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SCHEDULES

SCHEDULE 1

Section 3(1).

PROVISIONS SUPPLEMENTARY TO SECTION 3(1)

Spent convictions

- 1 A conviction which is to be treated as spent for the purposes of the ^{M1}Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland shall be disregarded for the purposes of section 3(1)(a) of this Act.

Marginal Citations

M1 1974 c. 53.

Discrimination

- 2 A person shall be deemed to have committed discrimination for the purposes of section 3(1)(b) of this Act in the following cases only, namely—
- (a) where a finding of discrimination has been made against him in proceedings under section 66 of the ^{M2}Sex Discrimination Act 1975 (in this Schedule referred to as “the 1975 Act”) and the finding has become final;
 - (b) where a non-discrimination notice has been served on him under the 1975 Act and the notice has become final;
 - (c) if he is for the time being subject to the restraints of an injunction or order granted against him in proceedings under section 71 (persistent discrimination) or section 72(4) (enforcement of sections 38 to 40) of the 1975 Act;
 - (d) if, on an application under section 72(2)(a) of the 1975 Act, there has been a finding against him that a contravention of section 38, section 39 or section 40 of that Act has occurred and that finding has become final;
 - (e) where a finding of discrimination has been made against him in proceedings under section 57 of the ^{M3}Race Relations Act 1976 (in this Schedule referred to as “the 1976 Act”) and the finding has become final;
 - (f) where a non-discrimination notice has been served on him under the 1976 Act and the notice has become final;
 - (g) if he is for the time being subject to the restraints of an injunction or order granted against him in proceedings under section 62 (persistent discrimination) or section 63(4) (enforcement of sections 29 to 31) of the 1976 Act; or
 - (h) if, on an application under section 63(2)(a) of the 1976 Act, there has been a finding against him that a contravention of section 29, section 30 or section 31 of that Act has occurred and that finding has become final;

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and the finding, notice, injunction or order related or relates to discrimination falling within Part III of the 1975 Act or the 1976 Act (discrimination in fields other than employment).

Marginal Citations

M2 1975 c. 65.

M3 1976 c. 74.

- 3 After the expiry of the period of five years beginning on the day on which any such finding or notice as is referred to in paragraph 2 above became final, no person shall be treated for the purposes of section 3(1)(b) of this Act as having committed discrimination by reason only of that finding or notice.
- 4 (1) So far as paragraphs 2 and 3 above relate to findings and notices under the 1975 Act, subsections (1) and (4) of section 82 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.
- (2) So far as paragraphs 2 and 3 above relate to findings and notices under the 1976 Act, subsections (1) and (4) of section 78 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.
- 5 In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1975 Act shall be construed as references to the ^{M4}Sex Discrimination (Northern Ireland) Order 1976, and in particular—
- (a) the references to sections 38, 39 and 40 of the 1975 Act shall be construed as references to Articles 39, 40 and 41 of that Order;
 - (b) the reference to subsections (1) and (4) of section 82 of the 1975 Act shall be construed as a reference to paragraphs (1), (2) and (5) or Article 2 of that Order; and
 - (c) other references to numbered sections of the 1975 Act shall be construed as references to the Articles of that Order bearing the same number;
- and there shall be omitted sub-paragraphs (e) to (h) of paragraph 2, sub-paragraph (2) of paragraph 4 and so much of paragraph 3 as relates to findings or notices under the 1976 Act.

Marginal Citations

M4 S.I. 1976/1042 (N.I. 15)

VALID FROM 04/08/1997

^{F16} In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1976 Act shall be construed as references to the Race Relations (Northern Ireland) Order 1997, and in particular the references to sections 29, 30, 31, 57, 62, 63(2)(a) and (4) and 78(1) and (4) of the 1976 Act shall be construed as references to Articles 29, 30, 31, 54, 59, 60(2)(a) and (4) and 2(2) and (3) respectively of that Order.]

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Textual Amendments

- F1** By S.I. 1997/869 (N.I. 6), art. 73, Sch. 2 para. 2(2); S.R. 1997/273, art. 2(4) it is provided (4.8.1997) that for certain words in Sch. 1 para. 5 there shall be substituted para. 6

SCHEDULE 2

Sections 5, 6 and 8(3).

PROCEDURE ETC.

PART I

ORDERS AND DECISIONS UNDER SECTIONS 3, 4 AND 6

Introductory

- 1 In this Schedule—
- (a) subject to sub-paragraph (2) below, references to “the person affected” are to the person in respect of whom the Director proposes to make, or has made, an order under section 3 or section 4 of this Act, or who has made an application under section 6 of this Act for the variation or revocation of such an order; and
 - (b) references to the Director’s “proposal” are to any proposal of his to make such an order or to make a decision under subsection (4) or subsection (5) of section 6 of this Act on such an application.
- (2) In the case of a proposal of the Director to make an order under section 3 or section 4 of this Act against a partnership where, by virtue of section 5(2) of this Act, he intends that the order shall have effect as an order against some or all of the partners individually, references in the following provisions of this Schedule to the person affected shall be construed, except where the contrary is provided, as references to each of the partners affected by the order, as well as to the partnership itself.

Notice of proposal

- 2 (1) The Director shall give to the person affected a notice informing him of the proposal and of the Director’s reason for it; but paragraph 1(2) above shall not apply for the purposes of this sub-paragraph.
- (2) In the case of a proposal to make an order, the notice under sub-paragraph (1) above shall inform the person affected of the substance of the proposed order and, in the case of a proposal to make an order under section 3 of this Act, shall—
- (a) set out those matters falling within subsection (1) of that section which the Director intends should be specified as the grounds for the order, and
 - (b) specify any other matters of which the Director has taken account under subsection (2) of that section, and
 - (c) if the Director proposes to rely on section 4(3) of this Act to establish the unfitness of the person affected, state that fact.

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- (3) The notice given under sub-paragraph (1) above shall invite the person affected, within such period of not less than twenty-one days as may be specified in the notice—
- (a) to submit to the Director his representations in writing as to why the order should not be made or, as the case may be, should be varied or revoked in accordance with the application, and
 - (b) to give notice to the Director, if he thinks fit, that he wishes to make such representations orally,
- and where notice is given under paragraph (b) above the Director shall arrange for the oral representations to be heard.

Hearing of representations

- 3 Where the Director receives notice under paragraph 2(3)(b) above he shall give the person affected not less than twenty-one days' notice, or such shorter notice as the person affected may consent to accept, of the date, time and place at which his representations are to be heard.
- 4 (1) In the course of the hearing of oral representations the Director shall, at the request of the person affected, permit any other person (in addition to the person affected) to make representations on his behalf or to give evidence or to introduce documents for him.
- (2) The Director shall not refuse to admit evidence solely on the grounds that it would not be admissible in a court of law.
- 5 If the Director adjourns the hearing he shall give the person affected reasonable notice of the date, time and place at which the hearing is to be resumed.

Decision

- 6 (1) The Director shall take into account in deciding whether to proceed with his proposal any written or oral representations made in accordance with the preceding provisions of this Schedule.
- (2) If the Director considers that he should proceed with his proposal but for a reason which differs, or on grounds which differ, from those set out in the notice of the proposal under paragraph 2 above, he shall give a further notice under that paragraph.
- (3) In any case where—
- (a) a notice under paragraph 2 above gives more than one reason for the proposal or (in the case of a proposal to make an order under section 3 of this Act) sets out more than one matter which the Director intends should be specified as the grounds for the order, and
 - (b) it appears to the Director that one or more of those reasons should be abandoned or, as the case may be, that one or more of those matters should not be so specified,
- the Director may nevertheless decide to proceed with his proposal on the basis of any other reason given in the notice or, as the case may be, on any other grounds set out in the notice.
- 7 If the Director decides not to proceed with his proposal he shall give notice of that decision to the person affected and, in the case of a notice of a decision on

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an application under section 6 of this Act, such a notice shall be combined with a notice under subsection (3) of that section.

- 8 If the Director decides to proceed with his proposal he may, if he thinks fit having regard to any representations made to him—
- (a) where the proposal is for the making of an order, make the order in a form which varies from that of the proposed order mentioned in the notice under paragraph 2 above, or
 - (b) where the proposal is to vary an order, make a variation other than that mentioned in the notice under paragraph 2 above, or
 - (c) where the proposal is to refuse to revoke an order, vary the order.

Notification of decision

- 9 (1) Notice of the decision to make the order, and of the terms of the order or, as the case may be, notice of the decision on the application for variation or revocation of the order, shall be given to the person affected, together with the Director's reasons for his decision, including the facts which in his opinion justify the decision.
- (2) The notice referred to in sub-paragraph (1) above shall also inform the person affected of his right to appeal against the decision and of the period within which an appeal may be brought and of how notice of appeal may be given.
- 10 (1) Subject to sub-paragraph (2) below, the order to which the decision relates or, as the case may be, any variation of an order for which the decision provides shall not come into operation until any appeal under section 7(1) of this Act and any further appeal has been finally determined or the period within which such an appeal may be brought has expired.
- (2) Where the Director states in the notice referred to in paragraph 9(1) above that he is satisfied that there are special circumstances which require it, an order shall come into operation immediately upon the giving of notice of the decision to make it.

PART II

APPLICATIONS UNDER SECTIONS 6(1) AND 8(3)

- 11 Any reference in this Part of this Schedule to an application is a reference to an application to the Director under section 6(1) or section 8(3) of this Act, and any reference to the applicant shall be construed accordingly.
- 12 An application shall be in writing and be in such form and accompanied by such particulars as the Director may specify by general notice.
- 13 The Director may by notice require the applicant to publish details of his application at a time or times and in a manner specified in the notice.
- 14 If an application does not comply with paragraph 12 above or if an applicant fails to comply with a notice under section 9 of this Act requiring the furnishing of information or the production of documents in connection with the application, the Director may decline to proceed with the application.

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