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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 497**

**Employment Equality (Sexual Orientation)  
Regulations (Northern Ireland) 2003**

**PART II**

**DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING**

**Applicants and employees**

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

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Northern Ireland, to discriminate against that person –

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.

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

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

(5) In paragraph (2)(d) reference to the dismissal of a person from employment includes references –

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and

- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

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

7.—(1) 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 –

- (a) by refusing to select or nominate, or deliberately not selecting or nominating, 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.

(2) 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 subject that other to harassment in relation to employment at an establishment in Northern Ireland.

### **Exception for genuine occupational requirement etc**

8.—(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of sexual orientation) –

- (a) regulation 6(1)(a) or (c) does not apply to any employment;
- (b) regulation 6(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
- (c) regulation 6(2)(d) does not apply to dismissal from any employment,

where paragraph (2) or (3) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out –

- (a) being of a particular sexual orientation is a genuine and determining occupational requirement;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either –
  - (i) the person to whom that requirement is applied does not meet it, or
  - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,

and this paragraph applies whether or not the employment is for purposes of an organised religion.

(3) This paragraph applies where –

- (a) the employment is for purposes of an organised religion;
- (b) the employer applies a requirement related to sexual orientation –
  - (i) so as to comply with the doctrines of the religion, or
  - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and
- (c) either –
  - (i) the person to whom that requirement is applied does not meet it, or

- (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

### **Contract workers**

**9.—(1)** It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to discriminate against a contract worker –

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to subject a contract worker to harassment.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal’s employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits 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 by the principal to his contract workers.

(5) In this regulation –

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

### **Meaning of employment and contract work at establishment in Northern Ireland**

**10.—(1)** For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Northern Ireland if the employee –

- (a) does his work wholly or partly in Northern Ireland; or
- (b) does his work wholly outside Northern Ireland and paragraph (2) applies.

(2) This paragraph applies if –

- (a) the employer has a place of business at an establishment in Northern Ireland;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Northern Ireland –
  - (i) at the time when he applies for or is offered the employment, or
  - (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes –

- (a) employment on board a ship only if the ship is registered at a port of registry in Northern Ireland, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.

(4) For the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Northern Ireland, this regulation has effect as if references to Northern Ireland included any area designated under section 1(7) of the Continental Shelf Act 1964(1), or any part of such an area, in which the law of Northern Ireland applies.

(5) This regulation applies in relation to contract work within the meaning of regulation 9 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 9.

### **Trustees and managers of occupational pension schemes**

**11.**—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to 2nd December 2003, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 1 (occupational pension schemes) shall have effect for the purposes of –

- (a) defining terms used in this regulation and in that Schedule;
- (b) treating every occupational pension scheme as including a non-discrimination rule;
- (c) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (d) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an industrial tribunal under regulation 34 (jurisdiction of industrial tribunals).

### **Office-holders etc**

**12.**—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person –

- (a) in the arrangements which he makes for the purposes of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person –

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him –

- (a) in the terms of the appointment;
  - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
  - (c) by terminating the appointment; or
  - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person –
- (a) who has been appointed to the office or post;
  - (b) who is seeking or being considered for appointment to the office or post; or
  - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).
- (5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment.
- (6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless –
- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
  - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
  - (c) the benefits relate to training.
- (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference –
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
  - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (8) This regulation applies to –
- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
  - (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,
- but not to a political office or a case where regulation 6 (applicants and employees), 7 (discrimination by persons with statutory power to select employees for others), 9 (contract workers), 15 (barristers) or 16 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.
- (9) For the purposes of paragraph (8)(a) the holder of an office or post –
- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;

- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments –
  - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.
- (10) In this regulation –
  - (a) appointment to an office or post does not include election to an office or post;
  - (b) “political office” means –
    - (i) any office of the House of Commons held by a member of it,
    - (ii) a life peerage within the meaning of the Life Peerages Act 1958<sup>(2)</sup>, or any office of the House of Lords held by a member of it,
    - (iii) any office of the Assembly held by a member of it,
    - (iv) any office of a district council held by a member of it, or
    - (v) any office of a political party;
  - (c) “relevant person”, in relation to an office or post, means –
    - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
    - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
    - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
  - (d) references to making a recommendation include references to making a negative recommendation; and
  - (e) references to refusal include references to deliberate omission.

### **Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve**

**13.—**(1) For the purposes of this Part, the holding of the office of constable as a police officer shall be treated as employment –

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
  - (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.
- (2) For the purposes of regulation 24 (liability of employers and principals) –
- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000<sup>(3)</sup> –

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(2) 1958 c. 21  
(3) 2000 c. 32

- (a) any compensation, damages or costs awarded against the Chief Constable in any proceedings brought against him under these Regulations, 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 the Chief Constable for the settlement of any claim made against him under these Regulations if the settlement is approved by the Policing Board.
- (4) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay –
- (a) any compensation, damages or costs awarded in proceedings under these Regulations against a police officer;
  - (b) any costs incurred and not recovered by a police officer in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.
- (5) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (4).
- (6) This regulation –
- (a) applies in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996<sup>(4)</sup> or section 23 of the Police Act 1997<sup>(5)</sup> as it applies in relation to a police officer;
  - (b) applies in relation to a police officer who by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998<sup>(6)</sup> is under the direction and control of the Police Ombudsman for Northern Ireland as if –
    - (i) in paragraph (1) the reference to the Chief Constable included a reference to the Ombudsman;
    - (ii) in paragraphs (2), (4) and (5) the references to the Chief Constable were references to the Ombudsman.

### **Other police bodies**

- 14.—(1) For the purposes of this Part, the holding of the office of constable otherwise than as a police officer shall be treated as employment –
- (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
  - (b) by the police authority as respects any act done by it in relation to that office or the holder of it.
- (2) For the purposes of regulation 24 (liability of employers and principals) –
- (a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund –
- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

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(4) 1996 c. 16  
(5) 1997 c. 50  
(6) 1998 c. 32

- (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.
- (4) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund –
  - (a) any compensation, damages or costs awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
  - (b) any costs incurred and not recovered by such a person in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).
- (6) Subject to paragraph (8), in this regulation –
  - “chief officer of police” means –
    - (a) in relation to the National Criminal Intelligence Service, the Director General of that Service;
    - (b) in relation to any other body of constables, the person who has the direction and control of the body in question;
  - “police authority” means –
    - (a) in relation to the National Criminal Intelligence Service, the Service Authority for the National Criminal Intelligence Service;
    - (b) in relation to any other body of constables, the authority by which the members of the body are paid;
  - “police fund” means –
    - (a) in relation to the National Criminal Intelligence Service, the service fund under section 16 of the Police Act 1997;
    - (b) in relation to any other body of constables, money provided by the authority by which the members of the body are paid.
- (7) Nothing in paragraphs (3) to (6) applies in relation to the police.
- (8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

## **Barristers**

- 15.**—(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 his pupil, to discriminate against him –
- (a) in respect of any terms applicable to him as his pupil;



- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits 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 any other detriment.
- (3) It is unlawful for a barrister to subject to harassment a person who is his pupil or has applied to be his pupil.
- (4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.
- (5) In this regulation –  
“pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.

## Partnerships

- 16.—**(1) It is unlawful for a firm, 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 to whom they should offer that position;
  - (b) in the terms on which they offer him that position;
  - (c) by refusing to offer, or deliberately not offering, 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 or by refusing to afford, or deliberately not affording, him access to them; or
    - (ii) by expelling him from that position, or subjecting him to any other detriment.
- (2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.
- (3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.
- (4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).
- (5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907(7).
- (6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.
- (7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890(8).
- (8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference –
- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and

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(7) 1907 c. 24

(8) 1890 c. 39

- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

### **Trade organisations**

- 17.—(1) It is unlawful for a trade organisation to discriminate against a person –
  - (a) in the terms on which it is prepared to admit him to membership of the organisation; or
  - (b) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him –
  - (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
  - (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.
- (3) It is unlawful for a trade organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.
- (4) In this regulation –
  - “trade organisation” means 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;
  - “profession” includes any vocation or occupation; and
  - “trade” includes any business.

### **Qualifications bodies**

- 18.—(1) It is unlawful for a qualifications body to discriminate against a person –
  - (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
  - (b) by refusing or deliberately not granting any application by him for such a qualification; or
  - (c) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.
- (3) Paragraph (1) does not apply to a professional or trade qualification for purposes of an organised religion where a requirement related to sexual orientation is applied to the qualification so as to comply with the doctrines of the religion or avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.
- (4) In this regulation –
  - “qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include –
    - (a) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
    - (b) a school;
  - “confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade; and

“profession” and “trade” have the same meaning as in regulation 17.

### **Providers of vocational training**

**19.**—(1) It is unlawful, in relation to a person seeking or undergoing training which would help fit him for any employment, for any training provider to discriminate against him –

- (a) in the terms on which the training provider affords him access to any training;
- (b) by refusing or deliberately not affording him such access;
- (c) by terminating his training; or
- (d) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training which would help fit him for any employment, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination only concerns training for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation –

“training” includes –

- (a) facilities for training; and
- (b) practical work experience provided by an employer to a person whom he does not employ;

“training provider” means any person who provides, or makes arrangements for the provision of, training which would help fit another person for any employment, but it does not include –

- (a) an employer in relation to training for persons employed by him;
- (b) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
- (c) a school.

### **Employment agencies, careers guidance etc**

**20.**—(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;
- (b) by refusing or deliberately not providing any of its services; or
- (c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this regulation if it proves that –

- (a) 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) 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 commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) For the purposes of this regulation –
  - (a) “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, but it does not include –
    - (i) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
    - (ii) a school; and
  - (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

#### **Assisting persons to obtain employment etc**

**21.**—(1) It is unlawful for the Department for Employment and Learning to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(9)</sup> (general functions of the Department as to employment and training for employment).

- (2) This regulation does not apply in a case where –
  - (a) regulation 19 (providers of vocational training) applies, or would apply but for the operation of any other provision of these Regulations, or
  - (b) the Department for Employment and Learning is acting as an employment agency within the meaning of regulation 20.

#### **Institutions of further and higher education**

**22.**—(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person –

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment –
  - (i) in the way it affords him access to any benefits,
  - (ii) by refusing or deliberately not affording him access to them, or
  - (iii) by excluding him from the establishment or subjecting him to any other detriment.
- (2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.
- (3) Paragraph (1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

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<sup>(9)</sup> 1950 c. 29 (N.I.) as amended by S.I.1988/1087 (N.I. 10) Art.3; *see also* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999, Art. 4 and Schedule 2, Part II.

(4) This regulation applies to the following educational establishments in Northern Ireland, namely –

- (a) an institution of further education (as recognised under Article 8 of the Further Education (Northern Ireland) Order 1997)**(10)**;
- (b) a Higher Education institution (within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993)**(11)**.

(5) In this regulation –

“student” means any person who receives education at an educational establishment to which this regulation applies.

### **Relationships which have come to an end**

**23.**—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.

(2) Where a relevant relationship has come to an end, it is unlawful for A –

- (a) to discriminate against B by subjecting him to a detriment; or
- (b) to subject B to harassment,

where the discrimination or harassment arises out of and is closely connected to that relationship.

(3) In paragraph (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before 2nd December 2003, reference to an act of discrimination or harassment which would, after that date, be unlawful.

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**(10)** S.I. 1997/1772 (N.I. 15)

**(11)** S.I. 1993/2810 (N.I. 12)