

STATUTORY INSTRUMENTS

**1976 No. 1042**

**Sex Discrimination (Northern Ireland) Order 1976**

**PART VI**

**GENERAL EXCEPTIONS FROM PARTS III TO V**

**[<sup>F1</sup>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;
- <sup>F2</sup>(b) . . . . .
- (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).]

**F1** 2002 c.2

**F2** Art. 43A(3)(b) revoked (31.12.2020) by [The European Parliamentary Elections Etc. \(Repeal, Revocation, Amendment and Saving Provisions\) \(United Kingdom and Gibraltar\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1310\)](#), reg. 1, **Sch. 1 Pt. 2** (as amended by [S.I. 2019/1389](#), regs. 1, 2(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.

(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>F3</sup>(2A) But paragraph (1) does not apply to discrimination under [<sup>F4</sup>Article 3, 3A or 4A] in its application to Articles 30 to 32 unless the conferral of benefits is —

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- (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.

<b>F3</b>	Art. 44(2A) inserted (6.4.2008) by <a href="#">Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)</a> , regs. 1(1), 2(2), <b>Sch. 2 para. 11</b>
<b>F4</b>	Words in art. 44(2A) substituted (2.5.2016) by <a href="#">The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191)</a> , regs. 1(1), <b>17</b>

**Sport etc.**

**45.**—<sup>F5</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>F6</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.]

<b>F5</b>	Art. 45 renumbered (6.4.2008) as para. (1) by <a href="#">Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)</a> , regs. 1(1), 2(2), <b>Sch. 2 para. 12</b>
<b>F6</b>	Art. 45(2) inserted (6.4.2008) by <a href="#">Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)</a> , regs. 1(1), 2(2), <b>Sch. 2 para. 12</b>

**Insurance etc.**

**46.**—<sup>F7</sup>(1) <sup>F8</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>F9</sup>(2) In the case of discrimination under Article <sup>F10</sup>...31 or 32, paragraph (1) applies only in so far as that Article relates to—

- (a) an excluded matter, or
- (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>F11</sup>(3) .....

<sup>F11</sup>(4) .....

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(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. ]

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| <b>F7</b>  | Art. 46 renumbered (6.4.2008) as para. (1) by <a href="#">Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)</a> , regs. 1(1), 2(2), <b>Sch. 2 para. 13</b>                        |
| <b>F8</b>  | Words in art. 46(1) substituted (21.12.2012) by <a href="#">The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462)</a> , regs. 1(1), <b>2(2)</b> (with reg. 3)      |
| <b>F9</b>  | Art. 46(2)-(5) inserted (6.4.2008) by <a href="#">Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)</a> , regs. 1(1), 2(2), <b>Sch. 2 para. 13</b> (with reg. 5(3))               |
| <b>F10</b> | Word in art. 46(2) omitted (21.12.2012) by virtue of <a href="#">The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462)</a> , regs. 1(1), <b>2(3)</b> (with reg. 3) |
| <b>F11</b> | Art. 46(3)(4) omitted (21.12.2012) by virtue of <a href="#">The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/462)</a> , 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>F12</sup>; and]
- [<sup>F13</sup>(c) in respect of discrimination falling within [<sup>F14</sup> Article 4A or 4B] , 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 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>F15</sup> Article 36(1) and (1C)].

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- F12** 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)**
- F13** 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)**
- F14** Words in art. 47(4)(c) substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191), regs. 1(1), **18**
- F15** 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>F16</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>F16</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>F16</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>F16</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>F16</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>F16</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>F16</sup>(4) Paragraphs (1) to (3) shall not apply in relation to any discrimination which is rendered unlawful by Article 8.]

**F16** 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>F17</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.]

**F17** 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—

- (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.

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### **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>F18</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.]



**[<sup>F19</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>F20</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>F21</sup>(except Articles 24 to 28, 33 and 34) in so far as they relate to an excluded matter].]

**F19** 1990 NI 2

**F20** 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)**

**F21** 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>F22</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.

**F22** 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.

(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.

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(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.]

**F22** [1998 NI 21](#)

### [<sup>F23</sup>Construction of references to vocational training

**53A.** In[<sup>F24</sup> Article][<sup>F25</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.]

**F23** [1990 NI 2](#)

**F24** [SR 2005/426](#)

**F25** [1998 NI 21](#)



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