



# Northern Ireland Act 1998

## 1998 CHAPTER 47

### PART VIII

#### MISCELLANEOUS

##### *Discrimination: certificates by Secretary of State*

#### **90 Effect of certificates.**

- (1) This section applies where in any proceedings—
  - (a) a person claims that an act discriminated against him in contravention of section 24 or 76; 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 [F1made under section 91] , appeal against the certificate to the Tribunal, that is to say, the tribunal established under section 91.
- (3) If on an appeal under subsection (2) the 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.
- (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.

*Status: Point in time view as at 26/01/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Northern Ireland Act 1998, Cross Heading: Discrimination: certificates by Secretary of State. (See end of Document for details)*

- (5) In this section “act” does not include the making, confirmation or approval of a provision of subordinate legislation.

#### Textual Amendments

- F1** Words in s. 90(2) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 105](#); S.I. 2006/1014, [art. 2\(a\)](#), [Sch. 1 para. 12\(b\)](#)

## 91 The Tribunal.

- (1) There shall be a tribunal in relation to which Schedule 11 shall have effect.
- (2) The Lord Chancellor may [<sup>F2</sup>, after consultation with the Lord Chief Justice of Northern Ireland,] make rules—
- for regulating the exercise of rights of appeal to the Tribunal;
  - for prescribing the practice and procedure to be followed on or in connection with appeals to the Tribunal, including the mode and burden of proof and admissibility of evidence on such appeals; and
  - for other matters preliminary or incidental to or arising out of such appeals.

[<sup>F3</sup>(2A) The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (2)—

- the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- a Lord Justice of Appeal (as defined in section 88 of that Act).]

- (3) Rules under this section may provide that—
- a party to any proceedings before the Tribunal on an appeal; and
  - where the Secretary of State is not party to any such proceedings, the Secretary of State,

has the right to be legally represented in the proceedings, subject to any power conferred on the Tribunal by such rules.

- (4) Rules under this section may, in particular—
- make provision enabling proceedings before the Tribunal to take place without a party being given full particulars of the reasons for the issue of the certificate which is the subject of the appeal;
  - make provision enabling the Tribunal to hold proceedings in the absence of any person, including a party and any legal representative appointed by a party;
  - make provision about the functions in proceedings before the Tribunal of persons appointed under subsection (7); and
  - make provision enabling the Tribunal to give a party a summary of any evidence taken in his absence.

- (5) Rules under this section may also include provision—
- enabling any functions of the Tribunal which relate to matters preliminary or incidental to an appeal to be performed by a single member of the Tribunal; or
  - conferring on the Tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.

*Status: Point in time view as at 26/01/2007.*

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- (6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to—
- (a) the need to secure that certificates which are the subject of appeals are properly reviewed; and
  - (b) the need to secure that information is not disclosed contrary to the public interest.
- (7) The Attorney General for Northern Ireland may appoint a person to represent the interests of a party to proceedings before the Tribunal in any proceedings from which he and any legal representative of his are excluded.
- (8) A person appointed under subsection (7)—
- (a) shall be a member of the Bar of Northern Ireland;
  - (b) shall not be responsible to the party whose interests he represents.
- (9) In this section and section 92 “party”, in relation to proceedings on appeal, means the appellant or the person proposing to rely on the certificate which is the subject of the appeal.

#### Textual Amendments

- F2** Words in s. 91(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 5 para. 106(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 12(b)
- F3** S. 91(2A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 5 para. 106(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 12(b)

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

- C1** S. 91 applied (16.8.1999) by S.I. 1998/3162 (N.I. 21), **arts. 80(5)**, 96, 98; S.R. 1999/355, **art. 2(a)**
- C2** S. 91 applied (N.I.) (1.10.2006) by The Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), **reg. 30(5)** (with reg. 50)
- C3** S. 91 applied (N.I.) (1.1.2007) by The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (S.R. 2006/439), **reg. 51(5)** (with regs. 5(4), 16(3)(4), 26, 53)

#### Commencement Information

- I1** S. 91 wholly in force at 2.8.1999; s. 91 not in force at Royal Assent see s. 101(3); s. 91(1) in force for specified purposes at 15.2.1999 and s. 91(2)-(6) in force at 1.3.1999 by S.I. 1999/340, **art. 2(2)(3)**, Sch. Pts. 2, 3; s. 91 in force at 2.8.1999 insofar as not already in force by S.I. 1999/2204, **art. 5**

## 92 Appeals from the Tribunal.

- (1) Where the Tribunal has determined an appeal under section 90—
- (a) any party to the appeal; or
  - (b) where the Secretary of State was not a party to the appeal, the Secretary of State,
- may bring a further appeal to the Court of Appeal in Northern Ireland on any question of law material to the Tribunal’s determination.
- (2) An appeal under this section may be brought only with the leave of the Tribunal or, if such leave is refused, with the leave of the Court of Appeal in Northern Ireland.

*Status: Point in time view as at 26/01/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Northern Ireland Act 1998, Cross Heading: Discrimination: certificates by Secretary of State. (See end of Document for details)*

(3) The Lord Chancellor may [<sup>F4</sup>, after consultation with the Lord Chief Justice of Northern Ireland,] make rules regulating, and prescribing the procedure to be followed on, applications to the Tribunal for leave to appeal under this section.

[<sup>F5</sup>(3A) The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (3)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(4) Rules under this section may include provision enabling an application for leave to appeal to be heard by a single member of the Tribunal.

#### Textual Amendments

- F4** Words in s. 92(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 5 para. 107(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 12(b)
- F5** S. 92(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 5 para. 107(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 12(b)

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

- C4** S. 92 applied (1.3.1999) by S.I. 1998/3162 (N.I. 21), **arts. 80(5)**, 96, 98; S.R. 1999/81, **art. 3(1)**
- C5** S. 92 applied (N.I.) (1.10.2006) by The Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), **reg. 30(5)** (with reg. 50)
- C6** S. 92 applied (N.I.) (1.1.2007) by The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (S.R. 2006/439), **reg. 51(5)** (with regs. 5(4), 16(3)(4), 26, 53)

#### Commencement Information

- I2** S. 92 wholly in force at 2.8.1999; s. 92 not in force at Royal Assent see s. 101(3); s. 92(3)(4) in force at 1.3.1999 by S.I. 1999/340, **art. 2(3)**, **Sch. Pt. 3**; s. 92 in force at 2.8.1999 insofar as not already in force by S.I. 1999/2204, **art. 5**

**Status:**

Point in time view as at 26/01/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the Northern Ireland Act 1998, Cross  
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