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DRAFT STATUTORY INSTRUMENTS

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**1998 No.**

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

**PART III**

**DISCRIMINATION IN THE EMPLOYMENT FIELD**

*Discrimination in the employment field*

**Discrimination against applicants and employees**

**19.**—(1) It is unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland,—

- (a) where that person is seeking employment—
  - (i) in the arrangements the employer makes for the purpose of determining who should be offered employment; or
  - (ii) in the terms on which he offers him employment; or
  - (iii) by refusing or deliberately omitting to offer that person employment for which he applies; or
- (b) where that person is employed by him—
  - (i) in the terms of employment which he affords him; or
  - (ii) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or
  - (iii) by dismissing him or by subjecting him to any other detriment.

(2) Paragraph (1)(b) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits 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 by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

**Discrimination against contract workers**

**20.**—(1) This Article applies to any work for a person (“the principal”) which is available to be done by individuals (“contract workers”)—

- (a) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal; and

(b) who, if they were instead employed by the principal to do that work, would be in his employment in Northern Ireland.

(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 benefits or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

(3) Paragraph (2)(c) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits 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 by the principal to his contract workers.

#### **Discrimination by persons with statutory power to select employees for others**

**21.** 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 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.

#### **Discrimination by employment agencies**

**22.—**(1) It is unlawful for an employment agency to discriminate against a person, in relation to employment in Northern Ireland,—

- (a) in the terms on which the agency offers to provide any of its services; or
- (b) by refusing or deliberately omitting to provide any of its services; or
- (c) in the way it provides any of its services.

(2) References in paragraph (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This Article does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person concerned.

(4) An employment agency shall not be subject to any liability under this Article if it proves—

- (a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful; and
- (b) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Discrimination by vocational organisations**

**23.** It is unlawful for a vocational organisation to discriminate against a person who is employed or is seeking employment in Northern Ireland, or who is engaged or is seeking to become engaged in an occupation in Northern Ireland,—

- (a) where that person is not a member of the organisation—
  - (i) by refusing or deliberately omitting to accept his application for membership; or
  - (ii) in the terms on which it is prepared to admit him to membership; or
- (b) where that person is a member of the organisation—
  - (i) in the way it affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or
  - (ii) by depriving him of membership, or varying the terms on which he is a member; or
  - (iii) by subjecting him to any other detriment.

### **Discrimination by persons providing training services**

**24.**—(1) It is unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, in Northern Ireland to discriminate against another person—

- (a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf—
  - (i) by refusing or deliberately omitting to provide those services; or
  - (ii) in the terms on which the person offers to provide those services; or
- (b) where that other person is receiving those services—
  - (i) in the way the person provides those services; or
  - (ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them; or
  - (iii) by withdrawing those services from him or varying the terms on which they are provided; or
  - (iv) by subjecting him to any other detriment.

(2) In paragraph (1) “services”, in relation to training for employment, means services provided otherwise than by the employer of the person who is seeking to obtain or is receiving the services.

(3) Paragraph (1) does not apply to—

- (a) discrimination which is rendered unlawful by Article 27; or
- (b) discrimination which would be rendered unlawful by Article 27 but for the operation of any other provision of this Order.

### **Discrimination by persons with power to confer qualifications**

**25.**—(1) It is unlawful for a person who has power to confer on another a qualification which is needed for, or facilitates, his engagement in employment in any capacity, or in a particular employment or occupation, in Northern Ireland to discriminate against him—

- (a) by refusing or deliberately omitting to confer that qualification on him on his application; or
  - (b) in the terms on which the person is prepared to confer it; or
  - (c) by withdrawing it from him or varying the terms on which he holds it.
- (2) Paragraph (1) does not apply to discrimination which is rendered unlawful by Article 27.