
DRAFT STATUTORY INSTRUMENTS

1998 No.

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

PART V

OTHER UNLAWFUL ACTS

Discriminatory advertisements

34.—(1) It is unlawful to publish, or cause to be published, an advertisement which indicates, or could reasonably be understood as indicating, an intention by a person to do an act which is unlawful by virtue of any provision of Part III or IV.

(2) Paragraph (1) does not apply if the intended act would be prevented from being unlawful by any provision of this Order.

(3) Paragraph (1) does not apply to the publisher of an advertisement in respect of the publication of the advertisement if the intended act would not be unlawful by virtue of any provision of Part III or IV but for Article 3(2)(b).

(4) The publisher of an advertisement which is unlawful by virtue of paragraph (1) shall not be subject to any liability under that paragraph in respect of the publication of the advertisement if he proves—

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of paragraph (2), the publication would not be unlawful; and
- (b) that it was reasonable for him 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.

Accessories and incitement

35.—(1) Any person who—

- (a) knowingly aids or incites; or
- (b) directs, procures or induces,

another to do an act which is unlawful by virtue of any provision of Part III or IV or Article 34 shall be treated for the purposes of this Order as if he, as well as that other, had done that act.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 36 (or would be so liable but for Article 36(4)) shall be taken to have aided the employer or principal to do the act.

(3) A person does not under this Article knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Order, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3) (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.

(5) An inducement consisting of an offer of benefit or a threat of detriment is not prevented from falling within paragraph (1) because the offer or threat was not made directly to the person in question.

Liability of employers and principals

36.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Order as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Order as done by that other person as well as by him.

(3) Paragraph (2) applies whether the authority was—

- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) In proceedings brought under this Order against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing in the course of his employment acts of the same description.