearing the immigration claim under Article 54.

(5) In this Article—

“the Immigration Acts” has the meaning given by section 158 of the 2002 Act;

“immigration appellate body” means an adjudicator appointed for the purposes of Part 5 of the 2002 Act, the Immigration Appeal Tribunal, the Special Immigration Appeals Commission, the Court of Appeal, the Court of Session or the House of Lords;

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“immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971;

“immigration claim” has the meaning given by paragraph (2);

“pending” has the same meaning as in the 1997 Act or, as the case may be, Part 5 of the 2002 Act;

“relevant act of discrimination” means an act of discrimination on the grounds of race or ethnic or national origins, or harassment done by an immigration authority in taking any relevant decision;

“relevant decision” means—

(a) in relation to an immigration authority, any decision under the Immigration Acts relating to the entitlement of the claimant to enter or remain in the United Kingdom; and

(b) in relation to an immigration appellate body, any decision on an appeal under the 1997 Act or Part 5 of the 2002 Act in relation to a decision falling within sub-paragraph (a);

“relevant immigration proceedings” means proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act;

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

and for the purposes of paragraph (1)(a), any power to grant leave to appeal out of time shall be disregarded.

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<sup>F9</sup>(6) This Article applies in relation to reviews under section 2D of the 1997 Act as it applies in relation to appeals under that Act.]]

**F8** SR 2003/341

**F9** Art. 54A(6) inserted (25.6.2013) by [Justice and Security Act 2013 \(c. 18\)](#), s. 20(1), [Sch. 2 para. 10](#); [S.I. 2013/1482](#), art. 2 (with arts. 3, 4)

### [<sup>F10</sup>**Burden of proof: county court**

**54B.**—(1) This Article applies where a claim is brought under Article 54 and the claim is that the respondent—

(a) has committed an act of discrimination, on grounds of race or ethnic or national origins which is unlawful by virtue of any provision referred to in Article 3(1B)(b) to (d), or Part IV in its application to those provisions, or

(b) has committed an act of harassment.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

(a) has committed such an act of discrimination or harassment against the claimant, or

(b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination or harassment against the claimant,

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

**F10** SR 2003/341

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## *Non-discrimination notices*

### **Issue of non-discrimination notice**

**55.**—(1) This Article applies to—

- (a) an unlawful<sup>F11</sup> act of discrimination or harassment]; 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).

<b>F11</b> SR 2003/341
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### **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—

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- (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<sup>F12</sup> (ignoring Article 54A)] 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).

**F12** SR 2003/341

### **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.

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### *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<sup>[F13]</sup> act of discrimination or harassment],<sup>[F13]</sup> or
- <sup>[F13]</sup>(c) a finding under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002 that he has done an act which was unlawful by virtue of Article 20A.]

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.

**F13** SR 2003/341

#### **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.



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### **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<sup>F14</sup> the person concerned]) 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.

<b>F14</b> SR 2003/341
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### **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.

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### *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<sup>F15</sup> or subjected to harassment] 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<sup>F15</sup> or, where the question relates to discrimination on grounds of race or ethnic or national origins, or to harassment, the period of eight weeks beginning with the day on which the question was served on him] 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.

<b>F15</b> SR 2003/341
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#### **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

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- (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 [<sup>F16</sup>imposed by Article 17 of the Access to Justice (Northern Ireland) Order 2003] and is subject to any provision in [<sup>F17</sup>, or made under] that Order for payment of any sum [<sup>F18</sup>to the Department of Justice].
- (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.

[<sup>F19</sup>(8) This Article (except for paragraph (4)) applies to proceedings or prospective proceedings under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality,

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Immigration and Asylum Act 2002 so far as they relate to acts which may be unlawful by virtue of Article 20A as it applies to proceedings or prospective proceedings under this Order.

(9) In this Article as it applies by virtue of paragraph (8) “rules and regulations” means—

- (a) in relation to proceedings under the Act of 1997, rules under that Act;
- (b) in relation to proceedings under Part 5 of the Act of 2002, rules under that Act.]

- F16** Words in art. 64(6) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 13(a)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3)
- F17** Words in art. 64(6) inserted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 13(b)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3)
- F18** Words in art. 64(6) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 13(c)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3) (as amended (18.11.2014) by Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 c. 11 (N.I.), **Sch. 2 para. 6(43)(a)(x)**)
- F19** SR 2003/341

#### *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.

[<sup>F20</sup>(1A) Article 249B of the Employment Rights (Northern Ireland) Order 1996 (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (1)(a).

(1B) Paragraphs (1) and (1A) shall be treated as provisions of the Employment Rights (Northern Ireland) Order 1996 for the purposes of Article 249B of that Order.]

(2) [<sup>F21</sup>subject to paragraph (2A)] 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.

[<sup>F21</sup>(2A) In relation to an immigration claim within the meaning of Article 54A, the period of six months mentioned in paragraph (2)(a) begins on the expiry of the period during which, by virtue of Article 54A(1)(a), no proceedings may be brought under Article 54(1) in respect of the claim.]

(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.

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(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.

**F20** [Art. 65\(1A\)\(1B\)](#) inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), s. 29(2), [Sch. 2 para. 42](#); S.R. 2020/1, art. 2(n)

**F21** SR 2003/341

## *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<sup>F22</sup> or any statutory provision mentioned in Article 20C(5)]

- (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;<sup>F23</sup> . . .

*Sub-para.(b) rep. by 1998 NI 21*

- (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.

**F22** SR 2003/341

**F23** [1998 NI 21](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Instrument am. (prosp.) by [1998 c. 17 s.50 Sch.4 para.41](#)
- Instrument am. (prosp.) by [1998 c. 32 s.74\(1\)Sch.4 para.24](#)