



# Northern Ireland Constitution Act 1973

## 1973 CHAPTER 36

### PART III

#### PREVENTION OF RELIGIOUS AND POLITICAL DISCRIMINATION

#### **17 Discrimination in legislation**

- (1) Any Measure, any Act of the Parliament of Northern Ireland and any relevant subordinate instrument shall, to the extent that it discriminates against any person or class of persons on the ground of religious belief or political opinion, be void.
- (2) In this section "relevant subordinate instrument" means an instrument of a legislative character (including a byelaw) made (whether before or after the coming into force of this section) under any Act of the Parliament of the United Kingdom or the Parliament of Northern Ireland or under any Measure and extending only to Northern Ireland or a part of Northern Ireland.

#### **18 Special procedure for determining validity of legislation**

- (1) If it appears to the Secretary of State to be expedient in the public interest that steps should be taken for the speedy decision of any question whether a provision of a Measure, Act of the Parliament of Northern Ireland or relevant subordinate instrument within the meaning of section 17 above is void by virtue of that section, he may recommend to Her Majesty that the question be referred for decision to the Judicial Committee of the Privy Council.
- (2) If it appears to the Secretary of State that a proposed Measure transmitted to him after being passed by the Assembly contains a provision which, if the Measure were enacted, might be void by virtue of the said section 17 he shall refer it back to the Assembly for further consideration ; and if—
  - (a) it is again transmitted to him with or without modification ; and
  - (b) it still appears to him to contain such a provision as aforesaid,

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he shall recommend to Her Majesty that the question whether that provision would be void by virtue of the said section 17 be referred for decision to the Judicial Committee of the Privy Council.

- (3) For the purposes of their consideration of any question referred to them under this section the Judicial Committee may hear any person who appears to them to be interested in the determination of that question.
- (4) The decision of the Judicial Committee under this section as to the validity of any provision shall be stated in open court and shall be binding in all subsequent legal proceedings.
- (5) Where the Judicial Committee decide that a provision in a proposed Measure would be void the Secretary of State shall not submit the proposed Measure for the approval of Her Majesty in Council; and where they decide that such a provision would not be void their decision shall be taken as applying also to that provision if contained in the Measure when enacted.
- (6) Subsection (6) of section 5 above shall apply where the Secretary of State is precluded by subsection (5) above from submitting a proposed Measure for approval as it applies where he withholds his consent under that section and as if the reference to subsection (5) of that section included a reference to subsections (2) and (5) above.
- (7) This section is without prejudice to any power of Her Majesty to refer to the Judicial Committee any questions other than those mentioned in this section.

## **19 Discrimination by public authorities**

- (1) It shall be unlawful for a Minister of the Crown, a member of the Northern Ireland Executive or other person appointed under section 8 above, the Post Office and any authority or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967, Schedule 1 to the Parliamentary Commissioner Act (Northern Ireland) 1969 or Schedule 1 to the Commissioner for Complaints Act (Northern Ireland) 1969 to discriminate, or aid, induce or incite another to discriminate, in the discharge of functions relating to Northern Ireland against any person or class of persons on the ground of religious belief or political opinion.
- (2) The obligation to comply with subsection (1) above is a duty owed to any person who may be adversely affected by a contravention of that subsection, and any breach of that duty is actionable in Northern Ireland accordingly.
- (3) Without prejudice to the right of any person apart from this subsection to claim an injunction restraining another from continuing or repeating any act which is unlawful by virtue of subsection (1) above, the plaintiff may in an action in respect of an act alleged to be unlawful as aforesaid claim any such injunction as is mentioned below on the grounds—
  - (a) that the act was done by the defendant and was unlawful as aforesaid;
  - (b) that the defendant had previously done such unlawful acts of the same kind as, or of a similar kind to, that act; and
  - (c) that he is likely, unless restrained by order of the court, to do further acts of the same or of a similar kind;

and the court may, if satisfied as to those grounds and whether or not damages are awarded, grant such injunction as appears to the court to be proper in all the

circumstances, being an injunction restraining the defendant from doing, or causing or permitting others to do, further acts of the same or a similar kind.

## **20 The Standing Advisory Commission on Human Rights**

- (1) There shall be constituted a Commission to be known as the Standing Advisory Commission on Human Rights (and hereafter in this section referred to as the Advisory Commission) for the purpose of—
  - (a) advising the Secretary of State on the adequacy and effectiveness of the law for the time being in force in preventing discrimination on the ground of religious belief or political opinion and in providing redress for persons aggrieved by discrimination on either ground;
  - (b) keeping the Secretary of State informed as to the extent to which the persons, authorities and bodies mentioned in section 19(1) above have prevented discrimination on either ground by persons or bodies not prohibited from discriminating by that law.
- (2) The Advisory Commission shall consist of—
  - (a) a chairman appointed by the Secretary of State from among the members of the Advisory Commission;
  - (b) the chairman of the Northern Ireland Community Relations Commission;
  - (c) the Northern Ireland Commissioner for Complaints;
  - (d) the Northern Ireland Parliamentary Commissioner for Administration; and
  - (e) such other members as may be appointed by the Secretary of State;and any member mentioned in paragraphs (b) to (d) above is hereafter in this section referred to as an ex-officio member.
- (3) An ex-officio member of the Advisory Commission shall on ceasing to hold the office by virtue of which he is a member of the Commission cease to be a member of the Commission and, if he is the chairman, to be chairman.
- (4) The members of the Advisory Commission, other than the ex-officio members, shall hold and vacate office in accordance with the terms of their respective appointments and shall, on ceasing to hold office, be eligible for re-appointment, but any such member may at any time by notice addressed to the Secretary of State resign his office.
- (5) The Secretary of State may out of moneys provided by Parliament pay the members of the Advisory Commission, other than the ex-officio members, such remuneration and such allowances as may be determined by the Secretary of State with the consent of the Minister for the Civil Service.
- (6) The Secretary of State shall provide the Advisory Commission with such officers and such accommodation as may be appropriate.
- (7) The Advisory Commission shall make annual reports to the Secretary of State with respect to the exercise of their functions and make copies of those reports available to the Assembly; and the Secretary of State shall lay any such report before each House of Parliament.

## **21 Unlawful oaths, undertakings and declarations**

- (1) Subject to subsections (2) and (3) below, it shall be unlawful for an authority or body to which this section applies to require any person to take an oath, make an undertaking

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in lieu of an oath or make a declaration, as a condition of his being appointed to or acting as a member of that authority or body, or of serving with or being employed under that authority or body.

- (2) Subsection (1) above shall not prevent a person being required to take an oath or make an undertaking or a declaration which is specifically required or authorised to be taken or made—
  - (a) by the law in force immediately before the coming into force of that subsection ; or
  - (b) by or under this Act or by a subsequent Measure for the time being in force ;
 but, except as aforesaid, has effect notwithstanding anything in any enactment, any Measure or any instrument made under an enactment or a Measure.
- (3) Subsection (1) above shall not prevent a person being required to make a declaration of acceptance of office or a declaration that he is qualified to act, serve or be employed, or not disqualified from acting, serving or being employed, in any capacity.
- (4) This section applies to the Assembly and to any authority or body listed in Schedule 1 to the Parliamentary Commissioner Act (Northern Ireland) 1969 or Schedule 1 to the Commissioner for Complaints Act (Northern Ireland) 1969.
- (5) Subsections (1) to (3) above shall apply with the necessary modifications to a member of the Northern Ireland Executive or other person appointed under section 8 above as they apply to any such authority or body.
- (6) Subsections (2) and (3) of section 19 above shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of that section.

## **22 Removal of restrictions on investigation into maladministration**

- (1) The enactments mentioned in subsection (2) below (which preclude a Commissioner appointed under any of the Acts so mentioned from conducting an investigation under the relevant Act when the person aggrieved has or had a remedy by way of proceedings in a court of law) shall not apply to an investigation of a complaint alleging maladministration involving discrimination on the ground of religious belief or political opinion or a requirement in contravention of section 21 above to take an oath or make an undertaking or declaration.
- (2) The said enactments are:—
  - (a) section 5(2)(b) of the Parliamentary Commissioner Act 1967;
  - (b) section 5(2)(b) of the Parliamentary Commissioner Act (Northern Ireland) 1969 ; and
  - (c) section 5(3)(b) of the Commissioner for Complaints Act (Northern Ireland) 1969.

## **23 Interpretation and supplemental**

- (1) For the purposes of this Part of this Act a Measure, an Act of the Parliament of Northern Ireland or any other instrument discriminates against any person or class of persons if it treats that person or that class less favourably in any circumstances than other persons are treated in those circumstances by the law for the time being in force in Northern Ireland.

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- (2) For those purposes a person discriminates against another person or a class of persons if he treats that other person or that class less favourably in any circumstances than he treats or would treat other persons in those circumstances.
- (3) No Measure, Act of the Parliament of Northern Ireland or other instrument and no act done by any person shall be treated for the purposes of this Act as discriminating if the instrument has the effect, or, as the case may be, the act is done for the purpose, of safeguarding national security or protecting public safety or public order.
- (4) A certificate purporting to be signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security shall be conclusive evidence that it was done for that purpose.
- (5) No provision of this Part of this Act shall affect the operation before the coming into force of that provision of any Measure, Act of the Parliament of Northern Ireland or other instrument.
- (6) No provision of this Part of this Act shall render unlawful anything required or authorised to be done by any Act of the Parliament of the United Kingdom, whenever passed.