



# Fair Employment (Northern Ireland) Act 1976 (repealed 1.3.1999)

## 1976 CHAPTER 25

### PART III

#### UNLAWFUL DISCRIMINATION

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

- C1** Pt. III (ss. 16–32) modified (*temp.*) by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), s. 50(2)

#### *General*

#### **16 Meaning of “discrimination” and “unlawful discrimination”.**

- (1) In this Act “discrimination” means—
- (a) discrimination on the ground of religious belief or political opinion; or
  - (b) discrimination by way of victimisation;
- and “discriminate” shall be construed accordingly.

- [<sup>F1</sup>(2) A person discriminates against another person on the grounds of religious belief or political opinion in any circumstances relevant for the purposes of this Act if—
- (a) on either of those grounds he treats that other less favourably than he treats or would treat other persons, or
  - (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—
    - (i) which is such that the proportion of persons of the same religious belief or of the same political opinion as that other who can comply with it is considerably smaller than the proportion of persons not

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- of that religious belief or, as the case requires, not of that political opinion who can comply with it, and
- (ii) which he cannot show to be justifiable irrespective of the religious belief or political opinion of the person to whom it is applied, and
- (iii) which is to the detriment of the other because he cannot comply with it.]
- (3) For the purposes of this Act a person discriminates against another person (“the person victimised”) by way of victimisation if he treats that other person less favourably in any circumstances than he treats or would treat any other person in those circumstances, and does so by reason that the person victimised has—
- (a) made a complaint against him or any other person under this Act of unlawful discrimination, or
  - (b) given evidence or information in connection with any such complaint or any investigation, legal proceedings or appeal under [<sup>F2</sup>the Fair Employment (Northern Ireland) Acts], or
  - (c) alleged that he or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of [<sup>F3</sup>those Acts], or
  - (d) otherwise done anything under or by reference to [<sup>F3</sup>those Acts] in relation to him or any other person,
- or by reason that he knows the person victimised intends to do any of these things, or that he suspects the person victimised has done, or intends to do any of them.
- (4) Subsection (3) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.
- [<sup>F4</sup>(4A) A comparison of the cases of persons of different religious belief or political opinion under subsection (2) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.]
- (5) For the purposes of this Act a person commits unlawful discrimination against another if he does an act in relation to that other which is unlawful by virtue of this Part, or if he is treated by virtue of any provision of Part IV as doing such an act.

#### Textual Amendments

- F1** S. 16(2) substituted (1.1.1990 but not so as to apply for the purposes of acts done before 1 January 1990: S.I. 1989/1928, **art. 2(3)**) by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), **ss. 49(1)(2)**, 60(2)
- F2** Words substituted by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), s. 59(1), **Sch. 2 para. 7(a)**
- F3** Words substituted by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), s. 59(1), **Sch. 2 para. 7(b)**
- F4** S. 16(4A) inserted (1.1.1990 but not so as to apply for the purposes of acts done before 1 January 1990: S.I. 1989/1928, **art. 2(3)**) by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), **ss. 49(2)**, 60(2)

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### *Acts of unlawful discrimination*

#### **17 Discrimination by employers.**

It shall be 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) by refusing or deliberately omitting to offer that person employment for which he applies, or
  - (iii) in the terms on which he offers him employment; 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
  - (iv) by subjecting him to any other detriment.

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

**C2** S. 17 excluded (28.7.1998) by 1998 c. 35, s. 1, **Sch. 1 para. 10(b)**; S.I. 1998/1858, **art. 2**

**C3** S. 17 modified by S.R.1991/127, **art. 3**,Sch.

#### **18 Discrimination against contract workers.**

(1) This section 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 shall be unlawful for the principal, in relation to work to which this section 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.

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

**C4** S. 18 modified by S.R.1991/127, **art. 3**,Sch.

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

It shall be unlawful for a person who is empowered by virtue of an enactment 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.

## 20 Discrimination by employment agencies.

- (1) It shall be 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 subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.
- (3) This section 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 section 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 subsection (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 subsection (4)(a) which in a material respect is false or misleading shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding [<sup>F5</sup>level 5 on the standard scale].

### Textual Amendments

**F5** Words substituted by virtue of S.I. 1984/703 (N.I. 3), arts. 5, 6

## 21 Discrimination by vocational organisations.

It shall be 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—

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- (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.

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

- (1) It shall be 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 subsection (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.

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

It shall be 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.

### *Complaints of unlawful discrimination*

#### **[<sup>F6</sup>24 Jurisdiction of the Fair Employment Tribunal.**

- (1) A complaint by any person (“the complainant”) that another person (“the respondent”) has committed unlawful discrimination against him may be presented to the Tribunal.
- (2) Subject to subsection (3), the Tribunal shall not consider a complaint unless it is brought before whichever is the earlier of—

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- (a) the end of the period of three months beginning with the day on which the complainant first had knowledge, or might reasonably be expected first to have had knowledge, of the act complained of, or
- (b) the end of the period of six months beginning with the day on which the act was done.

[ For the purposes of subsection (2)—

- <sup>F7</sup>(2A)
- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract, and
  - (b) any act extending over a period shall be treated as done at the end of that period, and
  - (c) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.]
- (3) The Tribunal may consider a complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) The Tribunal shall not consider a complaint relating to an act which is unlawful by virtue of section 23 if the act is one in respect of which an appeal, or proceedings in the nature of an appeal, may be brought to a court under any enactment.]

#### Textual Amendments

- F6** Ss. 24–29 substituted for ss. 24–31 by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), s. 50(1)(2)
- F7** S. 24(2A) inserted (25.8.1991) by 1991/1713 art.5.

#### [<sup>F8</sup>25 Conciliation.

- (1) Where a complaint is presented to the Tribunal under section 24, the Tribunal shall send a copy of the complaint to the Labour Relations Agency and it shall be the duty of the Agency—
- (a) in any case where it is requested to do so by both the complainant and the respondent, or
  - (b) in any other case where it considers that it could act under this subsection with a reasonable prospect of success,
- to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.
- (2) Where, before a complaint such as is mentioned in subsection (1) has been presented to the Tribunal, a request is made to the Labour Relations Agency to make its services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, subsection (1) applies as if the complaint had been so presented and a copy of it had been sent to the Agency.
- (3) In proceeding under subsection (1) or (2), the Labour Relations Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

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- (4) Anything communicated to the Labour Relations Agency in connection with the performance of its functions under this section shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.]

**Textual Amendments**

- F8** Ss. 24–29 substituted for ss. 24–31 by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), s. 50(1)(2)

**[<sup>F9</sup>26 Remedies on complaints under section 24.**

- (1) Where the Tribunal finds that a complaint presented to it under section 24 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—
- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates,
  - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered to pay by the High Court if the complaint had been a claim in tort, and
  - (c) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any unlawful discrimination to which the complaint relates.
- (2) As respects an act of unlawful discrimination falling within section 16(2)(b) no award of compensation shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of his religious belief or political opinion as the case may be.
- (3) Compensation awarded to a person under subsection (1)(b) may include compensation for injury to feelings whether or not it includes compensation under any other head.
- <sup>F10</sup>(4) . . . . .
- (5) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under subsection (1)(c), then, if it considers it just and equitable to do so—
- (a) the Tribunal may <sup>F11</sup>. . . increase the amount of any compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b), or
  - (b) if an order under subsection (1)(b) could have been made but was not, the Tribunal may make such an order.
- (6) Where compensation falls to be awarded in respect of any act both under the provisions of this section and under any other enactment, the Tribunal shall not award compensation under this section in respect of any loss or other matter which has been taken into account under that other enactment by a court or tribunal in awarding compensation in an action in respect of that act.

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[ The Department may by order made with the approval of the Department of Finance <sup>F12</sup>(6A) make provision—

- (a) for enabling the Tribunal, where an amount of compensation falls to be awarded under subsection (1)(b), to include in the award interest on that amount; and
- (b) specifying, for cases where the Tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined,

and the order may contain such incidental and supplementary provisions as the Department considers appropriate.]

[ The power to make an order under subsection (6A) includes power to vary or revoke (6B) the order.]

(7) Paragraphs (3) to (6) of Article 61 of the <sup>M1</sup>Industrial Relations (Northern Ireland) Order 1976 (which enables the Department to provide by order that sums payable in pursuance of decisions of industrial tribunals shall carry interest) shall apply with the necessary modifications in relation to an award of compensation under subsection (1) (b) as they apply in relation to a sum payable in pursuance of a decision of an industrial tribunal.

(8) The <sup>M2</sup>Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to an award of compensation under subsection (1) (b) as it applies to a sum due under a money judgment (within the meaning of that Order).

<sup>F13</sup>(9) .....

<sup>F13</sup>(10) .....

(11) A statutory rule containing an order under subsection [<sup>F14</sup>(6A)] shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of "subject to negative resolution") shall apply as if the power to make the order were conferred by a Measure of the Northern Ireland Assembly.

<sup>F13</sup>(12) .....]

**Textual Amendments**

- F9** Ss. 24–29 substituted for ss. 24–31 by Fair Employment (Northern Ireland) Act 1989 (c. 32, SIF 43:1), s. 50(1)(2)
- F10** S. 26(4) repealed (16.5.1995) by S.I. 1995/758 (N.I. 4), art. 3(1)
- F11** Words in s. 26(5)(a) repealed (16.5.1995) by S.I. 1995/758 (N.I. 4), art. 3(2)(a)
- F12** S. 26(6A)(6B) inserted (16.5.1995) by S.I. 1995/758 (N.I. 4), art. 4(1)
- F13** S. 26(9)(10)(12) repealed (16.5.1995) by S.I. 1995/758 (N.I. 4), art. 3(2)(b)
- F14** Words in s. 26(11) substituted (16.5.1995) by S.I. 1995/758 (N.I. 4), art. 4(2)

**Marginal Citations**

- M1** S.I. 1976/1043 (N.I. 16).
- M2** S.I. 1981/226 (N.I. 6).



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### [<sup>F15</sup>27 **Appeal to Court of Appeal.**

- (1) If any party to a complaint under section 24 is dissatisfied in point of law with a decision of the Tribunal, he may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.
- (2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.]

#### **Textual Amendments**

**F15** Ss. 24–29 substituted for ss. 24–31 by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), [s. 50\(1\)\(2\)](#)

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

**C5** [S. 27](#) extended (17.7.1995) by [S.R. 1995/240](#), [art. 14](#)

### *Help for persons suffering discrimination*

### [<sup>F16</sup>28 **Help for aggrieved persons in obtaining information etc.**

- (1) With a view to helping a person (“the person aggrieved”) who considers that another person may have unlawfully discriminated against him to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Department shall by regulations prescribe—
  - (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant, and
  - (b) forms by which the respondent may if he so wishes reply to any questions.
- (2) Where the person aggrieved questions the respondent (whether in accordance with regulations under subsection (1) or not)—
  - (a) the question, and any reply by the respondent (whether in accordance with the regulations or not) shall, subject to the following provisions of this section, be admissible as evidence in the proceedings, and
  - (b) if it appears to the Tribunal that the respondent deliberately and without reasonable cause omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) The Department may by regulations—
  - (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (2)(a), and
  - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (4) A statutory rule containing regulations under this section shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) <sup>M3</sup>1954

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(meaning of "subject to negative resolution") shall apply as if the power to make the regulations were conferred by a Measure of the Northern Ireland Assembly.

(5) In this section "respondent" includes a prospective respondent.]

**Textual Amendments**

**F16** Ss. 24–29 substituted for ss. 24–31 by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), s. 50(1)(2)

**Marginal Citations**

**M3** 1954 c.33 (N.I.).

**[<sup>F17</sup>29 Advice and assistance by Commission.**

- (1) Where a prospective complainant requests the Commission in writing for advice in relation to prospective proceedings under this Part, the Commission shall give him such advice unless it considers that the request is frivolous.
- (2) Where, in relation to proceedings or prospective proceedings under this Part, an individual who is an actual or prospective complainant applies to the Commission for assistance under this subsection, the Commission shall consider the application and may grant it if it thinks fit to do so on the ground that—
  - (a) the case raises a question of principle, or
  - (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent, or another person involved, or to any other matter to expect the applicant to deal with the case unaided, or by reason of any other special consideration.
- (3) Assistance given by the Commission under subsection (2) may include—
  - (a) giving advice to an actual complainant,
  - (b) procuring or attempting to procure the settlement of any matter in dispute,
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel,
  - (d) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, and
  - (e) any other form of assistance which the Commission may consider appropriate.]

**Textual Amendments**

**F17** Ss. 24–29 substituted for ss. 24–31 by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), s. 50(1)(2)

**32 Power of court to revise contracts.**

- (1) Where a term is included in or omitted from a contract in contravention of any provision of this Part or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part

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of it is unenforceable by reason only of the contravention; [<sup>F18</sup>but this subsection has effect subject to subsection (1A)]

[<sup>F19</sup>(1A) Where a complaint has been presented to the Tribunal under section 24, the complainant or respondent may apply to the High Court to revise the contract or any of its terms.]

- (2) On such an application the court may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of this Part.
- (3) Where the court makes an order under this section, every party to the contract, whether or not a party in the action, shall be bound by the order; but the court shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.

#### Textual Amendments

**F18** Words substituted (1.1.1990 but not so as to apply for the purposes of any complaint or act to which s. 50(2) of the Fair Employment (Northern Ireland) Act 1989 applies: [S.I. 1989/1928](#), [art. 2\(4\)](#) ) by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), [ss. 50\(2\)](#), 51(1), 60(2)

**F19** [S. 32\(1A\)](#) inserted (1.1.1990 but not so as to apply for the purposes of any complaint or act to which s. 50(2) of the Fair Employment (Northern Ireland) Act 1989 applies: [S.I. 1989/1928](#), [art. 2\(4\)](#) ) by [Fair Employment \(Northern Ireland\) Act 1989 \(c. 32, SIF 43:1\)](#), [ss. 50\(2\)](#), 51(2), 60(2)

#### [<sup>F20</sup>32A Restrictions on contracting out.

- (1) Except as provided by subsection (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
  - (a) to exclude or limit the operation of any provision of this Part; or
  - (b) to preclude any person from presenting a complaint to the Tribunal under section 24.
- (2) Subsection (1) shall not apply to any agreement to refrain from instituting or continuing any proceedings before the Tribunal where the Labour Relations Agency has taken action in accordance with section 25(1) or (2).]

#### Textual Amendments

**F20** [S. 32A](#) inserted (1.7.1992) by [S.I. 1992/807 \(N.I. 5\)](#), [art. 106\(1\)](#); [S.R. 1992/212](#), [art.2\(4\)](#).

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

**C6** [S. 32A](#) extended (1.7.1992) by [S.I. 1992/807 \(N.I. 5\)](#), [art. 106\(2\)](#); [S.R. 1992/212](#), [art.2\(4\)](#).

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**Changes to legislation:**

There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1976 (repealed 1.3.1999), Part III.