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## STATUTORY INSTRUMENTS

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# 1976 No. 1042

## Sex Discrimination (Northern Ireland) Order 1976

### 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>[F1]</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>[F1]</sup> or harassment] against the complainant,

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>[F2]</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.]

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**F1** SR 2005/426

**F2** 1998 NI 21

### [<sup>F3</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>F4</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>F4</sup> or harassment] against the complainant,

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.]

**F3** SR 2001/282

**F4** SR 2005/426

*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>F5</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>F6</sup> Article 3(2)(b)] or Article 5(1)(b), if the respondent proves that the[<sup>F6</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>F7</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—

- (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>F8</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>F5</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.

**F5** SR 1996/418

**F6** SR 2001/282

**F7** [2004 c.33](#)

**F8** 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>F9</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>F9</sup> or harassment] against the claimant,

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>F10</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>F10</sup>. . . .

[<sup>F11</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>F9</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>F9</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)—

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- (a) [<sup>F12</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.

**F9** SR 2005/426  
**F10** SR 1996/418  
**F11** SR 2001/282  
**F12** 1980 NI 3

### **[<sup>F13</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—

- (a) has committed an act of discrimination[<sup>F14</sup> or harassment] against the claimant which is unlawful by virtue of any 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>F14</sup> or harassment] against the claimant,

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.]

**F13** SR 2001/282  
**F14** SR 2005/426

### *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

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- (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,—

- (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 shall be brought only 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.

#### **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>F15</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

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most effective manner, the<sup>F16</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>F15</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>F15</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, or
  - (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>F16</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
- (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.

**F15** SR 2005/426

**F16** SI 1999/663

### **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>F17</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
- (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>F18</sup> under [<sup>F19</sup> the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ] and is subject to any provision in<sup>F20</sup> that [<sup>F19</sup> Order] for payment of any sum<sup>F18</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>F21</sup> industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996].

**F17** 1988 NI 13

**F18** prosp. subst. by 2003 NI 10

**F19** 1981 NI 8

**F20** prosp. insertion by 2003 NI 10

**F21** 1996 NI 18

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

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

**76.**—(1) An industrial tribunal shall not consider a complaint under Article 63 unless it is presented to the tribunal before the end of

- [<sup>F22</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.]

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

F22 1996 c. 46

VALID FROM 18/04/2011

**[<sup>F23</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.]

**F23** [Art. 76A](#) inserted (18.4.2011) by [Cross-Border Mediation Regulations \(Northern Ireland\) 2011 \(S.R. 2011/157\)](#), regs. 1, **6(4)**

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