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## STATUTORY INSTRUMENTS

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# 1976 No. 1042

## Sex Discrimination (Northern Ireland) Order 1976

### PART I INTRODUCTORY

#### Title and commencement

**1**<sup>F1</sup>.—(1) This Order may be cited as the Sex Discrimination (Northern Ireland) Order 1976.  
*Para.(2)—Commencement*

**F1** partly exercised SR 1998/231

#### Interpretation

**2.**—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“access” shall be construed in accordance with Article 51;

“act” includes a deliberate omission;

“advertisement” includes every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;

“associated employer” shall be construed in accordance with paragraph (3);

“the Commission” means<sup>F2</sup> the Equality Commission for Northern Ireland];

“Commissioner” means a member of the Commission;

“designate” shall be construed in accordance with paragraph (4);

<sup>F3</sup> references in Parts III and IV to subjecting a person to a detriment do not include subjecting a person to harassment;]

“discrimination” and related terms shall be construed in accordance with paragraph (7);

“dispose”, in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

“education” includes any form of training or instruction;

“Education and Library Board” has the same meaning as in the Education and Libraries (Northern Ireland) Order<sup>F4</sup> 1986];

**Status:** Point in time view as at 07/10/2013.

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“employment” means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

“employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

“enactment” includes an enactment contained in an Act of Parliament or in an Act of the Parliament of Northern Ireland or a Measure or an Order in Council having the same effect as such an Act or a Measure;

“equality clause” has the meaning given in section 1(2) of the Equal Pay Act;

“the Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970 ;

“estate agent” means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;

[<sup>F5</sup>“excluded matter” shall be construed in accordance with paragraph (8);]

“final” shall be construed in accordance with paragraph (5);

“firm” has the meaning given by section 4 of the Partnership Act 1890 ;

“formal investigation” means an investigation under Article 57;

“further education” includes such education within the meaning of [<sup>F6</sup> Article 3 of the Further Education (Northern Ireland) Order 1997];

[<sup>F7</sup>“gender reassignment” means a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process;]

“general notice”, in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

“genuine occupational qualification” shall be construed in accordance with Article 10(2)[<sup>F7</sup>, except in the expression “supplementary genuine occupational qualification”, which shall be construed in accordance with Article 10B(2);]

“government department” includes a department of the Government of the United Kingdom;

“grant-aided” in relation to an educational establishment has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order [<sup>F4</sup> 1986];

[<sup>F3</sup> references to subjecting a person to harassment, and to acts of harassment, shall be construed in accordance with Article 6A;]

“independent school” has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order [<sup>F4</sup> 1986];

*Definition rep. 1984 NI 9*

*Definition rep. 1998 c. 47*

“man” includes a male of any age;

“near relative” shall be construed in accordance with paragraph (6);

“non-discrimination notice” means a notice under Article 67;

“Northern Ireland” includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

“notice” means a notice in writing;

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“prescribed”, except in relation to anything required or permitted to be prescribed by order or county court rules, means prescribed by regulations made by the Department of Manpower Services;

“profession” includes any vocation or occupation;

“proprietor”, in relation to any school, has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order<sup>[F4]</sup> 1986;

<sup>[F8]</sup>“provision, criterion or practice” includes requirement or condition;]

“retirement” includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

“school” has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order<sup>[F4]</sup> 1986;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 ;

“trade” includes any business;

“training” includes any form of education or instruction;

“upper limit of compulsory school age” means, subject to paragraph (2) of<sup>[F4]</sup> Article 46] of the Education and Libraries (Northern Ireland) Order<sup>[F4]</sup> 1986], the age that is that limit by virtue of paragraph (1) of that Article;

<sup>[F3]</sup>“vocational training”

(a) means all types, and all levels of—

- (i) vocational training, advanced vocational training and retraining, and
- (ii) vocational guidance, and

(b) includes practical work experience undertaken for a limited period for the purposes of a person's vocational training (as defined by sub-paragraph(a));]

“woman” includes a female of any age.

<sup>[F9]</sup>(2A <sup>F10</sup> In this Order references to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references—

- (a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms; and
- (b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer or, as the case may be, the conduct of the other partners.]

(3) For the purposes of this Order two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

(4) Any power conferred by this Order to designate establishments or persons may be exercised either by naming them or by identifying them by reference to a class or other description.

(5) For the purposes of this Order a non-discrimination notice or a finding by a court or tribunal becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against a non-discrimination notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under Article 68(3).

**Status:** Point in time view as at 07/10/2013.

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(6) For the purposes of this Order a person is a near relative of another if that person is the wife or husband<sup>[F11]</sup> or civil partner], a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half-blood or<sup>[F11]</sup> by marriage or civil partnership)], and “child” includes an illegitimate child and the wife or husband<sup>[F11]</sup> or civil partner] of a child.

(7) In this Order—

(a) references to discrimination refer to any discrimination falling within Articles 3 to 6; and

(b) references to sex discrimination refer to any discrimination falling within<sup>[F3]</sup> Article 3,4 <sup>[F12]</sup>, 5A or 5B]],

and related expressions shall be construed accordingly.

<sup>[F13]</sup>(8) In this Order, references to an excluded matter must be construed in accordance with Article 36ZA.]

- F2** 1998 c. 47  
**F3** SR 2005/426  
**F4** 1986 NI 3  
**F5** Art. 2(2): definition of "excluded matter" inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008](#) (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 9(2)(a)**  
**F6** 1997 NI 15  
**F7** SR 1999/311  
**F8** SR 2001/282  
**F9** 1988 NI 13  
**F10** mod. SR 1991/127  
**F11** 2004 c.33  
**F12** Words in art. 2(7)(b) substituted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008](#) (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 3(2)**  
**F13** Art. 2(8) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008](#) (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 9(2)(b)**

## PART II

### DISCRIMINATION TO WHICH ORDER APPLIES

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

- C1** Pt. 2 applied (7.10.2013) by [Crime and Courts Act 2013](#) (c. 22), s. 61(2), [Sch. 4 para. 4\(1\)\(2\)\(a\)](#); S.I. 2013/1682, art. 3(k)

#### <sup>[F14]</sup>Direct and indirect discrimination against women

**3.—**(1) In any circumstances relevant for the purposes of any provision of this Order, other than a provision to which paragraph (2) applies, a person discriminates against a woman if—

- (a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or  
 (b) he applies to her a requirement or condition which he applies or would apply equally to a man but—

- (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it,

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment because she cannot comply with it.

(2) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if—

(a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or

[ he applies to her a provision criterion or practice which he applies or would apply equally  
F15(b) to a man, but—

(i) which puts or would put women at a particular disadvantage when compared with men,

(ii) which puts [F16, or would put,] her at that disadvantage, and

(iii) which he cannot show to be a proportionate means of achieving a legitimate aim.]

(3) Paragraph (2) applies to—

(a) any provision of Part III, F17 . . .

[ Articles 30 to 32, except in so far as they relate to an excluded matter, and]  
F18(aa)

(b) any provision of Part IV, so far as it applies to vocational training.

Para. (4) rep. by 2004 c. 33]

F14 SR 2001/282

F15 SR 2005/426

F16 Words in art. 3(2)(b)(ii) inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 3**

F17 Word in art. 3(3)(a) omitted (6.4.2008) by virtue of [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 1(a)**

F18 Art. 3(3)(aa) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 1(b)**

### Sex discrimination against men

4.—(1) Article 3 and the provisions of Parts III and IV relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

(2) In the application of paragraph (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

### [F19] Discrimination on the grounds of gender reassignment

4A.—(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of—

(a) any provision of Part III; F20 . . .

[ Article 30, 31 or 32, except in so far as it relates to an excluded matter, or]  
F21(aa)

(b) any provision of Part IV, so far as it applies to vocational training, if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.

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(2) Paragraph (3) applies to arrangements made by any person in relation to another's absence from work or from vocational training.

(3) For the purposes of paragraph (1), B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment—

- (a) he is treated less favourably than he would be if the absence was due to sickness or injury; or
- (b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.

(4) In paragraphs (2) and (3) "arrangements" includes terms, conditions or arrangements on which employment or vocational training is offered.

(5) For the purposes of paragraph (1), a provision mentioned in that paragraph framed with reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite.]

**F19** SR 1999/311

**F20** Word in art. 4A(1)(a) omitted (6.4.2008) by virtue of [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 2(a)**

**F21** Art. 4A(1)(aa) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 2(b)**

## [<sup>F22</sup>Discrimination against married persons and civil partners in employment field

5.—(1) In any circumstances relevant for the purposes of any provision of Part 3, a person discriminates against a person ("A") who fulfils the condition in paragraph (2) if—

- (a) on the ground of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition, or
- (b) he applies to A a provision, criterion or practice which he applies or would apply equally to a person who does not fulfil the condition, but—
  - (i) which puts or would put persons fulfilling the condition at a particular disadvantage when compared with persons not fulfilling the condition, and
  - (ii) which puts [<sup>F23</sup>, or would put,] A at that disadvantage, and
  - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.

(2) The condition is that the person is—

- (a) married, or
- (b) a civil partner.

(3) For the purposes of paragraph (1), a provision of Part 3 framed with reference to discrimination against women is to be treated as applying equally to the treatment of men, and for that purpose has effect with such modifications as are requisite.]

**F22** 2004 c.33

**F23** Words in art. 5(1)(b)(ii) inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 4**

[<sup>F24</sup>**Discrimination on the ground of pregnancy or maternity leave**

**5A.**—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if—

- (a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably <sup>F25</sup> . . . ; or
- (b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, the person treats her less favourably <sup>F26</sup> . . . .

(2) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if, on the ground that Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave) has to be complied with in respect of the woman, he treats her less favourably <sup>F27</sup> . . . .

(3) For the purposes of paragraph (1)—

- (a) in relation to a woman a protected period begins each time she becomes pregnant, and the protected period associated with any particular pregnancy of hers ends in accordance with the following rules—
  - (i) if she is entitled to ordinary but not additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of ordinary maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;
  - (ii) if she is entitled to ordinary and additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of additional maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;
  - (iii) if she is not entitled to ordinary maternity leave in respect of the pregnancy, the protected period ends at the end of the 2 weeks beginning with the end of the pregnancy;
- (b) where a person's treatment of a woman is on grounds of illness suffered by the woman as a consequence of a pregnancy of hers, that treatment is to be taken to be on the ground of the pregnancy;
- (c) a “statutory right to maternity leave” means a right conferred by Article 103(1) or 105(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary and additional maternity leave).

(4) In paragraph 3 “ordinary maternity leave” and “additional maternity leave” shall be construed in accordance with Articles 103 and 105 of the Employment Rights (Northern Ireland) Order 1996.

(5) Paragraphs (1) and (2) apply to—

- (a) any provision of Part III, and
- (b) any provision of Part IV, so far as it applies to vocational training.]

**F24** SR 2005/426

**F25** Words in art. 5A(1)(a) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(2\)](#)

**F26** Words in art. 5A(1)(b) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(3\)](#)

**F27** Words in art. 5A(2) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(4\)](#)

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## **[<sup>F28</sup>Discrimination on the ground of pregnancy or maternity: goods, facilities, services or premises**

**5B.**—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if he treats her less favourably—

- (a) on the ground of her pregnancy, or
  - (b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.
- (2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—
- (a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or
  - (b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.
- (3) Paragraph (2) does not apply if—
- (a) it is reasonable for P to think as mentioned in paragraph (2)(a) or (b), and
  - (b) P applies an equivalent policy.
- (4) An equivalent policy is—
- (a) for the purposes of paragraph (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;
  - (b) for the purposes of paragraph (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.
- (5) Paragraph (1) applies to Articles 30 to 32, except in so far as they relate to an excluded matter.]

**F28** Art. 5B inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), [Sch. 2 para. 3\(1\)](#)

## **Discrimination by way of victimisation**

**6.**—(1) A person (“the discriminator”) discriminates against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Order if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has—

- (a) brought proceedings against the discriminator or any other person under this Order or the Equal Pay Act<sup>F29</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995], or
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Order or the Equal Pay Act<sup>F29</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995], or
- (c) otherwise done anything under or by reference to this Order or the Equal Pay Act<sup>F29</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995] in relation to the discriminator or any other person, or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Order or give rise to a claim under the Equal Pay Act<sup>F29</sup> or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995],

or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done, or intends to do, any of them.

(2) Paragraph (1) 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.

(3) For the purposes of paragraph (1), a provision of Part III or IV framed with reference to discrimination against women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are requisite.

**F29** 1995 NI 22

### **[<sup>F30</sup>Harassment, including sexual harassment**

**6A.**—(1) For the purposes of this Order, a person subjects a woman to harassment if—

- (a) [<sup>F31</sup>he engages in unwanted conduct that is related to her sex or that of another person and] has the purpose or effect—
  - (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,
- (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect—
  - (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
- (c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

(2) Conduct shall be regarded as having the effect mentioned in paragraph (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.

(3) For the purposes of this Order, a person (“A”) subjects another person (“B”) to harassment if—

- (a) A, on the ground that B intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect—
  - (i) of violating B's dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for B;
- (b) A, on the ground of B's rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a), treats B less favourably than A would treat B had B not rejected, or submitted to, the conduct.

(4) Conduct shall be regarded as having the effect mentioned in paragraph (3)(a) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

(5) Paragraph (1) is to be read as applying equally to the harassment of men, and for that purpose shall have effect with such modifications as are requisite.

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(6) For the purposes of paragraphs (1) and (3), a provision of Part III or IV framed with reference to harassment of women shall be treated as applying equally to the harassment of men and for that purpose will have effect with such modifications as are requisite.]

**F30** SR 2005/426

**F31** Words in art. 6A(1)(a) substituted (6.4.2008) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), **reg. 3**

### [<sup>F32</sup>Basis of comparison

7. Each of the following comparisons, that is—

- (a) a comparison of the cases of persons of different sex under Article 3(1) or (2),
- (b) a comparison of the cases of persons required for the purposes of Article 4A, and
- (c) a comparison of the cases of persons who do and who do not fulfil the condition in Article 5(2),

must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.]

**F32** 2004 c.33

## PART III

### [<sup>F33</sup>EMPLOYMENT FIELD]

**F33** SR 2005/426

#### *Discrimination by employers*

### [<sup>F34</sup>Applicants and employees]

**8** <sup>F35</sup>—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against a woman—

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment, or
- (b) in the terms on which he offers her that employment, or
- (c) by refusing or deliberately omitting to offer her that employment.

(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Northern Ireland, to discriminate against her—

- (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
- (b) by dismissing her, or subjecting her to any other detriment.

[<sup>F34</sup>(2A) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment—

- (a) a woman whom he employs, or
- (b) a woman who has applied to him for employment.]

[<sup>F36</sup>(2B) For the purposes of paragraph (2A), the circumstances in which an employer is to be treated as subjecting a woman to harassment shall include those where—

- (a) a third party subjects the woman to harassment in the course of her employment, and
- (b) the employer has failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

(2C) Paragraph (2B) does not apply unless the employer knows that the woman has been subject to harassment in the course of her employment on at least two other occasions by a third party.

(2D) In paragraphs (2B) and (2C), “third party” means a person other than—

- (a) the employer, or
- (b) a person whom the employer employs,

and for the purposes of those paragraphs it is immaterial whether the third party is the same or a different person on each occasion.]

*Para. (3) rep. by 1988 NI 13*

[<sup>F37</sup>(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.]

(5) Subject to Article 11(3), paragraph (1)(b) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly<sup>F38</sup> . . . or otherwise) in the contract under which she was employed.

(6) Paragraph (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman's contract of employment.

(7) Paragraph (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or
- (b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or
- (c) the benefits, facilities or services relate to training.

[<sup>F39</sup>(8) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (4) to (6).]

**F34** SR 2005/426

**F35** mod. SR 1991/127

**F36** [Art. 8\(2B\)-\(2D\) inserted \(6.4.2008\) by Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\), reg. 4](#)

**F37** 1995 NI 22

**F38** 1988 NI 13

*Status: Point in time view as at 07/10/2013.*

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**F39** SR 1999/311

#### [<sup>F40</sup>Exception relating to terms and conditions during maternity leave

**8A.**—(1) Subject to paragraph (2), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.

(2) The reference in paragraph (1) to benefit from the terms and conditions of a woman's employment relating to remuneration does not include a reference to—

- (a) maternity-related remuneration (including maternity-related remuneration that is increase-related),
- (b) remuneration (including increase-related remuneration) in respect of times when the woman is not on maternity leave, or
- (c) remuneration by way of bonus in respect of times when a woman is on compulsory maternity leave.

(3) For the purposes of paragraph (2), remuneration is increase-related so far as it falls to be calculated by reference to increases in remuneration that the woman would have received had she not been on maternity leave.

(4) In this Article—

“maternity-related remuneration”, in relation to a woman, means remuneration to which she is entitled as a result of being pregnant or being on maternity leave;

“on compulsory maternity leave” means absent from work in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996;

“on maternity leave” means—

- (a) on compulsory maternity leave,
- (b) absent from work in exercise of the right conferred by Article 103(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary maternity leave), or
- (c) absent from work in exercise of the right conferred by Article 105(1) of that Order (additional maternity leave); and

“remuneration” means benefits—

- (a) that consist of the payment of money to an employee by way of wages or salary, and
- (b) that are not benefits whose provision is regulated by the employee's contract of employment.]

**F40** [Art. 8A](#) substituted (6.4.2008 with effect as mentioned in reg. 1(2) of the amending S.R.) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 5](#)

#### [<sup>F41</sup>Persons with statutory power to select employees for others

**9.**—(1) 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—

- (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.

(2) 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 subject that other to harassment.]

F41 SR 2005/426

### Exception where sex is a genuine occupational qualification

10<sup>F42</sup>.—(1) In relation to sex discrimination—

- (a) Article 8(1)( a ) or ( c ) does not apply to any employment where being a man is a genuine occupational qualification for the job, and
- (b) Article 8(2)( a ) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being a man is a genuine occupational qualification for a job only where—

- (a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or
- (b) the job needs to be held by a man to preserve decency or privacy because—
  - (i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or
  - (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities; or

[<sup>F43</sup>(bb) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman—

- (i) the degree of physical or social contact with a person living in the home, or
- (ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job; or]

- (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
  - (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and
  - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women; or
- (d) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because—
  - (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special supervision, attention or care, and
  - (ii) those persons are all men (disregarding any woman whose presence is exceptional), and
  - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman; or

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- (e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man, or

*Sub#para. (f) rep. by 1990 NI 2*

- (g) the job needs to be held by a man because it is likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or
- (h) the job is one of two to be held
  - [<sup>F44</sup>(i) by a married couple,
  - (ii) by a couple who are civil partners of each other, or
  - (iii) by a married couple or a couple who are civil partners of each other]

(3) Paragraph (2) applies where some only of the duties of the job fall within sub-paragraphs (a) to (g) as well as where all of them do.

(4) Sub-paragraph (a), (b), (c), (d), (e)<sup>F45</sup> . . . or (g) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees—

- (a) who are capable of carrying out the duties falling within that paragraph, and
- (b) whom it would be reasonable to employ on those duties, and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

**F42** mod. SR 1991/127

**F43** 1988 NI 13

**F44** 2004 c.33

**F45** 1990 NI 2

#### [<sup>F46</sup>Corresponding exception relating to gender reassignment

**10A.**—(1) In their application to discrimination falling within Article 4A, paragraphs (1) and (2) of Article 8 do not make unlawful an employer's treatment of another person if—

- (a) in relation to the employment in question—
  - (i) being a man is a genuine occupational qualification for the job; or
  - (ii) being a woman is a genuine occupational qualification for the job; and
- (b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant sub-paragraph of Article 10(2) and any other relevant circumstances.

(2) In paragraph (1) the reference to the employment in question is a reference—

- (a) in relation to any sub-paragraph of Article 8(1), to the employment mentioned in that sub-paragraph;
- (b) in relation to Article 8(2)—
  - (i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;
  - (ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.

(3) In determining for the purposes of paragraph (1) whether being a man or being a women is a genuine occupational qualification for a job, Article 10(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

[  
F47(4) Paragraph (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

F46 SR 1999/311

F47 2004 c.7

### Supplementary exceptions relating to gender reassignment

**10B.**—(1) In relation to discrimination falling within Article 4A—

- (a) Article 8(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job;
- (b) Article 8(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment; and
- (c) Article 8(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.

(2) Subject to paragraph (3), there is a supplementary genuine occupational qualification for a job only if—

- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;
- (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—
  - (i) the degree of physical or social contact with a person living in the home, or
  - (ii) the knowledge of intimate details of such a person's life, which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;
- (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
  - (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and
  - (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or
- (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

[  
F48(3) Paragraph (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

[

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<sup>F49</sup>(4) Sub-paragraph (a) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has employees falling within paragraph 5—

- (a) who are capable of carrying out the duties falling within that paragraph, and
- (b) whom it would be reasonable to employ on those duties, and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

(5) An employee falls within this paragraph if the employee does not intend to undergo and is not undergoing gender reassignment and either—

- (a) the employee has not undergone gender reassignment; or
- (b) the employee's gender has become the acquired gender under the Gender Recognition Act 2004]]

**F46** SR 1999/311

**F48** 2004 c.7

**F49** SR 2005/426

### **Equal Pay Act (Northern Ireland) 1970**

*Para.(1) substitutes s. 1(1)#(3) of 1970 c.32 (NI)*

(2) Section 1(1) of the Equal Pay Act (as set out in paragraph (1)) does not apply in determining for the purposes of Article 8(1)( b) the terms on which employment is offered.

(3) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene Article 8(1)( b).

(4) Where a person offers a woman employment on certain terms, and paragraph (3) would apply but for the fact that, on her acceptance of the offer, section 1(3) of the Equal Pay Act (as set out in paragraph (1)) would prevent the equality clause from operating, the offer shall be taken not to contravene Article 8(1)( b).

(5) An act does not contravene Article 8(2) if—

- (a) it contravenes a term modified or included by virtue of an equality clause, or
- (b) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1(3) of the Equal Pay Act.

*Para.(6), with Schedule 1, effects amendments*

[<sup>F50</sup>(7) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (3), (4) and (5)(b).]

**F50** SR 1999/311

### [<sup>F51</sup>**Contract workers]**

**12** <sup>F52</sup>.—(1) This Article applies to any work[<sup>F51</sup> at an establishment in Northern Ireland,] for a person ( “the principal”) which is available for doing by individuals ( “contract workers”) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this Article applies, to discriminate against a woman who is a contract worker—

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- (a) in the terms on which he allows her to do that work, or
- (b) by not allowing her to do it or continue to do it, or
- (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or
- (d) by subjecting her to any other detriment.

[<sup>F51</sup>(2A) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to subject a contract worker to harassment.]

(3) [<sup>F53</sup>Subject to paragraph (3A),] the principal does not contravene paragraph (2)( b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

[<sup>F53</sup>(3A) Paragraph (3) does not apply in relation to discrimination falling within Article 4A.

(3B) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—

- (a) he does it at a time when, if the work were to be done by a person taken into his employment—
  - (i) being a man would be a genuine occupational qualification for the job; or
  - (ii) being a woman would be a genuine occupational qualification for the job; and
- (b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of sub-paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.]

[<sup>F54</sup>(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

(4) Paragraph (2)( c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

<b>F51</b>	SR 2005/426
<b>F52</b>	mod. SR 1991/127
<b>F53</b>	SR 1999/311
<b>F54</b>	2004 c.7

### Meaning of employment at establishment in Northern Ireland

13.—[<sup>F55</sup>(1) For the purposes of this Part and section 1 of the Equal Pay Act (Northern Ireland) 1970 ( “the relevant purposes”), employment is to be regarded as being at an establishment in Northern Ireland if—

- (a) the employee does his work wholly or partly in Northern Ireland, or
  - (b) the employee does his work wholly outside Northern Ireland and paragraph (1A) applies.
- (1A) This paragraph applies if—
- (a) the employer has a place of business at an establishment in Northern Ireland,

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- (b) the work is for the purposes of the business carried on at that establishment, and
- (c) the employee is ordinarily resident in Northern Ireland—
  - (i) at the time when he applies for or is offered the employment, or
  - (ii) at any time during the course of the employment.]

[<sup>F56</sup>(2) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship[<sup>F55</sup>, only if the ship is] registered at a port of registry in Northern Ireland; and
- (b) employment on aircraft or hovercraft[<sup>F55</sup>, only if the aircraft or hovercraft is] registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.]

*Para. (3) rep. by SR 2000/8*

(4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

[<sup>F55</sup>(5) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Office of the First Minister and deputy First Minister may by order provide that paragraph (1) shall have effect as if—

- (a) the reference to Northern Ireland in each of sub-paragraphs (a) and (b) of paragraph (1), and
- (b) each of the references to Northern Ireland in paragraphs (1A) and (2),

included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964, in which the law of Northern Ireland applies.

(6) An order under paragraph (5) may provide that, in relation to employment to which the order applies, this Part and section 1 of the Equal Pay Act are to have effect with such modifications as are specified in the order.

(7) The Office of the First Minister and deputy First Minister shall not make an order under paragraph (5) unless a draft of the order has been approved by resolution of the Assembly.

(8) Paragraphs (1) to (4) or, where an order under paragraph (5) is in operation, those paragraphs as modified by the order, apply for the purposes of determining whether contract work, within the meaning given by Article 12, is at an establishment in Northern Ireland, but so apply with the following modifications—

- (a) a reference to employment is to be read as a reference to work to which Article 12 applies, and
- (b) “employee” and “employer” shall be read (respectively) as “contract worker” and “principal” with “contract worker” and “principal” having the meaning given by Article 12.]

**F55** SR 2005/426

**F56** SR 2000/8

[<sup>F57</sup>*Discrimination against office holders etc.*

**F57** SR 2005/426

### **Offices and posts to which Article 13B applies**

- 13A.**—(1) Subject to paragraphs (2) and (3), Article 13B applies to an office or post if—
- (a) the office or post is one—
    - (i) to which persons are appointed to discharge functions personally under the direction of another person, and
    - (ii) in respect of which they are entitled to remuneration,
  - (b) the office or post is one to which appointments are made by a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department, or
  - (c) the office or post is one to which appointments are made on the recommendation of, or subject to the approval of, a person referred to in sub-paragraph (b).
- (2) Article 13B does not apply to an office or post if Article 8 (Applicants and employees), Article 12 (Contract workers), or Article 14 (Partnerships)—
- (a) applies in relation to an appointment to the office or post, or
  - (b) would apply in relation to an appointment to an office or post but for the operation of any other provision of this Order.
- (3) Article 13B does not apply to—
- (a) any office of the House of Commons held by a member of it,
  - (b) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
  - (c) any office of the Assembly held by a member of it,
  - (d) any office of a district council held by a member of it,
  - (e) any office of a political party.
- (4) For the purposes of paragraph (1)(a), the holder of an office or post—
- (a) is to be regarded as discharging her functions under the direction of another person if that other person is entitled to direct her as to when and where she discharges those functions;
  - (b) is not to be regarded as entitled to remuneration merely because she is entitled to payments—
    - (i) in respect of expenses incurred by her in carrying out the functions of the office or post, or
    - (ii) by way of compensation for the loss of income or benefits she would or might have received from any person had she not been carrying out the functions of the office or post.
- (5) In this Article and Article 13B, appointment to an office or post does not include election to an office or post.

### **Office holders**

- 13B.**—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this Article applies, to discriminate against a woman—
- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered,
  - (b) in the terms on which he offers her the appointment, or
  - (c) by refusing to offer her the appointment.

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(2) It is unlawful, in relation to an appointment to an office or post to which this Article applies and which is an office or post referred to in Article 13A(1)(c), for a relevant person on whose recommendation, or subject to whose approval, appointments to the office or post are made, to discriminate against a woman—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment, or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a woman who has been appointed to an office or post to which this Article applies, to discriminate against her—

- (a) in the terms of the appointment,
- (b) in the opportunities which he affords her for promotion, a transfer, training or receiving any other benefit, or by refusing to afford her any such opportunity,
- (c) by terminating the appointment, or
- (d) by subjecting her to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this Article applies, to subject to harassment a woman—

- (a) who has been appointed to the office or post,
- (b) who is seeking or being considered for appointment to the office or post, or
- (c) who, in relation to appointment to the office or post, is seeking or being considered for a recommendation or approval referred to in Article 13A(1)(c).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if holding the office or post constituted employment, that act would be lawful by virtue of Article 10 (Exception where sex is a genuine occupational qualification), 10A (Corresponding exception relating to gender reassignment), 10B (Supplementary exceptions relating to gender reassignment) or Article 21 (Ministers of religion etc.).

(6) Paragraph (2) does not apply to any act in relation to an office or post where, if holding the office or post constituted employment, it would be lawful by virtue of Article 10, 10A, 10B or 21 to refuse to offer the person such employment.

(7) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds,
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of her appointment, or
- (c) the benefits relate to training.

(8) In paragraph (3)(c), the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions, and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that she is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(9) In this Article “relevant person”, in relation to an office or post, means—

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- (a) in a case relating to an appointment to an office or post, the person with power to make that appointment;
  - (b) in a case relating to the making of a recommendation or the giving of an approval in relation to an appointment, a person or body referred to in section 13A(1)(b) with power to make that recommendation or (as the case may be) to give that approval;
  - (c) in a case relating to a term of an appointment, the person with power to determine that term;
  - (d) in a case relating to a working condition afforded in relation to an appointment—
    - (i) the person with power to determine that working condition, or
    - (ii) where there is no such person, the person with power to make the appointment;
  - (e) in a case relating to the termination of an appointment, the person with power to terminate the appointment;
  - (f) in a case relating to the subjection of a person to any other detriment or to harassment, any person or body falling within one or more of sub#paragraphs (a) to (e) in relation to such cases as are there mentioned.
- (10) In paragraph 9(d) “working condition” includes any opportunity for promotion, a transfer, training or receiving any other benefit.
- (11) In this Article—
- (a) references to “making a recommendation” include references to making a negative recommendation;
  - (b) references to “refusal” include references to deliberate omission;
  - (c) “benefits” includes facilities and services]

#### *Discrimination by other bodies*

### **Partnerships**

**14.**—(1) It is unlawful for a firm<sup>F58</sup>. . . , in relation to a position as partner in the firm, to discriminate against a woman—

- (a) in the arrangements they make for the purpose of determining who should be offered that position, or
- (b) in the terms on which they offer her that position, or
- (c) by refusing or deliberately omitting to offer her that position, or
- (d) in a case where the woman already holds that position—
  - (i) in the way they afford her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
  - (ii) by expelling her from that position, or subjecting her to any other detriment.

(2) Paragraph (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

[<sup>F59</sup>(2A) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a woman who holds or has applied for that position.]

(3) [<sup>F60</sup>Subject to paragraph (3A),] paragraph (1)( a) and ( c) do not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.

[<sup>F60</sup>(3A) Paragraph (3) does not apply in relation to discrimination falling within Article 4A.

**Status:** Point in time view as at 07/10/2013.

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(3B) In relation to discrimination falling within Article 4A, paragraph (1) does not make unlawful a firm's treatment of a person in relation to a position as partner where—

- (a) if it were employment—
  - (i) being a man would be a genuine occupational qualification for the job; or
  - (ii) being a woman would be a genuine occupational qualification for the job; and
- (b) the firm can show that the treatment is reasonable in view of the circumstances relevant for the purposes of sub-paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within Article 4A, paragraph (1)(a), (c) and, so far as it relates to expulsion, (d)(ii) do not apply to a position as partner where, if it were employment, there would be a supplementary genuine occupational qualification for the job.]

[<sup>F61</sup>(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

*Para. (4) rep. by SR 2005/426*

(5) In the case of a limited partnership references in paragraph (1) to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907 .

[<sup>F62</sup>(6) This Article applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.]

**F58** 1988 NI 13  
**F59** SR 2005/426  
**F60** SR 1999/311  
**F61** 2004 c.7  
**F62** SR 2004/307

### Trade unions etc.

**15.—(1)** This Article applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) It is unlawful for an organisation to which this Article applies, in the case of a woman who is not a member of the organisation, to discriminate against her—

- (a) in the terms on which it is prepared to admit her to membership, or
- (b) by refusing, or deliberately omitting to accept, her application for membership.

(3) It is unlawful for an organisation to which this Article applies, in the case of a woman who is a member of the organisation, to discriminate against her—

- (a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
- (b) by depriving her of membership, or varying the terms on which she is a member, or
- (c) by subjecting her to any other detriment.

[<sup>F63</sup>(3A) It is unlawful for an organisation to which this Article applies, in relation to membership of that organisation, to subject to harassment a woman who—

- (a) is a member of the organisation, or
- (b) has applied for membership of the organisation.]

*Para. (4) rep. by SR 2005/426*

**F63** SR 2005/426

### Qualifying bodies

**16.**—(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a woman—

- (a) in the terms on which it is prepared to confer on her that authorisation or qualification, or
- (b) by refusing or deliberately omitting to grant her application for it, or
- (c) by withdrawing it from her or varying the terms on which she holds it.

[<sup>F64</sup>(1A) It is unlawful for a body to which this Article applies, in relation to an authorisation or qualification of a kind mentioned in paragraph (1), to subject to harassment a woman who holds or applies for such an authorisation or qualification.]

(2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorisation or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees, or agents (whether past or present), has practised unlawful discrimination in, or in connection with, the carrying on of any profession or trade.

(3) In this Article—

- (a) “authorisation or qualification” includes recognition, registration, enrolment, approval and certification,
- (b) “confer” includes renew or extend.

(4) Paragraph (1) does not apply to discrimination which is rendered unlawful by Article 24 or 25.

[<sup>F64</sup>(5) Paragraph (1A) does not apply to harassment which is rendered unlawful by Article 24 or 25.]

**F64** SR 2005/426

### [<sup>F65</sup>Persons concerned with provision of vocational training

**17.**—[

<sup>F66</sup>(1) It is unlawful, in the case of a woman seeking or receiving vocational training, for any person who provides, or makes arrangements for the provision of, facilities for vocational training to discriminate against her—

- (a) in the arrangements that person makes for the purpose of selecting people to receive vocational training,
- (b) in the terms on which that person affords her access to any vocational training or facilities concerned with vocational training,
- (c) by refusing or deliberately omitting to afford her such access,
- (d) by terminating her vocational training, or
- (e) by subjecting her to any detriment during the course of her vocational training.

(1A) It is unlawful for a provider of vocational training, in relation to such training, to subject to harassment a woman—

**Status:** Point in time view as at 07/10/2013.

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- (a) to whom he is providing such training, or
- (b) who has asked him to provide such training.

(1B) In this Article “vocational training”, in relation to a woman, includes (if it would not otherwise do so) any training which would help fit her for any employment.]

(2) Paragraph (1) does not apply to—

- (a) discrimination which is rendered unlawful by Article 8(1) or (2) or Article 24 or 25; or
- (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Order.]

**F65** 1990 NI 2  
**F66** SR 2005/426

### Employment agencies

**18.**—(1) It is unlawful for an employment agency to discriminate against a woman—

- (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.

[<sup>F67</sup>(1A) It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment a woman—

- (a) to whom it provides such services, or
- (b) who has requested the provision of such 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 woman.

(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 commits an offence, and shall be liable on summary conviction to a fine not exceeding [<sup>F68</sup> level 5 on the standard scale].

**F67** SR 2005/426  
**F68** 1984 NI 3

### *Special cases*

*Art. 19 rep. by 2000 c. 32*

### Prison officers

**20.** Nothing in this Part renders unlawful any discrimination between male and female prison officers as to requirements relating to height.

**[<sup>F69</sup>Ministers of religion etc.**

**21.—(1)** Nothing in this Part shall make it unlawful to apply a requirement in relation to employment where—

- (a) the employment is for purposes of an organised religion,
- (b) the requirement is one to which paragraph (3) applies, and
- (c) the requirement is applied—
  - (i) so as to comply with the doctrines of the religion, or
  - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly-held religious convictions of a significant number of the religion's followers.

(2) Nothing in Article 16 shall make it unlawful to apply a requirement in relation to an authorisation or qualification (as defined in that Article) where—

- (a) the authorisation or qualification is for purposes of an organised religion,
- (b) the requirement is one to which paragraph (3) applies, and
- (c) the requirement is applied—
  - (i) so as to comply with the doctrines of the religion, or
  - (ii) by the authority or body concerned, or by the person by whom the authority or body acts in a particular case, so as to avoid conflicting with the strongly-held religious convictions of a significant number of the religion's followers.

(3) This paragraph applies to—

- (a) a requirement to be of a particular sex,
- (b) a requirement not to be undergoing or to have undergone gender reassignment,
- (c) a requirement relating to not being married or to not being a civil partner,
- (d) a requirement, applied in relation to a person who is married, or is a civil partner, that relates—
  - (i) to the person, or the person's spouse or civil partner, not having a living former spouse or a living former civil partner, or
  - (ii) to how the person, or the person's spouse or civil partner, has at any time ceased to be married or ceased to be a civil partner.]

**F69** SR 2005/426

**Midwives**

**22.—(1)** [<sup>F70</sup>Until 1st September 1983] Article 8(1) does not apply to employment as a midwife.

(2) [<sup>F70</sup>Until 1st September 1983] Article 8(2)(a) does not apply to promotion, transfer or training as a midwife.

(3) [<sup>F70</sup>Until 1st September 1983] Article 17 does not apply to training as a midwife.  
*Para.(4), which inserts s.54A in 1970 c.11 (NI), rep. by 1979 c.36*

**F70** SR 1983/166

*Status: Point in time view as at 07/10/2013.*

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## [<sup>F71</sup>Relationships which have come to an end

**22A.**—(1) This Article applies where—

- (a) there has been a relevant relationship between a woman and another person (“the relevant person”), and
- (b) the relationship has come to an end (whether before or after the commencement of this Article).

(2) In this Article, a “relevant relationship” is a relationship during the course of which an act of discrimination by one party to the relationship against the other party to it is unlawful under any preceding provision of this Part.

(3) It is unlawful for the relevant person to discriminate against the woman by subjecting her to a detriment where the discrimination arises out of and is closely connected to the relevant relationship.

[  
<sup>F72</sup>(4) It is unlawful for the relevant person to subject a woman to harassment where that treatment arises out of or is closely connected to the relevant relationship.]]

**F71** SR 2004/172

**F72** SR 2005/426

*Para. (1) rep. by 1990 NI 2*

*Para. (2) rep. by 1995 NI 12*

## PART IV

### DISCRIMINATION IN OTHER FIELDS

#### *Education*

## [<sup>F73</sup>Bodies in charge of educational establishments]

**24.**—[<sup>F73F73</sup>(1)] It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to discriminate against a woman—

- (a) in the terms on which it offers to admit her to the establishment as a pupil, or
- (b) by refusing or deliberately omitting to accept an application for her admission to the establishment as a pupil, or
- (c) where she is a pupil of the establishment—
  - (i) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
  - (ii) by excluding her from the establishment or subjecting her to any other detriment.

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#### **TABLE**

*Establishment*

*Responsible body*

**Changes to legislation:** Sex Discrimination (Northern Ireland) Order 1976 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

1. Educational establishment which is grant-aided.	Education and Library Board or managers or governors, according to which of them has the function in question.
[ <sup>F74</sup> 1A. College of education, <sup>F75</sup> . . . .]	[ <sup>F74</sup> The managers.]
2. Independent school.	Proprietor
3. University.	Governing body.
<sup>F76</sup>	<sup>F76</sup>
. . .	. . .
[ <sup>F77</sup> 5. An establishment providing further education in respect of which grants are paid under Article 5(1)(b) of the Further Education (Northern Ireland) Order 1997.]	[ <sup>F77</sup> Governing body.]

[<sup>F73</sup>(2) It is unlawful for the governing body of an institution of further or higher education to discriminate against a woman in the arrangements it makes for the purpose of selecting people for admission to the institution.

(3) It is unlawful for the governing body of an institution of further or higher education to subject a woman to harassment if that woman is a student at the institution or has applied for admission to the institution.

(4) In paragraphs (2) and (3), “institution of further or higher education” means an establishment falling within column 1 of paragraph 1A, 3 or 5 of the table in paragraph (1).]

**F73** SR 2005/426

**F74** 1986 NI 3

**F75** 2005 NI 13

**F76** 1984 NI 10

**F77** 1997 NI 15

### Other discrimination by Education and Library Boards

25. It is unlawful for an Education and Library Board, in carrying out such of its functions under [<sup>F78</sup> the Education Orders, as defined in] the Education and Libraries (Northern Ireland) Order [<sup>F79</sup> 1986] as do not fall under Article 24, to do any act which constitutes sex discrimination.

**F78** 1997 NI 15

**F79** 1986 NI 3

### General duty in public sector of education

26.—(1) Without prejudice to its obligation to comply with any other provision of this Order, a body to which this paragraph applies shall be under a general duty to secure that facilities for education provided by it, and any ancillary benefits or services, are provided without sex discrimination.

(2) [<sup>F80</sup>Article 101] of the Education and Libraries (Northern Ireland) Order [<sup>F80</sup> 1986]<sup>F81</sup> . . . shall apply to the performance by a body to which paragraph (1) applies of the duties imposed by Articles 24 and 25 and shall also apply to the performance of the general duty imposed by paragraph (1), as it applies to the performance by an Education and Library Board of a duty imposed by that Order.

**Status:** Point in time view as at 07/10/2013.

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(3) The sanctions in paragraph (2) shall be the only sanctions for breach of the general duty in paragraph (1), but without prejudice to the enforcement of Articles 24 and 25 under Article 66 or otherwise (where the breach is also a contravention of either of those Articles).

(4) Paragraph (1) applies to—

- (a) an Education and Library Board; and
- (b) any other body which is a responsible body in relation to an establishment falling within paragraph 1<sup>[F80]</sup>, 1A], 4 or 5 of the table in Article 24.

**F80** 1986 NI 3

**F81** 1989 NI 20

### Exception for single-sex establishments

27.—(1) [<sup>F82</sup>Articles 24(1)( a) and ( b)] and 26 do not apply to the admission of pupils to any establishment (a “single-sex establishment”) which admits pupils of one sex only, or which would be taken to admit pupils of one sex only if there were disregarded pupils of the opposite sex—

- (a) whose admission is exceptional, or
- (b) whose numbers are comparatively small and whose admission is confined to particular courses of instruction or teaching classes.

(2) Where a school which is not a single-sex establishment has some pupils as boarders and others as non-boarders, and admits as boarders pupils of one sex only (or would be taken to admit as boarders pupils of one sex only if there were disregarded boarders of the opposite sex whose numbers are comparatively small),<sup>[F82</sup> Articles 24(1)( a) and ( b)] and 26 do not apply to the admission of boarders and<sup>[F82</sup> Articles 24(1)( c)(i)] and 26 do not apply to boarding facilities.

(3) Where an establishment is a single-sex establishment by reason of its inclusion in paragraph (1)( b), the fact that pupils of one sex are confined to particular courses of instruction or teaching classes shall not be taken to contravene Article 24( c)(i) or the duty in Article 26.

**F82** SR 2005/426

### Exception for single-sex establishments turning co-educational

28.—(1) Where at any time—

- (a) the responsible body for a single-sex establishment falling within column 1 of the table in<sup>[F83</sup> Article 24(1)] determines to alter its admissions arrangements so that the establishment will cease to be a single-sex establishment, or
- (b) Article 27(2) applies to the admission of boarders to a school falling within column 1 of that table but the responsible body determines to alter its admissions arrangements so that Article 27(2) will cease so to apply,

the responsible body may apply in accordance with Schedule 2 for an order (a “transitional exemption order”) authorising discriminatory admissions during the transitional period specified in the order.

(2) Where during the transitional period specified in a transitional exemption order applying to an establishment the responsible body refuses or deliberately omits to accept an application for the admission of a person to the establishment as a pupil the refusal or omission shall not be taken to contravene any provision of this Order.

(3) Paragraph (2) does not apply if the refusal or omission contravenes any condition of the transitional exemption order.

(4) Except as mentioned in paragraph (2), a transitional exemption order shall not afford any exemption from liability under this Order.

(5) Where, during the period between the making of an application for a transitional exemption order in relation to an establishment and the determination of the application, the responsible body refuses or deliberately omits to accept an application for the admission of a person to the establishment as a pupil the refusal or omission shall not be taken to contravene any provision of this Order.

**F83** SR 2005/426

*Art. 29 rep. by SR 2005/426*

### *Goods, facilities, services and premises*

#### **Discrimination in provision of goods, facilities or services**

**30.**—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services—

- (a) by refusing or deliberately omitting to provide her with any of them, or
- (b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section.

(2) The following are examples of the facilities and services mentioned in paragraph (1)—

- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
- (b) accommodation in a hotel, boarding house or other similar establishment;
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (d) facilities for education;
- (e) facilities for entertainment, recreation or refreshment;
- (f) facilities for transport or travel;
- (g) the services of any profession or trade, or any local or other public authority.

[<sup>F84</sup>(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment—

- (a) a woman who seeks to obtain or use those goods, facilities or services, or
- (b) a woman to whom he provides those goods, facilities or services.]

(3) For the avoidance of doubt it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it does not contravene paragraph (1) for a person who does not normally exercise it for women to insist on exercising it for a woman only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her case, to refuse or deliberately omit to exercise it.

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[<sup>F85</sup>(4) In its application in relation <sup>F86</sup> . . . to discrimination falling within Article 4A, paragraph (1) (b) shall have effect as if references to male members of the public, or of a section of the public, were references to members of the public, or of a section of the public, who do not intend to undergo, are not undergoing and have not undergone gender reassignment.]

**F84** Art. 30(2A) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 4(a)**

**F85** SR 1999/311

**F86** Words in art. 30(4) omitted (6.4.2008) by virtue of Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 4(b)**

### Discrimination in disposal or management of premises

**31.—**(1) It is unlawful for a person, in relation to premises in Northern Ireland of which he has power to dispose, to discriminate against a woman—

- (a) in the terms on which he offers her those premises, or
- (b) by refusing her application for those premises, or
- (c) in his treatment of her in relation to any list of persons in need of premises of that description.

[<sup>F87</sup>(1A) It is unlawful for such a person to subject to harassment a woman who applies for the premises.]

(2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a woman occupying the premises—

- (a) in the way he affords her access to any benefits or facilities, or by refusing or deliberately omitting to afford her access to them, or
- (b) by evicting her, or subjecting her to any other detriment.

[<sup>F88</sup>(2A) It is unlawful for such a person to subject to harassment a woman who occupies the premises.]

(3) Paragraph (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless he uses the services of an estate agent for the purposes of the disposal of the premises or publishes or causes to be published an advertisement in connection with the disposal.

[<sup>F89</sup>(4) Paragraphs (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.]

**F87** Art. 31(1A) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 5(a)**

**F88** Art. 31(2A) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 5(b)**

**F89** Art. 31(4) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 5(c)**

### Discrimination: consent for assignment or sub-letting

**32.—**(1) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Northern Ireland comprised in a tenancy, it is unlawful for the landlord or other person

- [<sup>F90</sup>(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or
- (b) in relation to such a licence or consent, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given.]
- (2) Paragraph (1) does not apply if—
- (a) the person withholding a licence or consent, or a near relative of his ( “the relevant occupier”) resides, and intends to continue to reside, on the premises, and
- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and
- (c) the premises are small premises as defined in Article 33(2).
- (3) In this Article “tenancy” means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance of any statutory provision; and “disposal”, in relation to premises comprised in a tenancy, includes assignment of the tenancy and sub-letting or parting with possession of the premises or any part of the premises.
- (4) This Article applies to tenancies created before the commencement of this Article, as well as to others.

**F90** Words in art. 32(1) substituted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), [Sch. 2 para. 6](#)

### Exception for small dwellings

- 33.**—(1) Articles 30(1) and 31 do not apply to the provision by a person of accommodation in any premises, or the disposal of premises by him, if—
- (a) that person or a near relative of his ( “the relevant occupier”) resides, and intends to continue to reside, on the premises, and
- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and
- (c) the premises are small premises.
- (2) Premises shall be treated for the purposes of paragraph (1) as small premises if—
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than two such households and only the relevant occupier and any member of his household reside in the accommodation occupied by him;
- (b) in the case of premises not falling within sub-paragraph ( a ), there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.

### Exception for political parties

- 34.**—(1) This Article applies to a political party if—
- (a) it has as its main object, or one of its main objects, the promotion of parliamentary candidatures for the Parliament of the United Kingdom, or the Assembly, or

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(b) it is an affiliate of, or has an affiliate, or has similar formal links with, a political party within sub-paragraph (a).

(2) Nothing in Article 30(1) shall be construed as affecting any special provision for persons of one sex only in the constitution, organisation or administration of the political party.

(3) Nothing in Article 30(1) shall render unlawful an act done in order to give effect to such a special provision.

### Exception for voluntary bodies

**35.**—(1) This Article applies to a body—

- (a) the activities of which are carried on otherwise than for profit, and
- (b) which was not set up by any statutory provision.

(2) Articles 30(1) and 31 shall not be construed as rendering unlawful—

- (a) the restriction of membership of any such body to persons of one sex (disregarding any minor exceptions), or
- (b) the provision of benefits, facilities or services to members of any such body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(3) Nothing in Article 30 or 31 shall—

- (a) be construed as affecting a provision to which this paragraph applies, or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(4) Paragraph (3) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a body within paragraph (1).

[<sup>F91</sup>(5) Paragraphs (2) to (4) do not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the treatment mentioned in those paragraphs is—

- (a) a proportionate means of achieving a legitimate aim, or
- (b) for the purpose of preventing or compensating for a disadvantage linked to sex.]

**F91** Art. 35(5) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), [Sch. 2 para. 7](#)

### Further exceptions from Articles 30(1) and 31

**36.**—[<sup>F92</sup>(1) A person who provides at any place facilities or services restricted to men does not for that reason contravene Article 30(1) if any of the conditions in paragraphs (1A) to (1C) is satisfied.]

[<sup>F93</sup>(1A) The condition is that the place is, or is part of—

- (a) a hospital, or
- (b) any other establishment for persons requiring special supervision, attention or care.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

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- (a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or
  - (b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.]
- (2) A person who provides facilities or services restricted to men does not for that reason contravene Article 30(1) if the facilities or services are such that physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a woman.

[<sup>F94</sup>(2A) In their application to discrimination falling within Article 4A, paragraphs (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.]

- (3) Articles 30(1) and 31 do not apply—
- (a) to discrimination [<sup>F95</sup>or harassment] which is rendered unlawful by any provision in column 1 of the table below, or
  - (b) to discrimination [<sup>F95</sup>or harassment] which would be so unlawful but for any provision in column 2 of that table, or
  - (c) to discrimination [<sup>F95</sup>or harassment] which contravenes a term modified or included by virtue of an equality clause.

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**TABLE**

***Provision creating illegality***

***Exception***

Part III

Articles 8(3), 10(1)( b), 18(4), 21 and 22.

Schedule 5 paragraphs 1 and 2.

Article 24 or 25

[<sup>F96</sup>Articles 27 and 28].

Schedule 5 paragraph 4.

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<b>F92</b>	Art. 36(1) substituted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 8(a)</b>
<b>F93</b>	Art. 36(1A)-(1C) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 8(b)</b>
<b>F94</b>	Art. 36(2A) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 8(c)</b>
<b>F95</b>	Words in art. 36(3) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 8(d)</b>
<b>F96</b>	SR 2005/426

[<sup>F97</sup>**Excluded matters**

**36ZA** Each of the following is an excluded matter for the purposes of Articles 30 to 32—

- (a) education (including vocational training);
- (b) the content of media and advertisements;
- (c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.]

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**F97** Art. 36ZA inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 9(1)**

**[<sup>F98</sup>Relationships which have come to an end**

**36A.**—(1) This Article applies where—

- (a) there has been a relevant relationship between a woman and another person (“the relevant person”), and
- (b) the relationship has come to an end (whether before or after the commencement of this Article).

(2) In this Article, a “relevant relationship” is a relationship during the course of which an act of discrimination by one party to the relationship against the other party to it is unlawful [<sup>F99</sup> under—

- (a) Articles 30 to 32, except in so far as they relate to an excluded matter, or
- (b) any other provision of this Part, so far as the provision applies to vocational training.]

(3) It is unlawful for the relevant person to discriminate against the woman by subjecting her to a detriment where the discrimination arises out of and is closely connected to the relevant relationship.

[  
<sup>F100</sup>(4) It is unlawful for the relevant person to subject a woman to harassment where that treatment arises out of or is closely connected to the relevant relationship.]]

**F98** SR 2004/172

**F99** Words in art. 36A(2) substituted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 10**

**F100** SR 2005/426

*Extent*

**Extent of Part IV**

**37.**—(1) Article 30(1)—

- (a) does not apply to goods, facilities or services outside Northern Ireland except as provided in paragraphs (2) and (3); and
- (b) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Northern Ireland.

(2) Article 30(1) applies to the provision of facilities for travel outside Northern Ireland where the refusal or omission occurs in Northern Ireland or on a ship, aircraft or hovercraft within paragraph (3).

(3) Article 30(1) applies on and in relation to—

- (a) any ship registered at a port of registry in Northern Ireland, and
- (b) any aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland, and
- (c) any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland,

even if the ship, aircraft or hovercraft is outside Northern Ireland.

(4) This Article shall not render unlawful an act done in or over a country outside the United Kingdom, or in or over that country's territorial waters, for the purpose of complying with the laws of that country.

(5) Articles 24, 25 and 26 do not apply to benefits, facilities or services outside Northern Ireland except—

- (a) travel on a ship registered at a port of registry in Northern Ireland, and
- (b) benefits, facilities or services provided on a ship so registered.

## PART V

### OTHER UNLAWFUL ACTS

#### Discriminatory practices

**38.**—<sup>F101</sup>(1) In this Article "discriminatory practice" means—

- (a) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of Part III or IV taken with Article 3(2)(b) or 5(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex, or
- (b) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part IV taken with Article 3(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex.]

(2) A person acts in contravention of this Article if and so long as—

- (a) he applies a discriminatory practice, or
- (b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this Article [<sup>F102</sup>may be brought] by the Commission in accordance with Articles 67 to 71.

**F101** SR 2001/282

**F102** Words in art. 38(3) substituted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), [reg. 5](#)

#### Discriminatory advertisements

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

(2) Paragraph (1) does not apply to an advertisement if the intended act would not in fact be unlawful.

(3) For the purposes of paragraph (1), use of a job description with a sexual connotation (such as “waiter”, “salesgirl”, “postman” or “stewardess”) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

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

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- (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) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding<sup>F103</sup> level 5 on the standard scale].

**F103** 1984 NI 3

### Instructions to discriminate

**40.** It is unlawful for a person—

- (a) who has authority over another person, or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of Part III or IV, or procure or attempt to procure the doing by him of any such act.

### Pressure to discriminate

**41.—**(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part III or IV by—

- (a) providing or offering to provide him with any benefit, or
- (b) subjecting or threatening to subject him to any detriment.

(2) An offer or threat is not prevented from falling within paragraph (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

### Liability of employers and principals

<sup>F104</sup>**42 .—**(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 (whether express or implied, and whether precedent or subsequent) 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) 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 that description.

**F104** mod. SR 1991/127

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

**C2** Art. 42 applied (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 4 para. 4\(3\)\(4\)\(a\)](#); [S.I. 2013/1682](#), art. 3(k)

### **Aiding unlawful acts**

**43.**—(1) A person who knowingly aids another person to do an act made unlawful by this Order shall be treated for the purposes of this Order as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 42 (or would be so liable but for Article 42(3)) shall be deemed to aid the doing of the act by the employer or principal.

(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 commits an offence, and shall be liable on summary conviction to a fine not exceeding<sup>[F105]</sup> level 5 on the standard scale].

**F105** 1984 NI 3

## **PART VI**

### **GENERAL EXCEPTIONS FROM PARTS III TO V**

#### **[F106] Selection of election candidates**

**43A.**—(1) Nothing in Parts 3 to 5 shall—

- (a) be construed as affecting arrangements to which this Article applies, or
- (b) render unlawful anything done in accordance with such arrangements.

(2) This Article applies to arrangements made by a registered political party which—

- (a) regulate the selection of the party's candidates in a relevant election, and
- (b) are adopted for the purpose of reducing inequality in the numbers of men and women elected, as candidates of the party, to be members of the body concerned.

(3) The following elections are relevant elections for the purposes of this Article—

- (a) parliamentary elections;
- (b) elections to the European Parliament;
- (c) elections to the Northern Ireland Assembly;
- (d) elections to a district council.

(4) In this Article “registered political party” means a party registered in the Northern Ireland register under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).]

**F106** 2002 c.2

### **Charities**

**44.**—(1) Nothing in Parts III to V shall—

- (a) be construed as affecting a provision to which this paragraph applies, or
- (b) render unlawful an act which is done in order to give effect to such a provision.

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(2) Paragraph (1) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

[<sup>F107</sup>(2A) But paragraph (1) does not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the conferral of benefits is —

- (a) a proportionate means of achieving a legitimate aim, or
- (b) for the purpose of preventing or compensating for a disadvantage linked to sex.]

(3) In this Article—

- (a) “charitable instrument” means a statutory provision or other instrument passed or made for charitable purposes, or a statutory provision or other instrument so far as it relates to charitable purposes;
- (b) “charitable purposes” means purposes which are exclusively charitable according to the law of Northern Ireland.

**F107** Art. 44(2A) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 11**

### Sport etc.

**45.**—[<sup>F108</sup>(1)] Nothing in Parts III to V shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, render unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

[<sup>F109</sup>(2) Paragraph (1) applies to discrimination under Articles 30 to 32 which falls within Article 4A, only if the discrimination is necessary to secure—

- (a) fair competition, or
- (b) the safety of competitors,

at such events.]

**F108** Art. 45 renumbered (6.4.2008) as para. (1) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 12**

**F109** Art. 45(2) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 12**

### Insurance etc.

**46.**—[<sup>F110</sup>(1)] [<sup>F111</sup>Nothing in Part III, Part IV (other than Article 30) or Part V] shall render unlawful the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment—

- (a) was effected by reference to actuarial or other data from a source on which it was reasonable to rely, and
- (b) was reasonable having regard to the data and any other relevant factors.

[<sup>F112</sup>(2) In the case of discrimination under Article <sup>F113</sup>...31 or 32, paragraph (1) applies only in so far as that Article relates to—

- (a) an excluded matter, or

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- (b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into before the appropriate date.

<sup>F114</sup>(3) .....

<sup>F114</sup>(4) .....

(5) For the purposes of this Article, “ the appropriate date ” means the date on which the Sex Discrimination (Amendment of Legislation) Regulations 2008 came into force. ]

<b>F110</b>	Art. 46 renumbered (6.4.2008) as para. (1) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 13</b>
<b>F111</b>	Words in art. 46(1) substituted (21.12.2012) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462), regs. 1(1), <b>2(2)</b> (with reg. 3)
<b>F112</b>	Art. 46(2)-(5) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), <b>Sch. 2 para. 13</b> (with reg. 5(3))
<b>F113</b>	Word in art. 46(2) omitted (21.12.2012) by virtue of The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462), regs. 1(1), <b>2(3)</b> (with reg. 3)
<b>F114</b>	Art. 46(3)(4) omitted (21.12.2012) by virtue of The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462), regs. 1(1), <b>2(4)</b> (with reg. 3)

**Communal accommodation**

47.—(1) In this Article “communal accommodation” means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by men only, or by women only (but which may include some shared sleeping accommodation for men, and some for women, or some ordinary sleeping accommodation).

(2) In this Article “communal accommodation” also includes residential accommodation all or part of which should be used by men only, or by women only, because of the nature of the sanitary facilities serving the accommodation.

(3) Nothing in Part III or IV shall render unlawful sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women.

(4) In applying paragraph (3) account shall be taken of—

- (a) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided; and
- (b) the frequency of the demand or need for use of the accommodation by men as compared with women [<sup>F115</sup>; and]

[<sup>F116</sup>(c) in respect of discrimination falling within Article 4A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.]

(5) Nothing in Part III or IV shall render unlawful sex discrimination against a woman, or against a man, as respects the provision of any benefit, facility or service if—

- (a) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation, and
- (b) in the relevant circumstances the woman or, as the case may be, the man could lawfully be refused the use of the accommodation by virtue of paragraph (3).

(6) Neither paragraph (3) nor paragraph (5) is a defence to an act of sex discrimination under Part III unless such arrangements as are reasonably practicable are made to compensate for the detriment caused by the discrimination; but in considering under paragraph (5)( b) whether the use

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of communal accommodation could lawfully be refused (in a case based on Part III), it shall be assumed that the requirements of this paragraph have been complied with as respects paragraph (3).

(7) Article 26 shall not apply to sex discrimination within paragraph (3) or (5).

(8) This Article is without prejudice to the generality of<sup>F117</sup> Article 36(1) and (1C)].

**F115** Words in art. 47(4)(b) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 14(a)(i)**

**F116** Art. 47(4)(c) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 14(a)(ii)**

**F117** Words in art. 47(8) substituted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 14(b)**

### Discriminatory training by certain bodies

**48.**—(1) Nothing in Parts III to V shall render unlawful any act done in relation to particular work by<sup>F118</sup> any person] in, or in connection with—

- (a) affording women only, or men only, access to facilities for training which would help to fit them for that work, or
- (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where it<sup>F118</sup> reasonably appears to that person] that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question doing that work in Northern Ireland, or the number of persons of that sex doing the work in Northern Ireland was comparatively small.

(2) Where in relation to particular work it<sup>F118</sup> reasonably appears to that person] that although the condition for the operation of paragraph (1) is not met for the whole of Northern Ireland it is met for an area within Northern Ireland, nothing in Parts III to V shall render unlawful any act done by<sup>F118</sup> that person] in, or in connection with—

- (a) affording persons who are of the sex in question, and who appear likely to take up that work in that area, access to facilities for training which would help to fit them for that work, or
- (b) encouraging persons of that sex to take advantage of opportunities in the area for doing that work.

(3) Nothing in Parts III to V shall render unlawful any act done by<sup>F118</sup> any person] in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it<sup>F118</sup> reasonably appears to that person] that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.

The discrimination in relation to which this paragraph applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

<sup>F118</sup>(4) Paragraphs (1) to (3) shall not apply in relation to any discrimination which is rendered unlawful by Article 8.]

**F118** 1988 NI 13

### Other discriminatory training etc.

**49.**—(1) Nothing in Parts III to V shall render unlawful any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with,—

- (a) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work, or
- (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

(2) Nothing in Article 15 shall render unlawful any act done by an organisation to which that Article applies in, or in connection with,—

- (a) affording female members of the organisation only, or male members of the organisation only, access to facilities for training which would help to fit them for holding a post of any kind in the organisation, or
- (b) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organisation,

where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among persons holding such posts in the organisation or the number of persons of that sex holding such posts was comparatively small.

(3) Nothing in Parts III to V shall render unlawful any act done by an organisation to which Article 15 applies in, or in connection with, encouraging women only, or men only, to become members of the organisation where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those members or the number of persons of that sex among the members was comparatively small.

[<sup>F119</sup>(4) Any act which by virtue of this Article or Article 48 could not be unlawful under any provision of Parts III to V (or, in the case of an act falling within paragraph (3), under Article 15) is not by virtue of Article 3(2)(b) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (indirect discrimination on the grounds of religious belief or political opinion) unlawful under any provision of Parts III to V of that Order.]

F119 1998 NI 21

### Trade unions etc.: elective bodies

**50.**—(1) If an organisation to which Article 15 applies comprises a body the membership of which is wholly or mainly elected, nothing in Article 15 shall render unlawful provision which ensures that a minimum number of persons of one sex are members of the body—

- (a) by reserving seats on the body for persons of that sex, or
- (b) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum,

where in the opinion of the organisation the provision is in the circumstances needed to secure a reasonable lower limit to the number of members of that sex serving on the body; and nothing in Parts III to V shall render unlawful any act done in order to give effect to such a provision.

(2) This Article shall not be taken as making lawful—

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- (a) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body, or
- (b) discrimination in any arrangements concerning membership of the organisation itself.

#### **Indirect access to benefits etc.**

**51.**—(1) References in this Order to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person (the “actual provider”).

(2) Where by any provision of this Order the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Order of any actual provider.

#### **[<sup>F120</sup> Acts done for purposes of protection of women**

**52.**—(1) Nothing in the following provisions, namely—

- (a) Part III;
- (b) Part IV so far as it applies to vocational training; or
- (c) Part V so far as it has effect in relation to the provisions mentioned in sub#paragraphs (a) and (b),

shall render unlawful any act done by a person in relation to a woman if—

- (i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women; or
- (ii) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision (within the meaning of Part II of the Health and Safety at Work (Northern Ireland) Order 1978) and it was done by that person for the purpose of the protection of the woman in question (or of any class of women that included that woman).

(2) In paragraph (1)—

- (a) the reference in sub#paragraph (i) to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards—
  - (i) pregnancy or maternity; or
  - (ii) other circumstances giving rise to risks specifically affecting women, whether the provision relates only to such protection or to the protection of any other class of persons as well; and
- (b) the reference in sub#paragraph (ii) to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within sub#paragraph (a)(i) or (ii) of this paragraph.

(3) In this Article “existing statutory provision” means (subject to paragraph (4)) any provision of—

- (a) an enactment enacted before this Order; or
- (b) an instrument made or approved under such an enactment (including one made or approved after the making of this Order).

(4) Where an enactment enacted after this Order re#enacts (with or without modification) a provision of an enactment enacted before this Order, that provision as re#enacted shall be treated

for the purposes of paragraph (3) as if it continued to be contained in an enactment enacted before this Order.]

**F120** [1990 NI 2](#)

**[<sup>F121</sup> Acts done under statutory authority to be exempt from certain provisions of Part IV**

**52A.**—(1) Nothing in—

[ Articles 24 to 28, 33 and 34;]

<sup>F122</sup>(za)

- (a) the relevant provisions of Part IV; or
- (b) Part V so far as it has effect in relation to those provisions,

shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision within the meaning of Article 52.

(2) In paragraph (1) “the relevant provisions of Part IV” means the provisions of that Part [<sup>F123</sup>(except Articles 24 to 28, 33 and 34) in so far as they relate to an excluded matter].]

**F121** [1990 NI 2](#)

**F122** [Art. 52A\(1\)\(za\)](#) inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 15(a)**

**F123** Words in [art. 52A\(2\)](#) substituted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 15(b)**

**[<sup>F124</sup> Acts safeguarding national security, etc.**

**53.** No act done by any person shall be treated for the purposes of any provision of Parts III to V as unlawfully discriminating if—

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of the act is justified by that purpose.

**F124** [1998 NI 21](#)

**Effect of certificates by Secretary of State**

**53ZA.**—(1) This Article applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of—
  - (i) the relevant provisions of Part IV; or
  - (ii) Part V, so far as it has effect in relation to those provisions; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
  - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
  - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with rules under section 91 of the Northern Ireland Act 1998, appeal against the certificate to the tribunal established under that section.

*Status: Point in time view as at 07/10/2013.*

*Changes to legislation: Sex Discrimination (Northern Ireland) Order 1976 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) If on an appeal under paragraph (2) that tribunal determines—

- (a) that the act specified in the certificate was done for the certified purpose; and
- (b) that the doing of the act was justified by that purpose,

the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If—

- (a) the claimant does not appeal against the certificate; or
- (b) the certificate is upheld on appeal,

the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this Article as they apply in relation to appeals under section 90 of that Act.

(6) In paragraph (1) “the relevant provisions of Part IV” means the provisions of that Part except so far as they apply to vocational training.]

**F124** [1998 NI 21](#)

#### [<sup>F125</sup>Construction of references to vocational training

**53A.** In [<sup>F126</sup>Article][<sup>F127</sup>53ZA] “vocational training” includes advanced vocational training and retraining; and any reference to vocational training in those provisions shall be construed as including a reference to vocational guidance.]

**F125** [1990 NI 2](#)

**F126** [SR 2005/426](#)

**F127** [1998 NI 21](#)

## PART VII

### EQUAL OPPORTUNITIES COMMISSION FOR NORTHERN IRELAND

#### *General*

#### **Establishment and duties of Commission**

**54.—(1)** [<sup>F128</sup>The Commission shall have the following duties]

(a) to work towards the elimination of discrimination,

[<sup>F129</sup>(aa) to work towards the elimination of harassment that is contrary to any of the provisions of this Order,]

(b) to promote equality of opportunity between men and women generally, <sup>F130</sup> . . .

[<sup>F130</sup>(bb) to promote equality of opportunity <sup>F131</sup> . . . for persons who intend to undergo, are undergoing or have undergone gender reassignment, and]

(c) to keep under review the working of this Order and the Equal Pay Act and, when the Commission is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending them.

*Paras. (2)#(4) rep. by 1998 c. 47*

**Changes to legislation:** Sex Discrimination (Northern Ireland) Order 1976 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F128** 1998 c. 47

**F129** SR 2005/426

**F130** SR 1999/311

**F131** Words in art. 54(1)(bb) omitted (6.4.2008) by virtue of Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 16**

## Research and education

**55.**—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of Article 54(1).

(2) The Commission may make charges for educational or other facilities or services made available by it.

## Review of discriminatory provisions in health and safety legislation

**56.**—(1) Without prejudice to the generality of Article 54(1), the Commission, in pursuance of the duties imposed by sub-paragraphs ( a ) and ( b ) of that paragraph—

(a) shall keep under review the relevant statutory provisions in so far as they require men and women to be treated differently, and

(b) if so required by the relevant department, make to it a report on any matter specified by it which is connected with those duties and concerns the relevant statutory provisions.

Any such report shall be made within the time specified by the relevant department, and the relevant department shall cause the report to be published.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the relevant department proposals for amending the relevant statutory provisions.

(3) The Commission shall carry out its duties in relation to the relevant statutory provisions in consultation with the relevant department.

(4) In this Article “the relevant statutory provisions” means the provisions mentioned in Schedule 4 or, in relation to the relevant department, means such of those provisions as relates to matters falling within the scope of the functions of that department; and “the relevant department” means any government department on or for purposes of which functions are conferred by any of those provisions.

## <sup>F132</sup>Codes of practice

**F132** 1988 NI 13

## Codes of practice

**56A.**—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for<sup>F133</sup> one or more] of the following purposes, namely—

(a) the elimination of discrimination in the field of employment;

[ the elimination in that field of harassment that is contrary to the provisions of this Order;]<sup>F134</sup>(aa)

(b) the promotion of equality of opportunity in that field between men and women.

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[ the promotion of equality of opportunity in that field for persons who intend to undergo, <sup>F133</sup>(c) are undergoing or have undergone gender reassignment.]

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this Article may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Order.

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; and
- (b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) If the Commission determines to proceed with the draft, it shall transmit the draft to the Department of Economic Development which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Department of Economic Development may by order appoint.

(8) The Commission may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code, and paragraphs (3) to (7) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(9) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings, but in any proceedings under this Order<sup>F135</sup> or the Equal Pay Act] before an industrial tribunal—

- (a) any code of practice issued under this Article shall be admissible in evidence; and
- (b) any provision of the code which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.]

**F133** SR 1999/311

**F134** SR 2005/426

**F135** 1993 NI 11

### *Investigations*

#### **Power to conduct formal investigations**

**57.**—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under Article 54(1), the Commission may if it thinks fit, and shall if required by the

Department of Manpower Services, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the head of the Department of Manpower Services, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

### Terms of reference

**58.**—(1) The Commission shall not embark on a formal investigation unless the requirements of this Article have been complied with.

(2) Terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

[<sup>F136</sup>(3A) Where the terms of reference of the investigation confine it to the activities of persons named in them and the Commission in the course of the investigation proposes to investigate any act made unlawful by this Order which they believe that a person so named may have done, the Commission shall—

- (a) inform that person of the Commission's belief and of the Commission's proposal to investigate the act in question; and
- (b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit);

and a person so named who avails himself of an opportunity under this paragraph of making oral representations may be represented—

- (i) by counsel or a solicitor; or
- (ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.]

(4) The Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, the Department after consulting the Commission, may from time to time revise the terms of reference; and paragraphs (1)[<sup>F136</sup>, (3) and (3A)] shall apply to the revised investigation and terms of reference as they applied to the original.

**F136** 1988 NI 13

### Power to obtain information

**59.**—(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner,—

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;

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- (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.
- (2) Except as provided by Article 69, a notice shall be served under paragraph (1) only where—
- (a) service of the notice was authorised by an order made by the Department of Manpower Services, or
- (b) the terms of reference of the investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—
- (i) unlawful<sup>F137</sup> acts of discrimination or harassment],
- (ii) contraventions of Article 38,
- (iii) contraventions of Article 39, 40 or 41, and
- (iv) acts in breach of a term modified or included by virtue of an equality clause, and confine the investigation to those acts.
- (3) A notice under paragraph (1) shall not require a person—
- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court, or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.
- (4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and if he fails without reasonable excuse to comply with any such order he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.
- (5) A person commits an offence if he—
- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this Article to produce, or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,
- and shall be liable on summary conviction to a fine not exceeding<sup>F138</sup> level 5 on the standard scale].
- (6) Proceedings for an offence under paragraph (5) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted—
- (a) against any person at any place at which he has an office or other place of business;
- (b) against an individual at any place where he resides, or at which he is for the time being.

**F137** SR 2005/426

**F138** 1984 NI 3

### Recommendations and reports on formal investigations

**60.**—(1) If in the light of any of the Commission's findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion,—

- (a) to make to any persons, with a view to promoting equality of opportunity between men and women who are affected by any of their activities, recommendations for changes in their policies or procedures, or as to any other matters, or
  - (b) to make to the Department of Manpower Services any recommendations, whether for changes in the law or otherwise,
- the Commission shall make those recommendations accordingly.
- (2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.
  - (3) If the formal investigation is one required by the Department of Manpower Services—
    - (a) the Commission shall deliver the report to the Department, and
    - (b) the Department shall cause the report to be published,and unless required by the Department the Commission shall not publish the report.
  - (4) If the formal investigation is not one required by the Department of Manpower Services, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).
  - (5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—
    - (a) to inspect the report during ordinary office hours and take copies of all or any part of the report, or
    - (b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.
  - (6) The Commission may if it thinks fit determine that the right conferred by paragraph (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.
  - (7) The Commission shall give notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

### **Restriction on disclosure of information**

- 61.**—(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except—
- (a) on the order of any court, or
  - (b) with the informant's consent, or
  - (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates, or
  - (d) in a report of the investigation published by the Commission or made available for inspection under Article 60(5), or
  - (e) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons, or
  - (f) for the purpose of any civil proceedings under this Order to which the Commission is a party, or any criminal proceedings.
- (2) Any person who discloses information in contravention of paragraph (1) commits an offence and shall be liable on summary conviction to a fine not exceeding [F139 level 5 on the standard scale].
- (3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private

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affairs of any individual or business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

F139 1984 NI 3

## PART VIII ENFORCEMENT

### *General*

#### **Restriction of proceedings for breach of Order**

**62.**—(1) Except as provided by this Order no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Order.

(2) Paragraph (1) does not preclude the making of an order of certiorari, mandamus or prohibition.

### *Enforcement in employment field*

#### **Jurisdiction of industrial tribunals**

**63.**—(1) A complaint by any person (“the complainant”) that another person (“the respondent”)

- (a) has committed an act of discrimination<sup>[F140]</sup> or harassment] against the complainant which is unlawful by virtue of Part III, or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination<sup>[F140]</sup> or harassment] against the complainant,<sup>[F141]</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III,]

may be presented to an industrial tribunal.

(2) Paragraph (1) does not apply to a complaint under Article 16(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any statutory provision.

<sup>[F142]</sup>(3) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998)—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part VI of that Order; or
- (b) such a complaint has been made, but the proceedings under that Order have not been disposed of,

the tribunal shall not proceed further under this Order in relation to the complaint unless all proceedings which can be taken under the Fair Employment and Treatment (Northern Ireland) Order 1998 in respect of the act have been disposed of.]

F140 SR 2005/426

**Changes to legislation:** Sex Discrimination (Northern Ireland) Order 1976 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F141** Art. 63(1)(c) and preceding word inserted (31.3.2011) by Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/156), **reg. 6**

**F142** 1998 NI 21

### **[<sup>F143</sup>Burden of proof: industrial tribunals**

**63A.**—(1) This Article applies to any complaint presented under Article 63 to an industrial tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed an act of discrimination[<sup>F144</sup> or harassment] against the complainant which is unlawful by virtue of Part III, or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination[<sup>F144</sup> or harassment] against the complainant,[<sup>F145</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III,]

the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.]

**F143** SR 2001/282

**F144** SR 2005/426

**F145** Art. 63A(2)(c) and preceding word inserted (31.3.2011) by Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/156), **reg. 7**

*Art. 64 rep. by 1996 NI 18*

### **Remedies on complaint under Article 63**

**65.**—(1) Where an industrial tribunal finds that a complaint presented to it under Article 63 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 by a county court to pay to the complainant if the complaint had fallen to be dealt with under Article 66;
- (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 act of discrimination to which the complaint relates.

[<sup>F146</sup>(1A) In applying Article 66 for the purposes of paragraphs (1)(b), no account shall be taken of paragraph (3) of that Article.

(1B) As respects an unlawful act of discrimination falling within[<sup>F147</sup> Article 3(2)(b)] or Article 5(1)(b), if the respondent proves that the[<sup>F147</sup> provision, criterion or practice] in question was not applied with the intention of treating the complainant unfavourably on the ground of his sex[<sup>F148</sup> or (as the case may be) fulfilment of the condition in Article 5(2)], an order may be made under paragraph (1)(b) only if the industrial tribunal—

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- (a) makes such order under paragraph (1)(a) and such recommendation under paragraph (1) (c) (if any) as it would have made if it had no power to make an order under paragraph (1) (b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1) (c) or both) considers that it is just and equitable to make an order under paragraph (1) (b) as well.]

*Para. (2) rep. by SR 1993/478*

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1)( c), then, if they think it just and equitable to do so,—

- (a) the tribunal may<sup>F149</sup> . . . increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)( b), or
- (b) if an order under paragraph (1)( b)[<sup>F146</sup> was not made], the tribunal may make such an order.

(4) Where compensation falls to be awarded in respect of any act both under the provisions of this Article and under any other statutory provision, an industrial tribunal shall not award compensation under this Article in respect of any loss or other matter which has been taken into account under that other statutory provision by the court in awarding compensation in an action in respect of that act.

**F146** SR 1996/418

**F147** SR 2001/282

**F148** 2004 c.33

**F149** SR 1993/478

### *Enforcement of Part IV*

#### **Claims under Part IV**

**66.**—(1) A claim by any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed an act of discrimination[<sup>F150</sup> or harassment] against the claimant which is unlawful by virtue of Part IV, or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination[<sup>F150</sup> or harassment] against the claimant,[<sup>F151</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part IV,]

may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Proceedings under paragraph (1) shall be brought only in a county court, but all such remedies shall be obtainable in such proceedings as, apart from this paragraph and Article 62(1), would be obtainable in the High Court.

(3) As respects an unlawful act of discrimination falling within Article 3(1)( b)<sup>F152</sup> . . . no award of damages 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 sex<sup>F152</sup> . . . .

[<sup>F153</sup>(3A) Paragraph (3) does not affect the award of damages in respect of an unlawful act of discrimination falling within Article 3(2)(b).]

(4) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination[<sup>F150</sup> or harassment] may include compensation for injury to feelings whether or not they include compensation under any other head.

(5) Civil proceedings in respect of a claim by any person that he has been discriminated against<sup>[F150]</sup>, or subjected to harassment] in contravention of Article 24 or 25 by a body to which Article 26(1) applies (other than proceedings in respect of a claim against the Department of Education) shall not be instituted unless the claimant has given notice of the claim to the Department of Education and either that Department has by notice informed the claimant that it does not require further time to consider the matter, or the period of two months has elapsed since the claimant gave notice to that Department; but nothing in this paragraph applies to a counter-claim.

(6) For the purposes of proceedings under paragraph (1)—

- (a) <sup>[F154]</sup> Article 33(1) of the County Courts (Northern Ireland) Order 1980 ] shall apply with the omission of the words “on the application of any party”, and
- (b) the remuneration of assessors appointed under the said section 62(1) shall be at such rate as may be determined by the Lord Chancellor with the approval of the Minister for the Civil Service and may be defrayed as part of the expenses of the county court service.

(7) A county court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its district, including such an act done outside Northern Ireland.

**F150** SR 2005/426

**F151** Art. 66(1)(c) and preceding word inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 8**

**F152** SR 1996/418

**F153** SR 2001/282

**F154** 1980 NI 3

### <sup>[F155]</sup> **Burden of proof: county court**

**66A.**—(1) This Article applies to any claim brought under Article 66(1) in a county court.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

- <sup>[F156]</sup>(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of—
  - (i) Article 30, 31 or 32, or
  - (ii) any other provision of Part IV so far as it applies to vocational training, or]
- (b) is by virtue of Article 42 and 43 to be treated as having committed such an act of discrimination<sup>[F157]</sup> or harassment] against the claimant,<sup>[F158]</sup> or
- (c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part IV,]

the court shall uphold the claim unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.]

**F155** SR 2001/282

**F156** Art. 66A(2)(a) substituted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), **Sch. 2 para. 17** (with reg. 5(1))

**F157** SR 2005/426

**F158** Art. 66A(2)(c) and preceding word inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 9**

*Status: Point in time view as at 07/10/2013.*

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### *Non-discrimination notices*

#### **Issue of non-discrimination notice**

**67.**—(1) This Article applies to—

- (a) an unlawful discriminatory act, and
- (b) a contravention of Article 38, and
- (c) a contravention of Article 39, 40 or 41, and
- (d) an act in breach of a term modified or included by virtue of an equality clause.

and so applies whether or not proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form (“a non-discrimination notice”) requiring him—

- (a) not to commit any such acts, and
- (b) where compliance with sub-paragraph (a) involves changes in any of his practices or other arrangements—
  - (i) to inform the Commission that he has effected those changes and what those changes are, and
  - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than five years after the notice has become final.

(5) The Commission shall not serve a non-discrimination notice in respect of any person unless it has first—

- (a) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so, and
- (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice, and
- (c) taken account of any representations so made by him.

(6) Paragraph (2) does not apply to any acts in respect of which the Department of Education could exercise the powers conferred on it by Article 26(2); but if the Commission becomes aware of any such acts it shall give notice of them to that Department.

(7) Article 59(4) shall apply to requirements under paragraphs (2)(b), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under Article 59(1).

#### **Appeal against non-discrimination notice**

**68.**—(1) Not later than six weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice—

- (a) to an industrial tribunal, so far as the requirement relates to acts which are within the jurisdiction of the tribunal;

(b) to a county court so far as the requirement relates to acts which are within the jurisdiction of the court and are not within the jurisdiction of an industrial tribunal.

(2) Where the court or tribunal considers a requirement in respect of which an appeal is brought under paragraph (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the court or tribunal shall quash the requirement.

(3) On quashing a requirement under paragraph (2) the court or tribunal may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Paragraph (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under paragraph (3).

### **Investigation as to compliance with non-discrimination notice**

**69.**—(1) If—

(a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination notice are being or have been carried out, but Article 59(2)(b) does not apply, and

(b) Article 58(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of five years beginning when the non-discrimination notice became final.

the Commission may within the period referred to in paragraph (2) serve notices under Article 59(1) for the purposes of the investigation without needing to obtain the consent of the Department of Manpower Services.

(2) The said period begins on the commencement date and ends on the later of the following dates—

(a) the date on which the period of five years mentioned in paragraph (1)(b) expires;

(b) the date two years after the commencement date.

### **Register of non-discrimination notices**

**70.**—(1) The Commission shall establish and maintain a register (“the register”) of non-discrimination notices which have become final.

(2) Any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission,—

(a) to inspect the register during ordinary office hours and take copies of any entry, or

(b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by paragraph (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

### *Other enforcement by Commission*

### **Persistent discrimination**

**71.**—(1) If, during the period of five years beginning on the date on which either of the following became final in the case of any person, namely,—

*Status: Point in time view as at 07/10/2013.*

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- (a) a non-discrimination notice served on him,
- (b) a finding by a court or tribunal under Article 63 or 66, or section 2 of the Equal Pay Act, that he has done an unlawful discriminatory act or an act in breach of a term modified or included by virtue of an equality clause,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within sub-paragraph ( b ), or contravening Article 38, the Commission may apply to a county court for an injunction restraining him from doing so; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(2) In proceedings under this Article the Commission shall not allege that the person to whom the proceedings relate has done an act which is within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

### **Enforcement of Articles 39 to 41**

**72.**—(1) Proceedings in respect of a contravention of Article 39, 40 or 41 [<sup>F159</sup> may be brought] by the Commission in accordance with the following provisions of this Article.

(2) The proceedings shall be—

- (a) an application for a decision whether the alleged contravention occurred, or
- (b) an application under paragraph (4),

or both.

(3) An application under paragraph (2)( a ) shall be made—

- (a) in a case based on any provision of Part III, to an industrial tribunal, and
- (b) in any other case to a county court.

(4) If it appears to the Commission—

- (a) that a person has done an act which by virtue of Article 39, 40 or 41 was unlawful, and
- (b) that unless restrained he is likely to do further acts which by virtue of that Article are unlawful,

the Commission may apply to a county court for an injunction restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.

(5) In proceedings under paragraph (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful under this Order and within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

**F159** Words in art. 72(1) substituted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), **reg. 10**

### **Preliminary action in employment cases**

**73.**—(1) With a view to making an application under Article 71(1) or 72(4) in relation to a person the Commission may present to an industrial tribunal a complaint that he has done an act within the jurisdiction of an industrial tribunal, and if the tribunal considers that the complaint is well-founded they shall make a finding to that effect and, if they think it just and equitable to do so in the case of an act contravening any provision of Part III may also (as if the complaint had been presented by the person discriminated against) make an order such as is referred to in Article 65(1)( a ), or a recommendation such as is referred to in Article 65(1)( c ), or both.

(2) Paragraph (1) is without prejudice to the jurisdiction conferred by Article 72(2).

- (3) Any finding of an industrial tribunal under—
- (a) this Order, or
  - (b) the Equal Pay Act,
- in respect of any act shall, if it has become final, be treated as conclusive—
- (i) by the county court on an application under Article 71(1) or 72(4) or in proceedings on an equality clause,
  - (ii) by an industrial tribunal on a complaint made by the person affected by the act under Article 63 or in relation to an equality clause.
- (4) In Articles 71 and 72 and this article, the acts “within the jurisdiction of an industrial tribunal” are those in respect of which such jurisdiction is conferred by Articles 63 and 72 and by section 2 of the Equal Pay Act.

*Help for persons suffering discrimination*

**Help for aggrieved persons in obtaining information etc.**

74.—(1) With a view to helping a person ( “the person aggrieved”) who considers he may have been discriminated against<sup>F160</sup> or subjected to harassment] in contravention of this Order to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the<sup>F161</sup> Office of the First Minister and deputy First Minister] shall by order 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;
  - (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 an order under paragraph (1) or not)—
- (a) the question, and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this Article, be admissible as evidence in the proceedings;
  - (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse omitted to reply within<sup>F160</sup> the period applicable under paragraph (2A)] or that his reply is evasive or equivocal, the court or 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.

<sup>F160</sup>(2A) The period applicable for the purposes of paragraph (2)(b) is—

- (a) eight weeks beginning with the day when the question was served on the respondent, if the question relates to discrimination under—
    - (i) any provision of Part III, <sup>F162</sup> . . .  
[ Article 30, 31 or 32, except in so far as it relates to an excluded matter; or]
  - <sup>F163</sup>(ia)
    - (ii) any provision of Part IV, so far as it applies to vocational training;
  - (b) a reasonable period, as regards any other question.]
- (3) The<sup>F161</sup> Office of the First Minister and deputy First Minister] may by order—
- (a) prescribe the period within which questions must be duly served in order to be admissible under paragraph (2)( a), and

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(b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.

(4) County court rules may enable the court entertaining a claim under Article 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this Article or not.

(5) This Article is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

*Para. (6) rep. by SI 1999/663*

(7) In this Article “respondent” includes a prospective respondent.

**F160** SR 2005/426

**F161** SI 1999/663

**F162** Word in art. 74(2A)(a)(i) omitted (6.4.2008) by virtue of Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 18(a)** (with reg. 5(2))

**F163** Art. 74(2A)(a)(ia) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963), regs. 1(1), 2(2), **Sch. 2 para. 18(b)** (with reg. 5(2))

### Assistance by Commission

**75.**—(1) Where, in relation to proceedings or prospective proceedings either under this Order or in respect of an equality clause, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this Article, 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 any other matter, to expect the applicant to deal with the case unaided,

or by reason of any other special consideration.

(2) Assistance by the Commission under this Article may include—

- (a) giving advice;
- (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,

[<sup>F164</sup>(e) any other form of assistance which the Commission may consider appropriate.]

but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in, any proceedings.

(3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this Article the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission—

- (a) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given, and

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(b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) The charge conferred by paragraph (3) is subject to any charge<sup>F165</sup> under [<sup>F166</sup> the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ] and is subject to any provision in<sup>F167</sup> that [<sup>F166</sup> Order] for payment of any sum<sup>F165</sup> into the legal aid fund.

(5) In this Article “respondent” includes a prospective respondent and “rules or regulations”

(a) in relation to county court proceedings, means county court rules;

(b) in relation to industrial tribunal proceedings, means<sup>F168</sup> industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996].

**F164** 1988 NI 13

**F165** prosp. subst. by 2003 NI 10

**F166** 1981 NI 8

**F167** prosp. insertion by 2003 NI 10

**F168** 1996 NI 18

#### *Period within which proceedings to be brought*

#### **Period within which proceedings to be brought**

76.—(1) [<sup>F169</sup>Subject to Article 76A, an industrial tribunal] shall not consider a complaint under Article 63 unless it is presented to the tribunal before the end of

[<sup>F170</sup>(a) the period of three months beginning when the act complained of was done; or

(b) in a case to which Article 82(9A) applies, the period of six months so beginning.]

(2) [<sup>F171</sup>Subject to Article 76A, a county court] shall not consider a claim under Article 66 unless proceedings in respect of the claim are instituted before the end of—

(a) the period of six months beginning when the act complained of was done; or

(b) in a case to which Article 66(5) applies, the period of eight months so beginning.

(3) [<sup>F172</sup>Subject to Article 76A, an industrial tribunal] or county court shall not consider an application under Article 72(2)( a) unless it is made before the end of the period of six months beginning when the act to which it relates was done; and a county court shall not consider an application under Article 72(4) unless it is made before the end of the period of five years so beginning.

(4) [<sup>F173</sup>Subject to Article 76A, an industrial tribunal] shall not consider a complaint under Article 73(1) unless it is presented to the tribunal before the end of the period of six months beginning when the act complained of was done.

(5) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of this Article—

(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

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the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.

- F169** Words in art. 76(1) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1, 6(2)
- F170** 1996 c. 46
- F171** Words in art. 76(2) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1, 6(3)
- F172** Words in art. 76(3) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1, 6(2)
- F173** Words in art. 76(4) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1, 6(2)

#### [<sup>F174</sup> **Extension of time limit: mediation**

**76A.**—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to proceedings under this Order; and
- (b) a period of time referred to in Article 76 (“the limitation period”) would, apart from this Article, expire—
  - (i) in the period of 8 weeks after the date on which the mediation ends;
  - (ii) on the date on which the mediation ends; or
  - (ii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party's withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

- F174** Art. 76A inserted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1, 6(4)

## PART IX SUPPLEMENTAL

### Validity and revision of contracts

77.—(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Order, or
- (b) it is included in furtherance of an act rendered unlawful by this Order, or
- (c) it provides for the doing of an act which would be rendered unlawful by this Order.

(2) Paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.

(3) A term of a contract which purports to exclude or limit any provision of this Order or the Equal Pay Act is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Paragraph (3) does not apply—

- (a) to a contract settling a complaint to which Article 63(1) of this Order or section 2 of the Equal Pay Act applies where the contract is made with<sup>[F175]</sup> the assistance of the Labour Relations Agency];

<sup>[F176]</sup>(aa) to a contract settling a complaint to which Article 63(1) of this Order or section 2 of the Equal Pay Act applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract;]

- (b) to a contract settling a claim to which Article 66 applies.

<sup>[F176]</sup>(4A) The conditions regulating compromise contracts under this Order are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received<sup>[F177]</sup> advice from a relevant independent adviser] as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a<sup>[F177]</sup> contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.

<sup>[F177]</sup>(4B) A person is a relevant independent adviser for the purposes of paragraph (4A)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or

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(d<sup>F178</sup> if he is a person of a description specified in an order made by the Department of Economic Development.

(4BA) But a person is not a relevant independent adviser for the purposes of paragraph (4A)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (4B)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (4B)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4BB) In paragraph (4B)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4BC) In paragraph (4B)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(4C) For the purposes of paragraph (4BA) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.]]

[<sup>F177</sup>(4D) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of paragraph (4)(a) and (aa) as being a contract settling a complaint if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.]

(5) On the application of any person interested in a contract to which paragraph (2) applies, a county court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(6) An order under paragraph (5) may include provision as respects any period before the making of the order.

**F175** 1996 NI 18

**F176** 1993 NI 11

**F177** 1998 NI 8

**F178** function transf. by SR 1999/481

## [<sup>F179</sup>Collective agreements and rules of undertakings

**77A.**—(1) Without prejudice to the generality of Article 77, that Article shall apply, as it applies in relation to a term of a contract, to the following, namely—

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- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation, authority or body to which paragraph (2) applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

and Article 77 shall so apply whether the agreement was entered into, or the rule made, before or after the commencement of Article 11 of the Sex Discrimination (Northern Ireland) Order 1988.

(2) This paragraph applies to—

- (a) any organisation of workers;
- (b) any organisation of employers;
- (c) any organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;
- (d) any authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade.

(3) For the purposes of Article 77 a term or rule shall be deemed to provide for the doing of an act which would be rendered unlawful by this Order if—

- (a) it provides for the inclusion in any contract of employment of any term which by virtue of an equality clause would fall either to be modified or to be supplemented by an additional term; and
- (b) that clause would not be prevented from operating in relation to that contract by section 1(3) of the Equal Pay Act (Northern Ireland) 1970 (material factors justifying discrimination).

(4) Nothing in Article 77 shall affect the operation of any term or rule in so far as it provides for the doing of a particular act in circumstances where the doing of that act would not be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order.

<sup>F180</sup>(4A) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph (1) of Article 77 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of sub-paragraph (c) of that paragraph, that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him; and
  - (ii) the act would be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer;
  - (ii) an organisation of employers of which an employer is a member; or
  - (iii) an association of such organisations of one of which an employer is a member; or
- (b) a rule made by an employer,

paragraph (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

*Status: Point in time view as at 07/10/2013.*

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(4C) In the case of a complaint about a rule made by an organisation, authority or body to which paragraph (2) applies, paragraph (4A) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body;
- (b) on whom the organisation, authority or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

(4D) When an industrial tribunal finds that a complaint presented to it under paragraph (4A) is well-founded the tribunal shall make an order declaring that the term or rule is void.]

(5) The avoidance by virtue of Article 77 of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights except in so far as they enable any person to require another person to be treated less favourably than himself, namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

(6) In this Article “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1976 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

(7) This Article shall have effect as if the terms of any service to which Parts III and V apply by virtue of paragraph (2) of Article 82 (Crown application) were terms of a contract of employment and in relation to the terms of any such service, as if service for the purposes of any person mentioned in that paragraph were employment by that person.]

**F179** 1988 NI 13

**F180** 1993 NI 11

## **Educational charities**

**78**<sup>F181</sup>.—(1) This Article applies to any trust deed or other instrument—

- (a) which concerns property applicable for or in connection with the provision of education in any establishment in paragraphs 1 to 5 of the table in Article 24, and
- (b) which in any way restricts the benefits available under the instrument to persons of one sex.

(2) If on the application of the trustees, or of the responsible body (as defined in Article 24), the Department of Finance is satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination that Department may by order make such modifications of the instrument as appear to it expedient for removing or modifying the restriction, and for any supplemental or incidental purposes.

(3) If the trust was created by gift or bequest, no order shall be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order.

(4) The Department of Finance shall require the applicant to publish notice—

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- (a) containing particulars of the proposed order, and
  - (b) stating that representations may be made to that Department within a period specified in the notice.
- (5) The period specified in the notice shall not be less than one month from the date of the notice.
- (6) The applicants shall publish the notice in such manner as may be specified by the Department of Finance, and the cost of any publication of the notice may be defrayed out of the property of the trust.
- (7) Before making the order the Department of Finance shall take into account any representations duly made in accordance with the notice.

**F181** functions transf. SR 1999/481

### Power to amend certain provisions of Order

**79.**—(1) The<sup>F182</sup> Office of the First Minister and deputy First Minister] may by an order the draft of which has been approved by the Assembly—

- (a) amend any of the following provisions, namely, Articles 8(3), 10, 21, 22(1), (2) and (3), 32(2), 33, 35, 36 and 44 to 49 (including any such provision as amended by a previous order under this paragraph);
- (b) amend or repeal any of the following provisions, namely, Articles 14(4), 15(4), 34 and 50 (including any such provision as amended by a previous order under this paragraph);
- (c) amend Part III, IV or V so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 8(1) or (2), 30(1), 31 or 32;

*Sub#para. (d) rep. by 1988 NI 13*

(2) <sup>F182</sup>The Office of the First Minister and deputy First Minister shall not lay] before the Assembly the draft of an order under paragraph (1) unless the Commission has been consulted about the contents of the draft.

(3) An order under paragraph (1)(c) may make such amendments to the list of provisions given in paragraph (1)(a) as in the opinion of the<sup>F182</sup> Office of the First Minister and deputy First Minister] are expedient having regard to the contents of the order.

**F182** SI 1999/663

### Orders and regulations

**80.**—(1) An order made by a Northern Ireland department under the preceding provisions of this Order (except Article 13(5)<sup>F183</sup> . . . , 28,<sup>F184</sup> . . . [<sup>F185</sup>, 59(2) or 79(1)]), and regulations made under this Order<sup>F186</sup> (except Article 82(9C)), shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 78 unless the order modifies an enactment.

(3) An order under this Order may contain transitional provisions and savings.

**F183** 1990 NI 2

**F184** 1988 NI 13

**F185** SI 1999/663

**F186** 1996 c. 46

*Status: Point in time view as at 07/10/2013.*

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### **Transitional provisions; amendments and repeals**

**81.**—(1) The provisions of Schedule 5 shall have effect for making transitional provision for the purposes of this Order.

*Para.(2), with Schedule 6, effects amendments; para.(3), with Schedule 7, effects repeals*

*Para.(4)—Commencement*

### **Application to Crown**

**82.**—(1) This Order applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Parts III and V apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,<sup>[F187]</sup> or]

<sup>[F187]</sup>(c) service in the armed forces,]

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

*Para. (3) rep. by 2005 NI 13*

(4) Paragraphs (1) and (2) have effect subject to<sup>[F188]</sup> Article 84 and 85].

<sup>[F189]</sup>(5) Nothing in this Order shall render unlawful an act done for the purpose of ensuring the combat effectiveness of the<sup>[F187]</sup> armed forces].]

*Para. (6) rep. by SR 2005/426*

*Para. (7) rep. by SR 1995/318*

(8) Paragraph (2) of Article 13 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland as it has effect in relation to a ship, aircraft or hovercraft mentioned in sub-paragraph ( a ) or ( b ) of that paragraph, and Article 13(5) shall apply accordingly.

(9) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Order as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under this Order section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

<sup>[F187]</sup>(9A) This paragraph applies to any complaint by a person ("the complainant") that another person—

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 8; or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

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(9B) No complaint to which paragraph (9A) applies shall be presented to an industrial tribunal under Article 63 unless—

- (a) the complainant has made [<sup>F190</sup>a service complaint in respect of the act complained of] ; and
- (b) the Defence Council have made a determination with respect to the [<sup>F191</sup>service complaint] .

(9C) Regulations made by the Secretary of State may make provision enabling a complaint to which paragraph (9A) applies to be presented to an industrial tribunal under Article 63 in such circumstances as may be specified by the regulations, notwithstanding that paragraph (9B) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(9D) Where a complaint is presented to an industrial tribunal under Article 63 by virtue of regulations under paragraph (9C), [<sup>F192</sup>the service complaint procedures] may continue after the complaint is so presented.

(9E) Regulations under paragraph (9C) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.]

[<sup>F187</sup>(10) In this Article—

"armed forces" means any of the naval, military or air forces of the Crown;

"service for purposes of a Minister of the Crown or government department" does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;

[<sup>F193</sup>"service complaint" means a complaint under section 334 of the Armed Forces Act 2006; "the service complaint procedures" means the procedures prescribed by regulations under that section;]

"statutory body" means a body set up by or in pursuance of a statutory provision and "statutory office" means an office so set up.]

**F187** 1996 c. 46

**F188** 2000 c. 32

**F189** SR 1995/318

**F190** Words in art. 82(9B)(a) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 82(2)(a)**; S.I. 2007/2913, **art. 3**

**F191** Words in art. 82(9B)(b) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 82(2)(b)**; S.I. 2007/2913, **art. 3**

**F192** Words in art. 82(9D) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 82(3)**; S.I. 2007/2913, **art. 3**

**F193** Art. 82(10): definitions of "service complaint" and "the service complaint procedures" substituted (1.1.2008) for "the service redress procedures" by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 82(4)**; S.I. 2007/2913, **art. 3**

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

**C3** Art. 82(9B) modified (24.4.2009) by Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), arts. 1(2)(b), **196(1)(e)**

**C4** Art. 82(9D) modified (24.4.2009) by Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), arts. 1(2)(b), **196(2)(e)**

*Art. 83 rep. by SR 2005/426*

*Status: Point in time view as at 07/10/2013.*

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## <sup>F194</sup>**The Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve**

**84.**—(1) For the purposes of Part II, the holding of the office of constable as a police officer shall be treated as employment—

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
- (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.

(2) Regulations under section 25 or 26 of the Police (Northern Ireland) Act 1998 or section 41 of the Police (Northern Ireland) Act 2000 shall not treat men and women differently except—

- (a) as to requirements relating to uniform or equipment or allowances in lieu of uniform or equipment;
- (b) so far as special treatment is accorded to women in connection with pregnancy or childbirth; or
- (c) in relation to pensions.

(3) Nothing in Part II renders unlawful any discrimination between male and female constables as to matters such as are mentioned in paragraph (2)(a).

(4) For the purposes of Article 42—

- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(5) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000—

- (a) any compensation, damages or costs awarded against the Chief Constable in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him the proceedings; and
- (b) any sum required by the Chief Constable for the settlement of any claim made against him under this Order if the settlement is approved by the Policing Board.

(6) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay—

- (a) any compensation, damages or costs awarded in proceedings under this Order against a police officer;
- (b) any costs incurred and not recovered by a police officer in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.

(7) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (6).

(8) Paragraphs (1) and (4) to (7)—

- (a) apply in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996 or<sup>F195</sup> section 23 or 24 of the Serious Organised Crime and Police Act 2005] as they apply in relation to a police officer;
- (b) apply in relation to a police officer who by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998 is under the direction and control of the Police Ombudsman for Northern Ireland as if—

- (i) in paragraph (1) the reference to the Chief Constable included a reference to the Ombudsman;
- (ii) in paragraphs (4), (6) and (7) the references to the Chief Constable were references to the Ombudsman.

**F194** 2000 c. 32

**F195** Words in art. 84(8)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178(8), Sch. 4 para. 37; S.I. 2006/378, art. 4(1), Sch. para. 10

### Other police bodies

**85.**—(1) For the purposes of Part II, the holding of the office of constable otherwise than as a police officer shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
- (b) by the police authority as respects any act done by it in relation to that office or the holder of it.

(2) For the purposes of Article 42—

- (a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of the police fund—

- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
- (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Order if the settlement is approved by the police authority.

(4) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, damages or costs awarded in proceedings under this Order against a person under the direction and control of the chief officer of police;
- (b) any costs incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).

[<sup>F196</sup>(6) In this Article in relation to any body of constables—

- (a) “chief officer of police” means the person who has the direction and control of the body;
- (b) “police authority” means the authority by which the members of the body are paid; and
- (c) “police fund” means money provided by that authority.]

(7) Nothing in paragraphs (3) to (6) applies in relation to the police.]

**F194** 2000 c. 32

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**F196** Art. 85(6) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178(8), Sch. 4 para. 38; S.I. 2006/378, **art. 4(1)**, Sch. para. 10

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