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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 341**

**RACE RELATIONS**

**Race Relations Order (Amendment) Regulations  
(Northern Ireland) 2003**

*Made* - - - - - *18th July 2003*

*Coming into operation* *19th July 2003*

The Office of the First Minister and deputy First Minister, being a department designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(a)</sup> in relation to discrimination<sup>(b)</sup>, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 and shall come into operation on 19th July 2003.

(2) The Interpretation Act (Northern Ireland) 1954<sup>(c)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

(3) In these Regulations “the Race Relations Order” means the Race Relations (Northern Ireland) Order 1997<sup>(d)</sup>.

**Transitional provisions**

**2.**—(1) Regulations 39 and 41 shall not apply to proceedings commenced before 19th July 2003.

(2) Regulations 40 and 43 apply to proceedings commenced before 19th July 2003, as well as proceedings instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

(3) The amendment made to Article 63(2)(b) of the Race Relations Order by regulation 48 shall not apply in the case of a question served on a respondent before 19th July 2003.

(4) In paragraph (3) “question” and “respondent” have the same meanings as in Article 63 of the Race Relations Order.

**Definitions**

**3.** In Article 2(2) of the Race Relations Order (interpretation) insert the following definitions at the appropriate place in alphabetical order –

“ “criminal proceedings” includes –

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(a) 1972 c. 68  
(b) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)  
(c) 1954 c.33 (N.I.)  
(d) S.I. 1997/869 (N.I. 6)

- (a) proceedings on dealing summarily with a charge under the Army Act 1955(a) or the Air Force Act 1955(b) or on summary trial under the Naval Discipline Act 1957(c);
- (b) proceedings before a summary appeal court constituted under any of those Acts;
- (c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Act of 1957;
- (d) proceedings before the Courts-Martial Appeal Court; and
- (e) proceedings before a Standing Civilian Court;”;

““detriment” does not include conduct of a nature such as to constitute harassment;”;

““harassment” has the meaning given by Article 4A;”;

““social protection” and “social advantage” have the same meaning as in Article 3 of Council Directive 2000/43/EC;”.

### **Racial discrimination**

**4.**—(1) In Article 3 of the Race Relations Order (racial discrimination) after paragraph (1) insert –

“(1A) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in paragraph (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but –

- (a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons;
- (b) which puts that other at that disadvantage; and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in paragraph (1A) are –

- (a) Part II;
- (b) Articles 18 and 19;
- (c) Article 20A;
- (d) Articles 21 to 24;
- (e) Article 26;
- (f) Article 72 ZA; and
- (g) Part IV in its application to the provisions referred to in sub-paragraphs (a) to (f).

(1C) Where, by virtue of paragraph (1A), a person discriminates against another, paragraph (1)(b) does not apply to him.”.

(2) In paragraph (3) of that Article, after the words “paragraph (1)”, insert “or (1A)”.

### **Harassment**

**5.** After Article 4 of the Race Relations Order insert –

#### **“Harassment**

**4A.**—(1) A person (“A”) subjects another person (“B”) to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(1B) where, on grounds of race or ethnic or national origins, A engages in unwanted conduct which has the purpose or effect of –

- (a) violating B’s dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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(a) 1955 c. 18  
 (b) 1955 c. 19  
 (c) 1957 c. 53

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.”.

#### **Meaning of “racial grounds” “racial group” etc**

**6.** In Article 5 of the Race Relations Order (meaning of “racial grounds”, “racial group” etc) after paragraph (3) insert –

“(3A) In this Order “race or ethnic or national origins” includes origins within the Irish Traveller community.”.

#### **Harassment by employers**

**7.—(1)** For the heading to Part II of the Race Relations Order there shall be substituted “DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD” and for the cross heading immediately thereafter there shall be substituted “*Discrimination and harassment by employers*”.

(2) In the heading to Article 6 of the Race Relations Order (discrimination against applicants and employees), omit the words “discrimination against”.

(3) That Article is amended as follows –

(a) after paragraph (2) insert –

“(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.”;

(b) in paragraph (3) (exception for employment for purposes of private household), after the words “Article 4”, insert “or discrimination on grounds of race or ethnic or national origins”, and

(c) after paragraph (4) insert –

“(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”; and

(d) in paragraph (5), after the words “an employer” insert “, on grounds other than those of race or ethnic or national origins,”.

**8.** In Article 7 of the Race Relations Order (discrimination by persons with statutory power to select employees for others) –

(1) the existing provision shall be numbered as paragraph (1) of that Article.

(2) After that provision insert –

“(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.”.

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

**9.** After Article 7 of the Race Relations Order insert –

##### **“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.”.

**10.** In Article 8 of the Race Relations Order (exceptions for genuine occupational qualifications), in paragraph (1), after the words “racial discrimination” insert “in cases where Article 7A does not apply”.

#### **Other harassment in employment etc**

**11.**—(1) In the heading to Article 9 of the Race Relations Order (discrimination against contract workers), omit the words “discrimination against”.

(2) That Article is amended as follows: –

- (a) in paragraph (3) –
  - (i) after the words “racial group”, in the first place where they occur, insert “, or not of a particular race or particular ethnic or national origins,”;
  - (ii) after the words “racial group” in the second place where they occur, insert “or of that race or those origins”; and
  - (iii) after the word “qualification” insert “or, as the case may be, that act would be lawful by virtue of Article 7A”; and
- (b) after paragraph (3), insert –
 

“(3A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.”, and
- (c) in paragraph (4) after the word “principal” insert “on grounds other than those of race or ethnic or national origins,”.

#### **Meaning of employment at establishment in Northern Ireland**

**12.**—(1) In Article 10 of the Race Relations Order (meaning of employment at establishment in Northern Ireland), in paragraph (1), for the words “unless the employee” to the end, substitute –

“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.”.

(2) After paragraph (1) of that Article insert –

“(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.”.

## Partnerships

**13.** In Article 12 of the Race Relations Order (partnerships),

(a) after paragraph (1), insert –

“(1A) The limitation of paragraph (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.

(1B) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.”.

(b) in paragraph (2) for the words “paragraph (1)” substitute “paragraphs (1), (1A) and (1B)”;

(c) in paragraph (3), for the words “being of a particular racial group” to the end, substitute “Article 7A or 8 would apply to such employment”; and

(d) at the end insert –

“(5) The reference in paragraph (1)(d)(ii) to the expulsion of a person from a position as partner includes, where the discrimination is on grounds of race or ethnic or national origins, references –

(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

(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.”.

## Other bodies

**14.** In Article 13 of the Race Relations Order (trade unions etc), at the end insert –

“(4) It is unlawful for an organisation to which this Article applies, in relation to a person’s membership or application for membership of that organisation, to subject him to harassment.”.

**15.** In Article 14 of the Race Relations Order (qualifying bodies) –

(a) after paragraph (1), insert –

“(1A) It is unlawful for an authority or body to which paragraph (1) applies, in relation to an authorisation or qualification conferred by it, to subject to harassment a person who holds or applies for such an authorisation or qualification.”; and

(b) for paragraph (3), substitute –

“(3) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment which is rendered unlawful by Article 18 or 19.”.

**16.** In Article 15 of the Race Relations Order (persons concerned with provision of vocational training) after paragraph (2) insert –

“(3) It is unlawful for any person who provides, or makes arrangements for the provision of, facilities for training to which paragraph (1) applies, in relation to such facilities or training, to subject to harassment a person to whom he provides such training or who is seeking to undergo such training.

(4) Paragraph (3) does not apply to harassment which is rendered unlawful by Article 6(2A) or by Article 18 or 19.”.

**17.** In Article 16 of the Race Relations Order (employment agencies) –

(a) after paragraph (1) insert –

“(1A) It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment a person to whom it provides such services or who requests the provision of such services.”; and

(b) in paragraph (2) for the words “paragraph (1)” substitute “paragraphs (1) and (1A)”.

### **Harassment in other fields**

**18.**—(1) In the heading to Article 18 of the Race Relations Order (discrimination by bodies in charge of educational establishments), omit the words “Discrimination by”.

(2) After paragraph (1) insert –

“(1A) It is unlawful for a responsible body, in relation to an establishment falling within column 1 of the table in paragraph (1), to subject to harassment –

- (a) a person who applies for admission to the establishment as a pupil; or
- (b) a pupil at the establishment.”.

**19.**—(1) In the heading to Article 19 of the Race Relations Order (other discrimination by education and library boards) after the word “discrimination” insert “etc.”.

(2) In that Article, after the words “constitutes racial discrimination”, insert “or harassment”.

### **Public authorities**

**20.** After Article 20 of the Race Relations Order insert –

#### **“Public authorities**

**20A.**—(1) It is unlawful for a public authority –

- (a) to discriminate against a person on the grounds of race or ethnic or national origins,  
or
- (b) to subject a person to harassment

in the course of carrying out any functions of the authority which consist of the provision of:

- (i) any form of social security;
- (ii) healthcare;
- (iii) any other form of social protection, or
- (iv) any form of social advantage,

which does not fall within Article 21.

(2) In this Article “public authority”:

- (a) includes any person certain of whose functions are functions of a public nature; but
- (b) does not include any person mentioned in paragraph (3).

(3) The persons mentioned in this paragraph are –

- (a) either House of Parliament;
- (b) a person exercising functions in connection with proceedings in Parliament;
- (c) the Assembly;
- (d) a person exercising functions in connection with proceedings in the Assembly;
- (e) the Security Service;
- (f) the Secret Intelligence Service;
- (g) the Government Communications Headquarters; and
- (h) any unit or part of a unit of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(4) In relation to a particular act, a person is not a public authority by virtue only of paragraph (2)(a) if the nature of the act is private.

(5) This Article is subject to Articles 20B to 20D.

(6) Nothing in this Article makes unlawful any act of discrimination on the grounds of race or ethnic or national origins, or harassment, which –

- (a) is made unlawful by virtue of any other provision of this Order; or
- (b) would be so made but for any provision made by or under this Order.

#### **Exceptions or further exceptions from Article 20A for judicial and legislative acts etc**

**20B.**—(1) Article 20A does not apply to –

- (a) any judicial act, whether done by a court, tribunal or other person; or
- (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Article 20A does not apply to any act of, or relating to, making, confirming or approving any statutory provision.

(3) Article 20A does not apply to any act of, or relating to, making or approving arrangements or imposing requirements or conditions, of a kind excepted by Article 40.

(4) Article 20A does not apply to any act of, or relating to, imposing a requirement, or giving an express authorisation, of a kind mentioned in Article 20C(3) in relation to the carrying out of immigration functions.

(5) In this Article “immigration functions” has the meaning given in Article 20C.

#### **Exception from Article 20A for certain acts in immigration cases**

**20C.**—(1) Article 20A does not make it unlawful for a relevant person to discriminate against another person on grounds of ethnic or national origins in carrying out immigration functions.

(2) For the purposes of paragraph (1), “relevant person” means –

- (a) a Minister of the Crown acting personally; or
- (b) any other person acting in accordance with a relevant authorisation.

(3) In paragraph (2), “relevant authorisation” means a requirement imposed or express authorisation given –

- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
- (b) with respect to a particular class of case by any of the statutory provisions mentioned in paragraph (5).

(4) In paragraph (1), “immigration functions” means functions exercisable by virtue of any of the statutory provisions mentioned in paragraph (5).

(5) Those statutory provisions are –

- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002<sup>(a)</sup> but excluding sections 28A to 28K of the Immigration Act 1971<sup>(b)</sup> so far as they relate to offences under Part III of that Act);
- (b) the Special Immigration Appeals Commission Act 1997<sup>(c)</sup>;
- (c) provision made under section 2(2) of the European Communities Act 1972<sup>(d)</sup> which relates to immigration or asylum; and
- (d) any provision of Community law which relates to immigration or asylum.

#### **Exceptions from Article 20A for decisions not to prosecute etc**

**20D.** Article 20A does not apply to –

- (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;

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(a) 2002 c. 41  
(b) 1971 c. 77  
(c) 1977 c. 68  
(d) 1972 c. 68

- (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and where such a decision has been made:
  - (i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and
  - (ii) any act done for the purpose of securing that the proceedings are not continued.”.

#### **Harassment in provision of goods, facilities or services**

**21.**—(1) In the heading to Article 21 of the Race Relations Order (discrimination in provision of goods, facilities or services), omit the words “Discrimination in”.

(2) After paragraph (1) of that Article insert –

“(1A) It is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in paragraph (1), in relation to such provision, to subject to harassment –

- (a) a person who seeks to obtain or use those goods, facilities or services, or
- (b) a person to whom he provides those goods, facilities or services.”.

**22.**—(1) In the heading to Article 22 of the Race Relations Order (discrimination in disposal or management of premises) omit the words “Discrimination in”.

(2) That Article is amended as follows –

(a) in paragraph (2), after the words “does not apply to”, insert “discrimination, on grounds other than those of race or ethnic or national origins, by”;

(b) after paragraph (3), insert –

“(3A) It is unlawful for a person, in relation to such premises as are referred to in paragraph (1) or (3), to subject to harassment a person who applies for or, as the case may be, occupies such premises.” and

(c) in paragraph (4), for the words “to discriminate against” to the end, substitute

“(a) discriminate against a person by withholding the licence or consent for the disposal of the premises to him, or

(b) in relation to such a licence or consent, to subject to harassment a person who applies for such a licence or consent, or from whom the licence or consent is withheld.”.

**23.** In Article 23 of the Race Relations Order (exception for small dwellings), at the beginning of paragraph (1) insert “In relation to discrimination on grounds other than those of race or ethnic or national origins”.

**24.**—(1) In the heading to Article 24 of the Race Relations Order (further exceptions from Articles 21(1) and 22) for the words “21(1)” substitute “21”.

(2) Paragraph (1) of that Article is amended as follows –

(a) for the words “21(1)” substitute “21”;

(b) in sub-paragraph (a), after the word “discrimination”, insert “or harassment”; and

(c) in sub-paragraph (b), after the words “Articles 6(3) and (5)”, insert “7A(1)(b)”.

**25.**—(1) In the heading to Article 26 of the Race Relations Order (discrimination by, or in relation to, barristers), omit the words “Discrimination by, or in relation to,”.

(2) That Article is amended as follows –

(a) in paragraph (3), after the words “discriminate against any person”, insert “or to subject any person to harassment”; and

(b) after paragraph (3) insert –

“(3A) It is unlawful for a barrister to subject to harassment a person who is, or has applied to be, his pupil.”.



## **Extent of Article 20A**

**26.** After Article 27(1) of the Race Relations Order insert –

“(1A) In its application in relation to granting entry clearance (within the meaning of the Immigration Act 1971) Article 20A applies in relation to acts done outside the United Kingdom, as well as those done within Northern Ireland.”.

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

**27.** In Part IV of the Race Relations Order, before Article 28, insert –

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

**27A.**—(1) In this Article a “relevant relationship” is a relationship during the course of which, by virtue of any provision referred to in Article 3(1B), taken with Article 3(1) or (1A), or (as the case may be) by virtue of Article 4A –

- (a) an act of discrimination by one party to the relationship (“the relevant party”) against another party to the relationship, on grounds of race or ethnic or national origins, or
- (b) harassment of another party to the relationship by the relevant party,

is unlawful.

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

- (a) to discriminate against another party, on grounds of race or ethnic or national origins, by subjecting him to a detriment, or
- (b) to subject another party 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 19th July 2003, reference to such an act which would, after that date, be unlawful.

(4) For the purposes of any proceedings in respect of an unlawful act under paragraph (2) that act shall be treated as falling within circumstances relevant for the purposes of such of the provisions or Parts referred to in paragraph (1) as determine most closely the nature of the relevant relationship.”.

**28.** For Article 28 of the Race Relations Order (discriminatory practices) substitute –

**“28.**—(1) In this Article “discriminatory practice” means –

- (a) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part II or III taken with Article 3(1)(b), or which would be likely to result in such an act of discrimination if the persons to whom it is applied included persons of any particular racial group as regards which there has been no occasion for applying it, or
- (b) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision referred to in Article 3(1B), taken with Article 3(1A), or which would be likely to result in such an act of discrimination, if the person to whom it is applied included persons of any particular race or of any particular ethnic or national origins, as regards which there has been no occasion for applying it.”.

**29.**—(1) In the heading to Article 30 of the Race Relations Order (instructions to discriminate) for the word “discriminate” substitute “commit unlawful acts”.

(2) After the words “Part II or III” in that Article insert “or Article 72ZA”.

**30.**—(1) In the heading to Article 31 of the Race Relations Order (pressure to discriminate) for the word “discriminate” substitute “commit unlawful acts”.

(2) After the words “Part II or III” in that Article insert “or Article 72ZA”.

31. In Article 34 of the Race Relations Order (charities), after paragraph (3), insert –

“(3A) Sub-paragraph (3)(b) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of Article 6, 7 or 9.”.

32. In Article 36(1) of the Race Relations Order (provision of education or training for persons not ordinarily resident in Northern Ireland), after the words “a person” insert “on grounds other than those of race or ethnic or national origins,”.

33. In Article 36A of the Race Relations Order(a) (selection of unemployed persons), after the words “Article 3(1)(b)”, insert “or 3(1A)”.

34. In Article 40 of the Race Relations Order (acts done under statutory authority) –

(a) after paragraph (1) insert –

“(1A) Paragraph (1) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of a provision referred to in Article 3(1B).”; and

(b) in paragraph (2) for sub-paragraphs (a) and (b) substitute –

“(a) in pursuance of any statutory provision; or

(b) in order to comply with any requirement imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department by virtue of any statutory provision; or

(c) in pursuance of any arrangements made by or with the approval of, or for the time being approved by, a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department; or

(d) in order to comply with any condition imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister or deputy First Minister) or government department.”.

35. In Article 42 of the Race Relations Order (establishment and duties of Commission), in paragraph (2)(a), after the word “discrimination”, insert “and harassment”.

36. In Article 45 of the Race Relations Order (codes of practice), in paragraph (1), after the word “discrimination”, in both places where it occurs, insert “and harassment”.

37. In Article 48 of the Race Relations Order (power to obtain information), in paragraph (2)(b)(i), for the words “discriminatory acts” substitute “acts of discrimination or harassment”.

38. In Article 51(1) of the Race Relations Order (restriction on proceedings for breach of Order), after the word “Order” in the first place where it occurs, insert “or the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002”.

#### **Barristers and office holders: Jurisdiction of industrial tribunals**

39. In Article 52(1) of the Race Relations Order (jurisdiction of industrial tribunals) –

(a) omit the words “of discrimination” in both places where they occur, and

(b) after the words “Part II” insert “, Article 72ZA or, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26”.

#### **Burden of proof**

40. After Article 52 of the Race Relations Order insert –

##### **“Burden of proof: industrial tribunals**

**52A.**—(1) This Article applies where a complaint is presented under Article 52 and the complaint is that the respondent –

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(a) Article 36A was inserted by S.I. 1998/3162 (N.I. 21) Article 97

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in Article 3(1B) (a), (e) or (f), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent –

- (a) has committed such an act of discrimination or harassment against the complainant,
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination or harassment against the complainant,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.”.

**41.**—(1) In the heading to Article 54 of the Race Relations Order (claims under Part III) after the words “Part III”, insert “etc”.

(2) In paragraph (1) of that Article –

- (a) omit the words “of discrimination”, in both places where they occur, and
- (b) after the words “Part III” insert “other than, (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26”.

(3) In paragraph (5)(b), before the word “either”, insert “in relation to a claim on grounds of colour or nationality”.

(4) After paragraph (8) insert –

“(9) A county court shall have jurisdiction to entertain proceedings under this Order with respect to an act done outside the United Kingdom where Article 20A applies in relation to such an act by virtue of Article 27(1A).

(10) This Article has effect subject to Article 54A.”.

**42.** After Article 54 of the Race Relations Order insert –

**“Claims under Article 20A in immigration cases**

**54A.**—(1) No proceedings may be brought by a claimant under Article 54(1) in respect of an immigration claim if –

- (a) the act to which the claim relates was done in the taking by an immigration authority of a relevant decision and the question whether that act was unlawful by virtue of Article 20A has been or could be raised in proceedings on an appeal which is pending, or could be brought, under the 1997 Act or Part 5 of the 2002 Act; or
- (b) it has been decided in relevant immigration proceedings that that act was not unlawful by virtue of that Article.

(2) For the purposes of this Article an immigration claim is a claim that a person –

- (a) has committed a relevant act of discrimination against the claimant which is unlawful by virtue of Article 20A; or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination against the claimant.

(3) Where it has been decided in relevant immigration proceedings that an act to which an immigration claim relates was unlawful by virtue of Article 20A, any court hearing that claim under Article 54 shall treat that act as an act which is unlawful by virtue of Article 20A for the purposes of the proceedings before it.

(4) No relevant decision of an immigration authority involving an act to which an immigration claim relates and no relevant decision of an immigration appellate body in relation to such a decision shall be subject to challenge or otherwise affected by virtue of a decision of a court hearing the immigration claim under Article 54.

(5) In this Article –

“the Immigration Acts” has the meaning given by section 158 of the 2002 Act;

“immigration appellate body” means an adjudicator appointed for the purposes of Part 5 of the 2002 Act, the Immigration Appeal Tribunal, the Special Immigration Appeals Commission, the Court of Appeal, the Court of Session or the House of Lords;

“immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971(a));

“immigration claim” has the meaning given by paragraph (2);

“pending” has the same meaning as in the 1997 Act or, as the case may be, Part 5 of the 2002 Act;

“relevant act of discrimination” means an act of discrimination on the grounds of race or ethnic or national origins, or harassment done by an immigration authority in taking any relevant decision;

“relevant decision” means –

- (a) in relation to an immigration authority, any decision under the Immigration Acts relating to the entitlement of the claimant to enter or remain in the United Kingdom; and
- (b) in relation to an immigration appellate body, any decision on an appeal under the 1997 Act or Part 5 of the 2002 Act in relation to a decision falling within sub-paragraph (a);

“relevant immigration proceedings” means proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act;

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

and for the purposes of paragraph (1)(a), any power to grant leave to appeal out of time shall be disregarded.”.

**43.** After Article 54A of the Race Relations Order insert –

**“Burden of proof: county court**

**54B.**—(1) This Article applies where a claim is brought under Article 54 and the claim is that the respondent –

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins which is unlawful by virtue of any provision referred to in Article 3(1B)(b) to (d), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this Article, conclude in the absence of an adequate explanation that the respondent –

- (a) has committed such an act of discrimination or harassment against the claimant, or
- (b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination or harassment against the claimant,

the court shall uphold the claim unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed that act.”.

**Non-Discrimination notices**

**44.** In Article 55 of the Race Relations Order (issue of non-discrimination notice), in paragraph (1)(a), for the words “discriminatory act” substitute “act of discrimination or harassment”.

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(a) 1971 c. 77

45. In Article 56 of the Race Relations Order (appeal against non-discrimination notice), in paragraph (1)(b), after the words “the court”, insert “(ignoring Article 54A)”.

#### **Other enforcement by the Equality Commission**

46. In Article 59 of the Race Relations Order (persistent discrimination) –

(a) in paragraph (1)(b), for the words “discriminatory act” substitute “act of discrimination or harassment” and at the end insert “or”; and

(b) after that paragraph insert –

“(c) a finding under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002 that he has done an act which was unlawful by virtue of Article 20A.”.

47. In Article 61 of the Race Relations Order (preliminary action in employment cases), in paragraph (2), for the words “person discriminated against” substitute “the person concerned”.

#### **Period within which respondent must reply**

48. In Article 63 of the Race Relations Order (help for aggrieved persons in obtaining information etc) –

(a) in paragraph (1), after the words “discriminated against”, insert “or subjected to harassment”; and

(b) in paragraph (2)(b), after the words “reasonable period”, insert “or, where the question relates to discrimination on grounds of race or ethnic or national origins, or to harassment, the period of eight weeks beginning with the day on which the question was served on him”.

#### **Assistance by Commission**

49. After Article 64(7) of the Race Relations Order (assistance by Commission) insert –

“(8) This Article (except for paragraph (4)) applies to proceedings or prospective proceedings under the Special Immigration Appeals Commission Act 1997 or Part 5 of the Nationality, Immigration and Asylum Act 2002 so far as they relate to acts which may be unlawful by virtue of Article 20A as it applies to proceedings or prospective proceedings under this Order.

(9) In this Article as it applies by virtue of paragraph (8) “rules and regulations” means –

(a) in relation to proceedings under the Act of 1997, rules under that Act;

(b) in relation to proceedings under Part 5 of the Act of 2002, rules under that Act.”.

#### **Period within which proceedings to be brought**

50.—(1) In Article 65 of the Race Relations Order (period within which proceedings to be brought) –

(a) at the beginning of paragraph (2) insert “subject to paragraph (2A)”; and

(b) after that paragraph insert –

“(2A) In relation to an immigration claim within the meaning of Article 54A, the period of six months mentioned in paragraph (2)(a) begins on the expiry of the period during which, by virtue of Article 54A(1)(a), no proceedings may be brought under Article 54(1) in respect of the claim.”.

#### **Evidence**

51. In Article 66(2) of the Race Relations Order (evidence), after “Order” insert “or any statutory provision mentioned in Article 20C(5)”.

## Validity and revision of contracts

52. In Article 68 of the Race Relations Order (validity and revision of contracts), in paragraph (2), after the words “unlawful discrimination against”, insert “or harassment of,”.

## Collective agreements and rules of undertaking

53. After Article 68 of the Race Relations Order insert –

### “Collective agreements and rules of undertakings

**68A.**—(1) This Article applies to –

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation to which Article 13 (trade organisations) applies, or by a body to which Article 14 (qualifying bodies) applies, for application to –
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this Article applies is void where –

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful on grounds of race or ethnic or national origins, by virtue of a provision referred to in Article 3(1B);
- (b) the term or rule is included or made in furtherance of an act which is unlawful on such grounds by virtue of such a provision; or
- (c) the term or rule provides for the doing of such an act.

(3) Paragraph (2) applies whether the agreement was entered into, or the rule made, before, on or after 19th July 2003; but in the case of an agreement entered into, or a rule made, before that date, that paragraph does not apply in relation to any period before that date.

(4) In this Article, and in Article 68B, “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992<sup>(a)</sup> (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

**68B.**—(1) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of Article 68A if he has reason to believe –

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of Article 68(2)(c), that –
  - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
  - (ii) the act would be rendered unlawful on grounds of race or ethnic or national origins by a provision referred to in Article 3(1B) if done in relation to him in present circumstances.

(2) In the case of a complaint about –

- (a) a term of a collective agreement made by or on behalf of –
  - (i) an employer;
  - (ii) an organisation of employers of which an employer is a member; or

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(a) S.I. 1992/807 (N.I. 5)

(iii) an association of such organisations of one of which an employer is a member;  
or  
(b) a rule made by an employer, within the meaning of Article 68A(1)(b);  
paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(3) In the case of a complaint about a rule made by an organisation or body to which Article 68A(1)(c) applies, paragraph (1) applies to any person –

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, or body;
- (b) on whom the organisation, or body has conferred an authorisation or qualification, or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, or body has power to confer.

(4) When an industrial tribunal finds that a complaint presented to it under paragraph (1) is well-founded the tribunal shall make an order declaring that the term or rule is void.

(5) An order under paragraph (4) may include provision as respects any period before the making of the order (but after 19th July 2003).

(6) The avoidance by virtue of Article 68A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely –

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.”.

#### **Application to Crown etc**

**54.** In Article 71 of the Race Relations Order (application to Crown etc)

(a) after paragraph (2) insert –

“(2A) Paragraphs (1) and (2) do not apply in relation to the provisions mentioned in paragraph (2B).

(2B) Articles 20A to 20D bind the Crown and the other provisions of this Order so far as they relate to those provisions shall be construed accordingly (including, in particular, references to employment in Part IV).”;

(b) in paragraph (3) for “and (2)” substitute “to (2B)”.

#### **Office-holders**

**55.** In Article 72(1) of the Race Relations Order (government appointments outside Article 6), after the words “Article 6” insert “or 72ZA”.

**56.** After Article 72 of the Race Relations Order insert –

##### **“Other office holders**

**72ZA.**—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this Article applies, to discriminate against a person on the grounds of race or ethnic or national origins –

- (a) in the arrangements which he makes for the purpose 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 Article 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 on the grounds of race or ethnic or national origins –

- (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 Article applies, to discriminate against him on grounds of race or ethnic or national origins –

- (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 Article 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 Article 7A (exception for genuine occupational requirement); 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 Article 7A 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 Article 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 (including the First Minister and deputy First Minister) or a government department,



but not a political office or a case where Article 6 (applicants and employees), 9 (contract workers), 12 (partnerships) or 26 (barristers) applies, or would apply but for the operation of any other provision of this Order.

- (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 Article –
- (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(a), 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 council within the meaning of section 1(3) of the Local Government Act (Northern Ireland) 1972(b) 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.”.

### Consequential amendments

**57.** In Article 13A of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990(c) (protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets), in paragraph (1) –

- (a) for the words “requirement or condition” wherever occurring substitute “provision, criterion or practice”;
- (b) after the words “Article 3(1)(b)” insert “or Article 3(1A)”; and
- (c) after the words “Article 3(1)(b)(ii) of” insert “, or to be a proportionate means of achieving a legitimate aim as mentioned in Article 3(1A)(c) of,”.

**58.** In Article 11(5) of the Industrial Tribunals (Northern Ireland) Order 1996(d) (pre-hearing reviews and preliminary matters), in paragraph (5), after the word “discrimination” insert “or harassment”.

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(a) 1958 c. 21

(b) 1972 c. 9 (N.I.)

(c) S.I. 1990/246 (N.I. 2); Article 13A was inserted by paragraph 5 of Schedule 2 to S.I. 1997/869 (N.I. 6)

(d) S.I. 1996/1921 (N.I. 18)

**59.** In Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(a)</sup> (procedure for matters within jurisdiction of industrial tribunals), in paragraph (1)(a)(iv) –

(a) omit the words “of discrimination”; and

(b) after the words “Part II” insert “, Article 72ZA or (in relation to discrimination on grounds of race or ethnic or national origins, or harassment), Article 26”.

**60.** In section 84 of the Nationality, Immigration and Asylum Act 2002 (grounds of appeal against an immigration decision), in subsection (1)(b) after “1976” insert “or Article 20A of the Race Relations (Northern Ireland) Order 1997”.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 18th July 2003.

(L.S.)

*P. McAuley*

A senior officer of the Office of the First Minister and deputy First Minister

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<sup>(a)</sup> S.I. 1998/3162 (N.I. 21)

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations, which are made under section 2(2)(a) and (b) of the European Communities Act 1972, implement Council Directive 2000/43 EC of 29 June 2000 (“the Directive”) and include provision for matters arising out of or relating to such implementation. The Directive is concerned with the principle of equal treatment between persons, irrespective of racial or ethnic origins, in the areas of employment (and related matters), social protection, social advantage, education and access to and supply of, goods and services which are available to the public, including housing.

The Directive necessitates amendment of the Race Relations (Northern Ireland) Order 1997 (“the Order”), in particular to reflect the provisions of the Directive which deal with the definition of indirect discrimination, harassment, genuine and determining occupational requirements, the burden of proof in proceedings and abolition of statutory provisions which are contrary to the principle of equal treatment.

Regulation 4 sets out a new definition of indirect discrimination on grounds of race or ethnic or national origins, in those areas with which the Directive is concerned.

Regulation 5 sets out a new definition of harassment, on the grounds of a person’s race or ethnic or national origins, which will apply in the areas with which the Directive is concerned.

Regulation 6 amends Article 5 of the Order to provide that the amendments made by these Regulations apply to the Irish Traveller community as defined in the Order.

Regulation 7 makes it unlawful for an employer to subject to harassment an employee or an applicant for employment, and removes, partially, the exceptions (from the discrimination in employment provisions) for employment in a private household or for training in skills to be exercised outside Northern Ireland.

Regulation 8 makes it unlawful for a person with statutory power to select employees for others to subject to harassment a person whom he is selecting or nominating.

Regulations 9 and 10 provide for a new exception (from the discrimination in employment provisions) where being of a particular race or of particular ethnic or national origins is a genuine and determining requirement for the employment in question.

Regulation 11 makes it unlawful for a principal to subject a contract worker to harassment and removes, partially, the exception (from the contract workers provisions) for work to provide training in skills to be exercised outside Northern Ireland.

Regulation 12 contains an expanded definition of “work at an establishment in Northern Ireland”.

Regulation 13 removes the lower limit on the size of partnerships which can discriminate unlawfully on grounds of race or ethnic or national origins and makes it unlawful for partnerships to subject to harassment partners or applicants for partnership.

Regulations 14 to 17 make it unlawful for bodies such as trade organisations, qualifying bodies, providers of vocational training and employment agencies to subject persons to harassment.

Regulations 18 and 19 make it unlawful for bodies concerned with education or vocational training or guidance to subject persons to harassment.

Regulation 20 makes it unlawful for public authorities concerned with the provision of health, welfare or other services to discriminate on grounds of race or ethnic or national origins or to subject persons to harassment. The Regulation provides for certain exemptions from the definition of “public authority”, namely the Northern Ireland Assembly and proceedings in that Assembly, and the intelligence agencies. The Regulation also provides an exemption for judicial and legislative acts, for acts in relation to the carrying out of immigration functions and for decisions not to institute criminal proceedings or, where such proceedings have been instituted, for decisions to terminate or not to continue the proceedings.

Regulations 21 to 23 make it unlawful for persons concerned with the provision of goods, facilities or services, or accommodation, to subject persons to harassment.

Regulation 24 makes consequential amendments.

Regulation 25 makes it unlawful for barristers to subject to harassment a person who is, or has applied to be, his pupil.

Regulation 26 extends the application of Article 20A so that it applies to the grant or refusal of entry clearance outside the United Kingdom.

Regulation 27 provides that, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject to a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 28 makes consequential amendments to the provisions dealing with discriminatory practices.

Regulation 29 extends to office holders the application of Article 30 of the Order dealing with instructions to discriminate or harass.

Regulation 30 extends to office holders the application of Article 31 of the Order which makes it unlawful to induce someone to commit an unlawful act of discrimination or harassment.

Regulation 31 removes the exception for charities to discriminate in employment.

Regulation 32 removes, partially, the exception for education or training of persons who are not going to stay in Northern Ireland.

Regulation 33 makes a consequential amendment.

Regulation 34 removes, partially, the exception for acts which are done under statutory authority.

Regulation 35 makes it the duty of the Equality Commission for Northern Ireland (“the ECNI”) to work towards the elimination of harassment (in addition to its existing duty in respect of discrimination).

Regulation 36 adds harassment to the matters which can be the subject of a code of practice.

Regulation 37 adds harassment to the matters in respect of which the ECNI can require information for the purposes of a formal investigation.

Regulation 38 makes a consequential amendment.

Regulation 39 provides that claims of unlawful discrimination on grounds of race, ethnic or national origins, or harassment, by or against barristers, or in the appointment of certain office holders, are to be heard by industrial tribunals.

Regulation 40 alters the burden of proof in tribunal proceedings relating to discrimination on grounds of race or ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Paragraph (2) of Regulation 41 amends the provisions for bringing complaints in the courts in consequence of certain matters being transferred to industrial tribunals.

Paragraph (3) of Regulation 41 removes the requirement to delay the institution of proceedings in respect of a claim of unlawful discrimination on the grounds of race or ethnic or national origins, or harassment, involving an educational body.

Paragraph (4) of Regulation 41 provides that a county court shall have jurisdiction to entertain proceedings with respect to an act done outside the United Kingdom in relation to granting entry clearance.

Regulation 42 makes provision for claims of unlawful discrimination or harassment which have been the subject of immigration proceedings.

Regulation 43 alters the burden of proof in court proceedings relating to discrimination on grounds of race or ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Regulation 44 adds harassment to the matters which can be the subject of a non-discrimination notice.

Regulation 45 provides for a non-discrimination notice in respect of an immigration decision to be appealed in the county court.

Regulation 46 includes harassment in the provisions dealing with unlawful persistent discrimination. It also provides that a finding of unlawful discrimination by the Immigration Appellate Authority in an immigration case may be the subject of an injunction.

Regulation 47 makes a consequential amendment.

Regulation 48 ensures that, in certain cases, respondents must reply to a claimants preliminary questions within eight weeks of being served with them.

Regulation 49 provides that the ECNI may provide assistance to claimants in certain immigration proceedings.

Regulation 50 makes provision for time limits in respect of complaints in relation to immigration matters.

Regulation 51 makes a consequential amendment.

Regulation 52 extends the provisions of the Order relating to unlawful contracts so as to include harassment.

Regulation 53 applies to collective agreements and rules of undertakings the provisions of the Order relating to unlawful contracts, insofar as the grounds of race or ethnic or national origins are concerned.

Regulation 54 provides that certain provisions of the Order bind the Crown.

Regulation 55 makes a consequential amendment.

Regulation 56 makes it unlawful to discriminate against a person on grounds of race or ethnic or national origins, or to subject him to harassment in making a recommendation, or

giving or refusing an approval or making arrangements for determining who should be recommended or approved, for appointment to certain offices or posts.

Regulations 57 to 60 make consequential amendments.

A copy of the Regulatory Impact Assessment relating to these regulations has been placed in the library of the Northern Ireland Assembly and can be obtained from Anti-Discrimination Division, Office of the First Minister and deputy First Minister, Room E3.06, Castle Buildings, Stormont, Belfast BT4 3SR.

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