

STATUTORY INSTRUMENTS

**1998 No. 3162**

**The Fair Employment and Treatment  
(Northern Ireland) Order 1998**

**PART VIII  
EXCEPTIONS**

**Excepted employments, etc.**

**70.**—(1) This Order does not apply to or in relation to—

(a) any employment or occupation as a clergyman or minister of a religious denomination,<sup>F1</sup> . . .  
*Sub.-para.(b) rep. by SR 2003/520*

(2) Part VII does not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief.

[<sup>F2</sup>(3) So far as they relate to discrimination on the ground of religious belief, Parts III and V do not apply to or in relation to any employment or occupation where -

- (a) the holding, or not holding, of a particular religious belief is an occupational requirement;
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim; and
- (c) either -
  - (i) the person (A) to whom that requirement is applied does not meet it; or
  - (ii) the person who applies the requirement has reasonable grounds for not being satisfied that A meets it.]

(4) So far as they relate to discrimination on the ground of political opinion, Parts III and V do not apply to or in relation to an employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular political opinion.

<sup>F3</sup>(5) . . . . .

<b>F1</b>	SR 2003/520
<b>F2</b>	Art. 70(3) substituted (6.4.2015) by <a href="#">The Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/144)</a> , regs. 1(1), <b>2</b>
<b>F3</b>	Art. 70(5) omitted (12.5.2022) by virtue of <a href="#">Fair Employment (School Teachers) Act (Northern Ireland) 2022 (c. 23)</a> , s. 3(1)(2), <b>Sch. para. 3</b>

**School teachers**

<sup>F4</sup>**71.** . . . . .

**F4** Art. 71 omitted (12.5.2022) by virtue of [Fair Employment \(School Teachers\) Act \(Northern Ireland\) 2022 \(c. 23\)](#), **ss. 1, 3(1)(2)**

### **[<sup>F5</sup>The police and the police support staff**

**71A.**—(1) Nothing in Part III or V shall render unlawful anything done by the Chief Constable in order to comply with the requirements of [<sup>F6</sup>section 46(1) to (1F)] of the Police (Northern Ireland) Act 2000 (selection of persons for appointment as police trainees).

(2) Nothing in Part III or V shall render unlawful anything done by the Chief Constable in order to comply with the requirements of [<sup>F7</sup>section 46(5) to (5F)] of the Police (Northern Ireland) Act 2000 (selection of persons for certain posts in police support staff).

(3) The application of any [<sup>F8</sup> provision, criterion or practice] to any person applying for appointment as a police reserve trainee with a view to service in the Police Service of Northern Ireland Reserve on a part-time basis where the [<sup>F8</sup> provision, criterion or practice] is one that the person applying is resident in a particular area is not by virtue of [<sup>F8</sup> Article 3(2A)] unlawful under any provision of Part III or V.]

**F5** 2000 c. 32

**F6** Words in art. 71A(1) substituted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), **8(6)(a)**

**F7** Words in art. 71A(2) substituted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), **9(6)(a)**

**F8** SR 2003/520

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

**C1** Art. 71A continued in force (temp. from 28.3.2007 to 28.3.2010) by [Police \(Northern Ireland\) Act 2000 \(Renewal of Temporary Provisions\) Order 2007 \(S.R. 2007/214\)](#), **art. 2**

**C2** Art. 71A continued in force (temp. from 28.3.2010 to 28.3.2011) by [Police \(Northern Ireland\) Act 2000 \(Renewal of Temporary Provisions\) Order 2010 \(S.R. 2010/112\)](#), **art. 2**

### **Provision of training in pursuance of affirmative action**

**72.**—(1) This Article applies where, in pursuance of affirmative action, persons are afforded access to facilities for training which would help to fit them for employment, for employment in a particular capacity or for a particular employment or occupation, but—

- (a) the facilities are provided only at a particular place in Northern Ireland or the training is confined to persons of a particular class, not being a class framed by reference to religious belief or political opinion; and
- (b) by providing the facilities only there or by so confining the training, access to the facilities by persons of a particular religious belief or political opinion is excluded or restricted.

(2) For the purpose of determining whether any act done in, or in connection with, affording those facilities is by virtue of [<sup>F9</sup> Article 3(2A)] unlawful under any provision of Parts III and V, the fact that, by providing the facilities only there or by so confining the training, their access to the facilities is thereby excluded or restricted is to be disregarded.

**F9** SR 2003/520

## Redundancy

73.—(1) This Article applies where—

- (a) a practice relating to the selection of employees who may be dismissed as redundant is followed by an employer in pursuance of affirmative action; and
- (b) the practice does not involve the application of any condition or requirement framed by reference to religious belief or political opinion, but has or may have the effect that the proportion of employees of a particular religious belief or political opinion who are selected is smaller than the proportion of employees not of that religious belief or, as the case may be, not of that political opinion who are selected.

(2) The dismissal of an employee in pursuance of the practice is not by virtue of<sup>[F10]</sup> Article 3(2A)] unlawful under any provision of Parts III and V.

**F10** SR 2003/520

## Measures to encourage applications, etc. from under-represented community

74. Nothing in Part III or V shall render unlawful any act done by—

- (a) an employer;
- (b) an employment agency;
- (c) a vocational organisation; or
- (d) a person providing services as mentioned in Article 24(1),

in or in connection with encouraging members of the Roman Catholic, or members of the Protestant, community in Northern Ireland to consider or to apply for a particular employment or particular training or to consider a particular occupation, where the act is done in pursuance of affirmative action.

## Selection of unemployed persons

75.—(1) The application of any<sup>[F11]</sup> provision, criterion or practice] to any person applying to fill a vacancy for employment where the<sup>[F11]</sup> provision, criterion or practice] is one that the person applying to fill the vacancy has not been in employment for a specified period of time is not by virtue of<sup>[F11]</sup> Article 3(2A)] unlawful under any provision of Parts III and V.

(2) The Commission shall, on request, advise any person who proposes to apply any<sup>[F11]</sup> provision, criterion or practice] described in paragraph (1).

(3) In paragraph (1) “specified” means specified by the person applying the<sup>[F11]</sup> provision, criterion or practice] in question.

**F11** SR 2003/520

## Religion specific training

76.—(1) Subject to paragraph (3), nothing in Parts III to V shall render unlawful any act done by—

- (a) an employer; or
- (b) a person who provides training services in connection with the training of persons for employment and is acting on behalf of an employer,

in relation to employment with the employer at a particular establishment in Northern Ireland, being an act done in or in connection with affording only persons of a particular religious belief access to training which would help to fit them for that employment where the conditions in paragraph (2) are satisfied at any time within the 12 months immediately preceding the doing of that act.

(2) The conditions referred to in paragraph (1) are—

(a) that it appears to the Commission that—

- (i) there are no persons of the religious belief in question among those engaged in that employment at the establishment; or
- (ii) that the proportion of persons of that belief among those engaged in that employment at that establishment is small in comparison with the proportion of persons of that belief among all those employed by the employer there or among the population of the area from which that employer might reasonably be expected to recruit persons for employment at that establishment; and

(b) that the Commission has given its approval to the act.

(3) Paragraph (1) does not apply in relation to any act done by an employer, or a person providing training services on behalf of an employer, in relation to any person who is employed by the employer at the time when the act is done.

### Charities

77.—(1) [<sup>F12</sup>Subject to paragraph (3)] Nothing in this Order shall—

- (a) be construed as affecting a provision to which this paragraph applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(2) Paragraph (1) applies to a provision for conferring benefits on persons of a particular religious belief or a particular political opinion (disregarding any benefits to persons not of that belief or opinion which are exceptional or are relatively insignificant), being a provision—

- (a) which is contained in a statutory provision or other instrument; and
- (b) which has been enacted or made for purposes which are exclusively charitable according to the law of Northern Ireland.

[<sup>F12</sup>(3) Paragraph (1) does not apply to an act which is unlawful by virtue of a provision referred to in Article 3(2B).]

<b>F12</b> SR 2003/520
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### Acts done under statutory authority

78.—(1) [<sup>F13</sup>Subject to paragraph (1A)] Nothing in this Order renders unlawful anything done in order to comply with a requirement—

- (a) of primary legislation passed or made before the date on which this Order is made;
- (b) of an instrument made or approved (whether before or after that date) under primary legislation passed or made before that date.

[<sup>F13</sup>(1A) Paragraph (1) does not apply to an act which is unlawful by virtue of a provision referred to in Article 3(2B).]

(2) In paragraph (1) “primary legislation” means—

- (a) an Act of Parliament; or
- (b) Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978.

(3) Where primary legislation passed or made on or after the date on which this Order is made re-enacts (with or without modification) a provision of primary legislation passed or made before that date, paragraph (1) shall apply to that provision as re-enacted as if it continued to be contained in primary legislation passed or made before that date.

**F13** SR 2003/520

**Acts safeguarding national security, etc.**

**79.** No act done by any person shall be treated for the purposes of any provision of Parts III to V as unlawfully discriminating if—

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of the act is justified by that purpose.

**Effect of certificates by Secretary of State**

**80.—**(1) This Article applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Parts III to V; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
  - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
  - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with rules under section 91 of the Northern Ireland Act 1998, appeal against the certificate to the tribunal established under that section.

(3) If on an appeal under paragraph (2) that tribunal determines—

- (a) that the act specified in the certificate was done for the certified purpose; and
- (b) that the doing of the act was justified by that purpose,

the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If—

- (a) the claimant does not appeal against the certificate; or
- (b) the certificate is upheld on appeal,

the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this Article as they apply in relation to appeals under section 90 of that Act.

(6) In this Article—

- “claim” includes complaint; and
- “claimant” includes complainant.

**Changes to legislation:**

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, PART VIII.