
STATUTORY INSTRUMENTS

1997 No. 869

The Race Relations (Northern Ireland) Order 1997

PART II

DISCRIMINATION IN THE EMPLOYMENT FIELD

Discrimination by employers

Discrimination against applicants and employees

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

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment; or
- (b) in the terms on which he offers him that employment; or
- (c) by refusing or deliberately omitting to offer him that employment.

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

- (a) in the terms of employment which he affords him; or
- (b) in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (c) by dismissing him, or subjecting him to any other detriment.

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

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

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

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

Discrimination by persons with statutory power to select employees for others

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

- (a) by refusing or deliberately omitting to select or nominate him for employment; or
- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

Exceptions for genuine occupational qualifications

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

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

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

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

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

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

- (a) who are capable of carrying out the duties falling within that sub-paragraph; and
- (b) whom it would be reasonable to employ on those duties; and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Discrimination against contract workers

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

(2) It is unlawful for the principal, in relation to work to which this Article applies, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work; or
- (b) by not allowing him to do it or continue to do it; or

- (c) in the way he affords him access to any benefits, facilities or services or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

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

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

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

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

Meaning of employment at establishment in Northern Ireland

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

(2) Paragraph (1) does not apply to—

- (a) employment on board a ship registered at a port of registry in Northern Ireland, or
- (b) employment on an aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland other than an aircraft or hovercraft while so operated in pursuance of a contract with a person who has his principal place of business, or is ordinarily resident, outside the United Kingdom,

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

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

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

(5) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department may by order provide that paragraphs (1), (2) and (3) shall each have effect as if the last reference to Northern Ireland included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 in which the law of Northern Ireland applies.

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

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

Exception for seamen recruited abroad

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

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

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

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