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STATUTORY INSTRUMENTS

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**1976 No. 1042**

**Sex Discrimination (Northern Ireland) Order 1976**

**PART V**

**OTHER UNLAWFUL ACTS**

**Discriminatory practices**

**38.**—<sup>F1</sup>(1) In this Article "discriminatory practice" means—

<sup>F2</sup>(...) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of Part III or IV taken with Article [<sup>F3</sup>3A] or 5(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex,<sup>F4</sup>...

<sup>F5</sup>(b)] .....

(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 [<sup>F6</sup>may be brought] by the Commission in accordance with Articles 67 to 71.

**F1** SR 2001/282

**F2** Word in art. 38(1)(a) omitted (2.5.2016) by virtue of [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **16(a)(i)**

**F3** Word in art. 38(1)(a) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **16(a)(ii)**

**F4** Word in art. 38(1)(a) omitted (2.5.2016) by virtue of [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **16(a)(iii)**

**F5** Art. 38(1)(b) omitted (2.5.2016) by virtue of [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **16(b)**

**F6** Words in art. 38(3) substituted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 5**

**Discriminatory advertisements**

**39.**—(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part III or IV.

(2) Paragraph (1) does not apply to an advertisement if the intended act would not in fact be unlawful.

*Changes to legislation: Sex Discrimination (Northern Ireland) Order 1976, PART V is up to date with all changes known to be in force on or before 05 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) For the purposes of paragraph (1), use of a job description with a sexual connotation (such as “waiter”, “salesgirl”, “postman” or “stewardess”) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

(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), 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 referred to in paragraph (4) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding<sup>[F7]</sup> level 5 on the standard scale].

**F7** 1984 NI 3

### **Instructions to discriminate**

**40.** 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 III or IV, or procure or attempt to procure the doing by him of any such act.

### **Pressure to discriminate**

**41.—**(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part III or IV by—

- (a) providing or offering to provide him with any benefit, or
- (b) subjecting or threatening to subject him to any detriment.

(2) An offer or threat 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**

<sup>F8</sup>**42 .—**(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 (whether express or implied, and whether precedent or subsequent) 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) 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 doing that act, or from doing in the course of his employment acts of that description.

**F8** mod. SR 1991/127

**Modifications etc. (not altering text)**

- C1** Art. 42 applied (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 4 para. 4\(3\)\(4\)\(a\)](#); [S.I. 2013/1682](#), art. 3(k)

**Aiding unlawful acts**

**43.**—(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 an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 42 (or would be so liable but for Article 42(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this Article 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 referred to in paragraph (3) ( 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<sup>[F9]</sup> level 5 on the standard scale].

**F9** 1984 NI 3

**Changes to legislation:**

Sex Discrimination (Northern Ireland) Order 1976, PART V is up to date with all changes known to be in force on or before 05 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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

- Instrument am. (prosp.) by [1998 c. 17 s.50Sch.4 para.13](#)
- Instrument am. (prosp.) by [1998 c. 32 s.74\(1\)Sch.4 para.12](#)
- Instrument rev. in pt. (saving) (prosp.) by [1998 c. 32 s.74\(2\)\(3\)Schs.56](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 46 s. 22](#)
- Act amended by [1996 c. 46 s. 22](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch.3 rev. (prosp.) by [1998 c. 47 ss .99 100\(2\) Sch.13 para.2\(4\). Sch.15](#)
- Sch.6 para.2 rev. (prosp.) by [1998 c. 47 s. 100\(2\)Sch.15](#)
- art.19(6)(aa) added (prosp.) by [1997 c. 50 s.134\(1\)Sch.9 para.37](#)
- art.19(6)(aa) added (prosp.) by [1997 c. 50 s.134\(1\)Sch.9 para.37](#)
- art.54(2)(3)(4) rev. (prosp.) by [1998 c. 47 ss .99 100\(2\) Sch.13 para.2\(3\)\(b\). Sch. 15](#)