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STATUTORY INSTRUMENTS

1997 No. 869

The Race Relations (Northern Ireland) Order 1997

PART II

[^{F1}DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD]

[^{F1}Discrimination and harassment by employers]

F1 SR 2003/341

^{F2} . . . 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.

[^{F2}(2A) It is unlawful for a person, 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.]

(3) Except in relation to discrimination falling within Article 4[^{F2} or discrimination on grounds of race or ethnic or national origins], 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

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(c) the benefits, facilities or services relate to training.

[^{F2}(4A) In paragraph (2)(c) the reference to the dismissal of a person from employment includes, where the discrimination is on grounds of race or ethnic or national origins, 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;
- (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]

(5) Paragraphs (1) and (2) do not render unlawful any act done by an employer[^{F2}, on grounds other than those of race or ethnic or national origins,] 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.

F2 SR 2003/341

Discrimination by persons with statutory power to select employees for others

7.—[^{F3}(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, 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.

[^{F3}(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.]

F3 SR 2003/341

[^{F4}Exception for genuine occupational requirement

7A.—(1) In relation to discrimination on grounds of race or ethnic or national origins—

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

where paragraph (2) 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 race or of particular ethnic or national origins 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 the person meets it.]

F4 SR 2003/341

Exceptions for genuine occupational qualifications

- 8.—**(1) In relation to racial discrimination^[F5] in cases where Article 7A does not apply]
- (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.

F5 SR 2003/341

^{F6} . . . 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

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- (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^{F6}, or not of a particular race or particular ethnic or national origins,] 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^{F6} or of that race or those origins] would be a genuine occupational qualification^{F6} or, as the case may be, that act would be lawful by virtue of Article 7A] for the job.

^{F6}(3A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.]

(4) Nothing in this Article shall render unlawful any act done by the principal^{F6} on grounds other than those of race or ethnic or national origins,] 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 ^{F7}Articles 10 and 11 apply] for the purposes of this paragraph with appropriate modifications.

F6	SR 2003/341
F7	Words in art. 9(6) substituted (9.7.2012) by The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/263) , arts. 1(3), 3

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^{F8} if the employee—

- (a) does his work wholly or partly in Northern Ireland; or
- (b) does his work wholly outside Northern Ireland and paragraph (1A) applies.]

^{F8}(1A) This paragraph applies if, in a case involving discrimination on grounds of race or ethnic or national origins, or harassment—

- (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.]

^{F9}(2) The reference to “employment” in paragraph (1) includes—

- ^{F10}(a)
- (b) employment on aircraft ^{F11}... registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.]

[^{F12}(2A) Except as provided by Article 11, paragraph (1) does not apply to employment as a seafarer (within the meaning of that Article).]

Para.3 rep. by SR 2000/8

(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 [^{F9} paragraphs (1) and (2) shall each have effect as if the last reference to Northern Ireland in paragraph (1)] 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.

F8 SR 2003/341

F9 SR 2000/8

F10 Art. 10(2)(a) omitted (9.7.2012) by virtue of [The Race Relations Order 1997 \(Amendment\) Order \(Northern Ireland\) 2012 \(S.R. 2012/263\)](#), arts. 1(3), **4(a)**

F11 Words in art. 10(2)(b) omitted (9.7.2012) by virtue of [The Race Relations Order 1997 \(Amendment\) Order \(Northern Ireland\) 2012 \(S.R. 2012/263\)](#), arts. 1(3), **4(a)**

F12 Art. 10(2A) inserted (9.7.2012) by [The Race Relations Order 1997 \(Amendment\) Order \(Northern Ireland\) 2012 \(S.R. 2012/263\)](#), arts. 1(3), **4(b)**

[^{F13}Seafarers

11.—(1) If paragraph (2), (3) or (4) applies to a seafarer, this Part applies to the seafarer as if the seafarer were employed at an establishment in Northern Ireland.

(2) This paragraph applies to a seafarer who works wholly or partly within Northern Ireland on—

- (a) a UK ship; or
- (b) a UK hovercraft operated by a person whose principal place of business, or ordinary residence, is in Northern Ireland.

(3) This paragraph applies to a seafarer who works wholly or partly within Northern Ireland if—

- (a) the seafarer is on a ship registered in or entitled to fly the flag of an EEA State other than the United Kingdom, or a hovercraft registered in an EEA State ^{F14} ...,
- (b) the ship or hovercraft is in United Kingdom waters adjacent to Northern Ireland,
- (c) the seafarer is a British citizen, or a national of an EEA State ^{F14} ... or of a designated state; and
- (d) the legal relationship of the seafarer's employment is located within Northern Ireland or retains a sufficiently close link to Northern Ireland.

(4) This paragraph applies to a seafarer who works wholly outside Northern Ireland if—

- (a) the seafarer is on a UK ship registered at a port of registry in Northern Ireland or a UK hovercraft operated by a person whose principal place of business, or ordinary residence, is in Northern Ireland,

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- (b) the seafarer is a British citizen, or a national of an EEA State^{F15}...or of a designated state; and
 - (c) the legal relationship of the seafarer’s employment is located within Northern Ireland or retains a sufficiently close link to Northern Ireland.
- (5) It is not a contravention of Article 6 or 9 for an employer or principal to offer to pay, or to pay, a person (A) at a lower rate than that at which the employer or principal offers to pay or pays another person (B) because A is of a different nationality from B, if—
- (a) A—
 - (i) applied for work as a seafarer, or
 - (ii) was recruited as a seafarer, outside Northern Ireland, and
 - (b) A is not—
 - (i) a British citizen,
 - (ii) a national of [F16]EEA State, or
 - (iii) a national of a designated state.
- (6) For the purposes of this Article—
- (a) paying an employee or contract worker includes making provision for a pension, annuity, lump sum, gratuity or other similar benefit which will be paid or given to the employee or contract worker or a member of his family or household in the event of his retirement or death;
 - (b) the legal relationship of the seafarer’s employment is located within Northern Ireland if the contract under which the seafarer is employed—
 - (i) was entered into in Northern Ireland; or
 - (ii) takes effect in Northern Ireland;
 - (c) whether the legal relationship of the seafarer’s employment retains a sufficiently close link with Northern Ireland is to be determined by reference to all relevant factors including—
 - (i) where the seafarer is subject to tax;
 - (ii) where the employer or principal is incorporated;
 - (iii) where the employer or principal is established;
 - (iv) where the ship or hovercraft on which the seafarer works is registered.
- (7) In this Article—
- “British citizen” has the same meaning as the British Nationality Act 1981;
- “designated state” means the countries of the African, Caribbean, and Pacific Group of States, the Kingdom of Morocco, Montenegro, the Most Serene Republic of San Marino, the People’s Democratic Republic of Algeria, the Principality of Andorra, the Republic of Albania, the Republic of Croatia, the Republic of Macedonia, the Republic of Tunisia, the Republic of Turkey, the Russian Federation and the Swiss Confederation;
- “seafarer” means a person employed or engaged in any capacity on board a ship or hovercraft;
- “UK hovercraft” means a hovercraft registered in the United Kingdom;
- “UK ship” means a ship registered in the United Kingdom;
- “United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom.]

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- F13** Art. 11 substituted (9.7.2012) by [The Race Relations Order 1997 \(Amendment\) Order \(Northern Ireland\) 2012 \(S.R. 2012/263\)](#), arts. 1(3), **5**
- F14** Words in art. 11(3) omitted (31.12.2020) by virtue of [The Merchant Shipping \(Miscellaneous Provisions\) \(Amendments etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1221\)](#), reg. 2(b), **Sch. para. 4(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in art. 11(4)(b) omitted (31.12.2020) by virtue of [The Merchant Shipping \(Miscellaneous Provisions\) \(Amendments etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1221\)](#), reg. 2(b), **Sch. para. 4(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Word in art. 11(5)(b)(ii) substituted (31.12.2020) by [The Merchant Shipping \(Miscellaneous Provisions\) \(Amendments etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1221\)](#), reg. 2(b), **Sch. para. 4(c)**; 2020 c. 1, Sch. 5 para. 1(1)

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