

Draft Order laid before the Assembly under Schedule 2, paragraph 3 of the European Communities Act 1972 and Article 69(3) of the Race Relations (Northern Ireland) Order 1997 for approval

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2012 No. 0000

RACE RELATIONS

**The Race Relations Order 1997 (Amendment) Order (Northern
Ireland) 2012**

Made - - - -

May 2012

Coming into operation -

May 2012

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(a) (“the Act”) in relation to discrimination(b), makes the following Order in exercise of the powers conferred by section 2(2) of the Act and by Article 69(1)(b) of the Race Relations (Northern Ireland) Order 1997(c) (“the Order”).

In accordance with Article 69(4) of the Order, the Office of the First Minister and deputy First Minister has consulted the Commission about the contents of the draft.

In accordance with Schedule 2, paragraph 3 of the Act and Article 69(3) of the Order, a draft of this Order was laid before, and approved by, a resolution of the Assembly.

Citation, interpretation and commencement

1.—(1) This Order may be cited as the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012.

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to this Order as it applies to an Act of the Assembly.

(3) This Order comes into operation on 2012.

(a) 1972 c.68

(b) See Schedule 2 to the European Communities (Designation) (No.3) Order 2002 (S.I.2002/1819)

(c) 1997 No. 869 (N.I. 6). Article 9 was amended by regulation 11 of the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 (S.R.2003 No.341); Article 10 was amended by regulation 4 of the Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations (Northern Ireland) 2000 (S.R.2000 No.8) and by regulation 12 of S.R.2003 No.341; Article 11 was amended by Article 2 of the Race Relations Order (Seamen recruited Abroad) Order (Northern Ireland) 2003 (S.R.2003 No.318); Article 71 was amended by regulation 54 of S.R.2003 No.318.

(d) 1954 c.33 (N.I.)

Amendments to the Race Relations (Northern Ireland) Order 1997

2. The Race Relations (Northern Ireland) Order 1997 shall be amended in accordance with Articles 3 to 8.

3. In Article 9(6) for “Article 10 applies” substitute “Articles 10 and 11 apply”.

4. In Article 10—

- (a) in paragraph (2) omit sub-paragraph (a) and the words “or hovercraft” in sub-paragraph (b);
- (b) after paragraph (2) insert—

“(2A) Except as provided by Article 11, paragraph (1) does not apply to employment as a seafarer (within the meaning of that Article).”

5. For Article 11 substitute the following—

“Seafarers

11.—(1) If paragraph (2), (3) or (4) applies to a seafarer, this Part applies to the seafarer as if the seafarer were employed at an establishment in Northern Ireland.

(2) This paragraph applies to a seafarer who works wholly or partly within Northern Ireland on—

- (a) a UK ship; or
- (b) a UK hovercraft operated by a person whose principal place of business, or ordinary residence, is in Northern Ireland.

(3) This paragraph applies to a seafarer who works wholly or partly within Northern Ireland if—

- (a) the seafarer is on a ship registered in or entitled to fly the flag of an EEA State other than the United Kingdom, or a hovercraft registered in an EEA State other than the United Kingdom,
- (b) the ship or hovercraft is in United Kingdom waters adjacent to Northern Ireland,
- (c) the seafarer is a British citizen, or a national of an EEA State other than the United Kingdom or of a designated state; and
- (d) the legal relationship of the seafarer’s employment is located within Northern Ireland or retains a sufficiently close link to Northern Ireland.

(4) This paragraph applies to a seafarer who works wholly outside Northern Ireland if—

- (a) the seafarer is on a UK ship registered at a port of registry in Northern Ireland or a UK hovercraft operated by a person whose principal place of business, or ordinary residence, is in Northern Ireland,
- (b) the seafarer is a British citizen, or a national of an EEA State other than the United Kingdom or of a designated state; and
- (c) the legal relationship of the seafarer’s employment is located within Northern Ireland or retains a sufficiently close link to Northern Ireland.

(5) It is not a contravention of Article 6 or 9 for an employer or principal to offer to pay, or to pay, a person (A) at a lower rate than that at which the employer or principal offers to pay or pays another person (B) because A is of a different nationality from B, if—

- (a) A—
 - (i) applied for work as a seafarer, or
 - (ii) was recruited as a seafarer,

outside Northern Ireland, and

- (b) A is not—

- (i) a British citizen,
- (ii) a national of another EEA State, or
- (iii) a national of a designated state.

(6) For the purposes of this Article—

- (a) paying an employee or contract worker includes making provision for a pension, annuity, lump sum, gratuity or other similar benefit which will be paid or given to the employee or contract worker or a member of his family or household in the event of his retirement or death;
- (b) the legal relationship of the seafarer’s employment is located within Northern Ireland if the contract under which the seafarer is employed—
 - (i) was entered into in Northern Ireland; or
 - (ii) takes effect in Northern Ireland;
- (c) whether the legal relationship of the seafarer’s employment retains a sufficiently close link with Northern Ireland is to be determined by reference to all relevant factors including—
 - (i) where the seafarer is subject to tax;
 - (ii) where the employer or principal is incorporated;
 - (iii) where the employer or principal is established;
 - (iv) where the ship or hovercraft on which the seafarer works is registered.

(7) In this Article—

“British citizen” has the same meaning as the British Nationality Act 1981(a);

“designated state” means the countries of the African, Caribbean, and Pacific Group of States, the Kingdom of Morocco, Montenegro, the Most Serene Republic of San Marino, the People’s Democratic Republic of Algeria, the Principality of Andorra, the Republic of Albania, the Republic of Croatia, the Republic of Macedonia, the Republic of Tunisia, the Republic of Turkey, the Russian Federation and the Swiss Confederation;

“seafarer” means a person employed or engaged in any capacity on board a ship or hovercraft;

“UK hovercraft” means a hovercraft registered in the United Kingdom;

“UK ship” means a ship registered in the United Kingdom;

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom.”.

6. In Article 37(9) for “Article 10” substitute “Articles 10 and 11 apply”

7. In Article 69(2) for “Articles 10(5) and 11(3)” substitute “Article 10(5)”.

8. For Article 71(4) substitute—

“(4) Paragraph (2) of Article 10 shall have effect in relation to any aircraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to an aircraft such as is mentioned in that paragraph.

(4A) Article 11 shall have effect in relation to any ship or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to a ship or hovercraft such as is mentioned in that Article.

(4B) Paragraph (4) of Article 27 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the

(a) 1981 c.61

United Kingdom as it has effect in relation to a ship, aircraft or hovercraft such as is mentioned in that paragraph.”.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Race Relations (Northern Ireland) Order 1997 to prescribe the circumstances in which unlawful discrimination in relation to employment under that Order applies to seafarers on ships and hovercraft.

The Order provides that it is not unlawful to differentiate in relation to pay where a person applied for work as a seafarer outside Northern Ireland or was recruited as a seafarer outside Northern Ireland and is not a British citizen or a national of another EEA State or designated state (Article 5).

A Regulatory Impact Assessment of the effect this Order will have on business costs in Northern Ireland has been placed in the library of the Northern Ireland Assembly. Copies may be obtained from the Equality Directorate, Office of the First Minister and deputy First Minister, Room E3.18, Castle Buildings, Stormont Estate, Belfast BT4 3SR.

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