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STATUTORY INSTRUMENTS

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**1998 No. 3162**

**The Fair Employment and Treatment  
(Northern Ireland) Order 1998**

**PART III**

**[<sup>F1</sup>DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD]**

*[<sup>F1</sup>Discrimination and harassment in the employment field]*

**F1** SR 2003/520

**<sup>F2</sup> . . . applicants and employees**

**19.**—(1) It is unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland,—

- (a) where that person is seeking employment—
  - (i) in the arrangements the employer makes for the purpose of determining who should be offered employment; or
  - (ii) in the terms on which he offers him employment; or
  - (iii) by refusing or deliberately omitting to offer that person employment for which he applies; or
- (b) where that person is employed by him—
  - (i) in the terms of employment which he affords him; or
  - (ii) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or
  - (iii) by dismissing him or by subjecting him to any other detriment.

[<sup>F2</sup>(1A) It is unlawful for an employer, in relation to employment by him in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.]

(2) Paragraph (1)(b) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public comprising the employee in question, unless—

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

[<sup>F2</sup>(3) In paragraph (1)(b)(iii) reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment 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 is renewed on the same terms; and
- (b) to the termination of that person's employment 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.]

**F2** SR 2003/520

<sup>F3</sup>... **contract workers**

**20.**—(1) This Article applies to any work for a person (“the principal”) which is available to be done by individuals (“contract workers”)—

- (a) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal; and
- (b) who, if they were instead employed by the principal to do that work, would be in his employment in Northern Ireland.

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

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

[<sup>F3</sup>(2A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.]

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

**F3** SR 2003/520

[<sup>F4</sup>**Office-holders etc.**

**20A.**—(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 person—

- (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 him the appointment; or
- (c) by refusing to offer him the appointment.

(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 paragraph (8)(b), for a relevant person on whose

recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (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 person who has been appointed to an office or post to which this Article applies, to discriminate against him—

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

- (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 is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of Article 70 and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of Article 70 to refuse to offer the person such employment.

(6) 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 by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) 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 he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This Article applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and

(b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,  
but not a political office or a case where Article 19, 20, 21, 26 or 32 applies, or would apply but for the operation of any other provision of this Order.

(9) For the purposes of paragraph (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
  - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this Article—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
  - (i) any office of the House of Commons held by a member of it,
  - (ii) 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,
  - (iii) any office of the Assembly held by a member of it,
  - (iv) any office of a district council held by a member of it, or
  - (v) any office of a political party.
- (c) “relevant person”, in relation to an office or post, means—
  - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
  - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit; and
  - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.]

**F4** SR 2003/520

<sup>F5</sup> . . . **persons with statutory power to select employees for others**

**21.**—<sup>F5</sup>[<sup>F5</sup>(1)] It is unlawful for a person who is <sup>F5</sup>empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person, <sup>F5</sup> . . .

- (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.

[<sup>F5</sup>(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.]

**F5** SR 2003/520

#### <sup>F6</sup> . . . employment agencies

**22.**—(1) It is unlawful for an employment agency to discriminate against a person,<sup>F6</sup> . . .

- (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>F6</sup>(1A) It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment a person to whom it provides such services or who requests the provision of such services.]

(2) References in [<sup>F6</sup> paragraphs (1) and (1A)] to the services of an employment agency include guidance on careers and any other services related to employment.

(3) [<sup>F6</sup>Paragraph (1)] does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person concerned.

(4) An employment agency shall not be subject to any liability under [<sup>F6</sup> paragraph (1)] 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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**F6** SR 2003/520

#### [<sup>F7</sup>Vocational organisations

**23.**—(1) It is unlawful for a vocational organisation to discriminate against a person—

- (a) who is not a member of the organisation—
  - (i) in the terms on which it is prepared to admit him to membership of the organisation; or
  - (ii) by refusing to accept, or deliberately not accepting, his application for membership; or
- (b) who is a member of the organisation—
  - (i) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
  - (ii) by depriving him of membership, or varying the terms on which he is a member; or
  - (iii) by subjecting him to any other detriment.

(2) It is unlawful for a vocational organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.]

F7 SR 2003/520

**<sup>F8</sup> . . . persons providing training services**

**24.**—(1) It is unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation,<sup>F8</sup> . . . to discriminate against another person—

- (a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf—
  - (i) by refusing or deliberately omitting to provide those services; or
  - (ii) in the terms on which the person offers to provide those services; or
- (b) where that other person is receiving those services—
  - (i) in the way the person provides those services; or
  - (ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them; or
  - (iii) by withdrawing those services from him or varying the terms on which they are provided; or
  - (iv) by subjecting him to any other detriment.

[<sup>F8</sup>(1A) It is unlawful for a person who provides services in connection with training to which paragraph (1) applies, to subject to harassment a person to whom he provides such services or who is seeking to obtain such services.]

(2) In [<sup>F8</sup> paragraphs (1) and (1A)] “services”, in relation to training for employment, means services provided otherwise than by the employer of the person who is seeking to obtain or is receiving the services.

[<sup>F8</sup>(3) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment—

- (a) which is rendered unlawful by Article 27; or
- (b) which would be rendered unlawful by Article 27 but for the operation of any other provision of this Order.]

F8 SR 2003/520

**[<sup>F9</sup>Assisting persons to obtain employment etc.**

**24A.**—(1) It is unlawful for the [<sup>F10</sup>Department for Communities or the Department for the Economy] to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 1 of the Employment and Training Act (Northern Ireland) 1950 (general functions of the [<sup>F11</sup>Department for Communities or the Department for the Economy] as to employment and training for employment).

(2) This Article does not apply in a case where—

- (a) the [<sup>F12</sup>Department for Communities or the Department for the Economy] is acting as an employment agency, or

- (b) Article 24 applies, or would apply but for the operation of any other provision of this Order.]

**F9** SR 2003/520

**F10** Words in art. 24A(1) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 47(a)(i)** (with art. 9(2))

**F11** Words in art. 24A(1) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 47(a)(ii)** (with art. 9(2))

**F12** Words in art. 24A(2)(a) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 47(b)** (with art. 9(2))

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

**C1** Art. 24A: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 4 Pt. 2** (with art. 9(2))

<sup>F13</sup> . . . persons with power to confer qualifications

**25.**—(1) It is unlawful for a person who has power to confer on another a qualification which is needed for, or facilitates, his engagement in employment in any capacity, or in a particular employment or occupation,<sup>F13</sup> . . . to discriminate against him—

- (a) by refusing or deliberately omitting to confer that qualification on him on his application; or
- (b) in the terms on which the person is prepared to confer it; or
- (c) by withdrawing it from him or varying the terms on which he holds it.

[<sup>F13</sup>(1A) It is unlawful for a person who has the power referred to in paragraph (1), in relation to a qualification conferred by him, to subject to harassment another who holds or applies for such a qualification.]

[<sup>F13</sup>(2) Paragraphs (1) and (1A) do not apply to discrimination or, as the case may be, harassment which is rendered unlawful by Article 27.]

**F13** SR 2003/520

[<sup>F14</sup>**Trustees and managers of occupational pension schemes**

**25A.**—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to 10th December 2003, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 2A shall have effect for the purposes of:—

- (a) defining terms used in this Article and in that Schedule;
- (b) treating every occupational pension scheme as including a non-discrimination rule;
- (c) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;

**Changes to legislation:** *There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, Cross Heading: Discrimination and harassment in the employment field. (See end of Document for details)*

- (d) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to the Tribunal under Article 38.]

**F14** SR 2003/520



**Changes to legislation:**

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, Cross Heading: Discrimination and harassment in the employment field.