

## SCHEDULE 1

Regulation 11(3)

### OCCUPATIONAL PENSION SCHEMES

#### *Interpretation*

1.—(1) In this Schedule –

“active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, in relation to an occupational pension scheme, have the meanings given by Article 121(1) of the Pensions (Northern Ireland) Order 1995(1) as at 2nd December 2003;

“member” means any active member, deferred member or pensioner member;

“non-discrimination rule” means the rule in paragraph 2;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act (Northern Ireland) 1993(2) as at 2nd December 2003;

“prospective member”, in relation to an occupational pension scheme, means any person who, under the terms of his employment or the rules of the scheme or both –

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.

(2) In paragraph 6 (procedure in industrial tribunals), “employer”, in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995 as at 2nd December 2003.

(3) Any term used in regulation 11 (trustees and managers of occupational pension schemes) and in this Schedule shall have the same meaning in that regulation as it has in this Schedule.

#### *Non-discrimination rule*

2. Every occupational pension scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 11.

3. The other provisions of the scheme are to have effect subject to the non-discrimination rule.

4. The trustees or managers of an occupational pension scheme may –

- (a) if they do not (apart from this paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) if they have such power but the procedure for doing so –
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

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(1) S.I.1995/3213 (N.I. 22)

(2) 1993 c. 49

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5. Alterations made by a resolution such as is referred to in paragraph 4 may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before 2nd December 2003).

*Procedure in industrial tribunals*

6. Where under regulation 34 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme –

- (a) have committed against him an act which is unlawful by virtue of regulation 11 (trustees and managers of occupational pension schemes) or 23 (relationships which have come to an end); or
- (b) are by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

*Remedies in industrial tribunals*

7.—(1) This paragraph applies where –

- (a) under regulation 34 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme (“the complainant”) presents to an industrial tribunal a complaint against the trustees or managers of the scheme or his employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the industrial tribunal may, without prejudice to the generality of its power under regulation 36(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right –

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2) –

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before 2nd December 2003);
- (b) may make such provision as the industrial tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the industrial tribunal may not make an order for compensation under regulation 36(1)(b), whether in relation to arrears of benefits or otherwise, except –

- (a) for injury to feelings;
- (b) by virtue of regulation 36(3).

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SCHEDULE 2

Regulation 39(1)

QUESTIONNAIRE OF PERSON AGGRIEVED

To ..... *(name of person to be questioned)* of .....  
..... *(address)*

1.—(1) I ..... *(name of questioner)* of ..... *(address)* consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.

(2) *(Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.)*

(3) I consider that this treatment may have been unlawful [because .....  
..... *(complete if you wish to give reasons, otherwise delete)*].

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination [harassment]?

If not –

- (a) why not,
- (b) for what reason did I receive the treatment accorded to me, and
- (c) how far did considerations of sexual orientation affect your treatment of me?

4. *(Any other questions you wish to ask.)*

5. My address for any reply you may wish to give to the questions raised above is [that set out in paragraph 1(1) above] [the following address .....].

..... *(signature of questioner)*

..... *(date)*

*N.B.*—By virtue of regulation 39 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

SCHEDULE 3

Regulation 39(1)

REPLY BY RESPONDENT

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To ..... (name of questioner) of ..... (address)

I, ..... (name of person questioned) of ..... (address) hereby acknowledge receipt of the questionnaire signed by you and dated ..... which was served on me on ..... (date).

2. [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in that .....

3. I accept/dispute that my treatment of you was unlawful discrimination | harassment | by me against you.

[My reasons for so disputing are..... The reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are .....

4. (Replies to questions in paragraph 4 of the questionnaire.)

[5. I have deleted (in whole or in part) the paragraph (s) numbered ..... above, since I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons .....

..... (signature of person questioned);

..... (date);

SCHEDULE 4

Regulation 42

VALIDITY OF CONTRACTS, COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

PART I

VALIDITY AND REVISION OF CONTRACTS

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

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

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

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

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after 2 December 2003; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

- 2.—(1) Paragraph 1(3) does not apply –
- (a) to a contract settling a complaint to which regulation 34(1) (jurisdiction of industrial tribunals) applies where the contract is made with the assistance of the Labour Relations Agency;
  - (b) to a contract settling a complaint to which regulation 34(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
  - (c) to a contract settling a claim to which regulation 37 (jurisdiction of county courts) applies.
- (2) The conditions regulating compromise contracts under this Schedule are that –
- (a) the contract must be in writing;
  - (b) the contract must relate to the particular complaint;
  - (c) the complainant must have received 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 a complaint before an industrial tribunal;
  - (d) there must be in force, when the adviser gives the advice, a 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 Schedule are satisfied.
- (3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(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; or
  - (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.
- (4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant –
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
  - (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
  - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(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.
- (6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992(3).
- (7) For the purposes of sub-paragraph (4)(a) 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.

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- (8) An agreement under which the parties agree to submit a dispute to arbitration –
- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) 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(4), and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such a contract in any other case.

3.—(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court may make such order as it thinks fit for –

- (a) removing or modifying any term rendered void by paragraph 1(1), or
- (b) removing or modifying any term made unenforceable by paragraph 1(2);

but such an order shall not be made unless all persons affected have been given notice in writing 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.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 2nd December 2003).

## PART II

### COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

4.—(1) This Part of this Schedule applies to –

- (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 a trade organisation (within the meaning of regulation 17) or a qualifications body (within the meaning of regulation 18) for application to –
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 18) or who are seeking the professional or trade qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where –

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.

(3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after 2nd December 2003; but in the case of an agreement entered into, or a rule made,

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(4) Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8))

before 2nd December 2003, that sub-paragraph does not apply in relation to any period before that date.

5. 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 4 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 paragraph 4(2)(c), 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 unlawful by virtue of these Regulations if done in relation to him in present circumstances.

6. 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 within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

7. In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person –

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 18); or
- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

8.—(1) When an industrial tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 2nd December 2003).

9. The avoidance by virtue of paragraph 4(2) 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.

10. In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 (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.

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## SCHEDULE 5

Regulation 44

## AMENDMENTS TO LEGISLATION

1. The Industrial Tribunals (Northern Ireland) Order 1996<sup>(5)</sup> is amended as follows.
 

In Article 20(1)(a) (cases where conciliation provisions apply) –

  - (a) at the end of head (iii), there is omitted “or”, and
  - (b) after head (iv), insert –
 

“or

(v) regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.”.
  
2. Article 160 (compensation for acts which are both unfair dismissal and discrimination) of the Employment Rights (Northern Ireland) Order 1996<sup>(6)</sup> is amended as follows –
  - (a) in sub-paragraph (b) of paragraph (1) –
    - (i) after “Disability Discrimination Act 1995” there is omitted “and”;
    - (ii) after “Race Relations (Northern Ireland) 1997” there is inserted “and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003”;
  - (b) after “those Orders” insert “or Regulations”.
  
- 3.—(1) In Article 85(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(7)</sup> (procedure for matters within jurisdiction of industrial tribunal) –
  - (a) in sub-paragraph (a) after head (iv) add –
 

“(v) a person has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part II of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; or”;
  - (b) in paragraph (b) after “Order 1997” insert “or the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003”.

(2) In Article 85(3)(b) of that Order, after head (iii), insert –

“(iv) regulation 34(4) of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.”.
  
4. In the Employment Order (Northern Ireland) 2003<sup>(8)</sup> at the end of each of the following Schedules –
  - (a) Schedule 2 (tribunal jurisdictions to which Article 17 applies);
  - (b) Schedule 3 (tribunal jurisdictions to which Article 19 applies); and
  - (c) Schedule 4 (tribunal jurisdictions to which Article 27 applies),

insert –

“Regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (discrimination in the employment field)”.

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<sup>(5)</sup> S.I. 1996/1921 (N.I. 18)

<sup>(6)</sup> S.I. 1996/1919 (N.I. 16)

<sup>(7)</sup> S.I. 1998/3162 (N.I. 21)

<sup>(8)</sup> S.I. 2003/2902 (N.I. 15)



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