Draft Order in Council laid before Parliament under the Northern Ireland Act 1974, Schedule 1 paragraph 1(4)(a), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

1998 No. (N.I.)

NORTHERN IRELAND

The Fair Employment and Treatment (Northern Ireland) Order 1998

Made - - - - 1998
Coming into operation on days to be appointed under Article 1(2)

At the Court at , the day of 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

Title and commencement

1.—(1) This Order may be cited as the Fair Employment and Treatment (Northern Ireland) Order 1998.

(2) This Order comes into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

General interpretation

2.—(1) Subject to Articles 102 and 103, the Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Northern Ireland Assembly.

(2) In this Order—

"access" shall be construed in accordance with paragraphs (7) and (8);

"act" includes a deliberate omission;

"advertisement" includes every form of advertisement or notice, whether to the public or not;

"affirmative action" has the meaning given in Article 4;

"the Agency" means the Labour Relations Agency;

"benefits" includes all opportunities, services and facilities and, in particular, includes opportunities for training, transfer or promotion, for betterment of any kind (including more attractive terms or conditions of work) or for any financial advantage (including bonuses, advances of money and preferential terms for acquiring property of any kind);

"the Commission" means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998;

"complainant" means a person making a complaint that unlawful discrimination has been committed against him;

"complaint" means a complaint of unlawful discrimination made to the Tribunal under Article 38;

"confer", in relation to a qualification, includes renew and extend;

"contract" includes any contract, whether in writing or oral, express or implied;

"costs" includes expenses;

"the Department" means the Department of Economic Development;

"discrimination" and "discriminate" shall be construed in accordance with Article 3;

"employer" (except in Part VII) means—

(a) in relation to apersonwho isseekingemployment, anybody who has employment available;

(b) in relation to a person employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, the person entitled to the benefit of the contract;

(c) in relation to a person who has ceased to be in employment, his former employer;

and "employee", correspondingly, means (except in that Part) such a person as is first mentioned in sub-paragraph (a), (b) or (c) of this definition;

"employment" (except in Part VII) means employment under—

(a) a contract of service or apprenticeship; or

(b) a contract personally to execute any work or labour;

"employment agency" means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

"employment in Northern Ireland" shall be construed in accordance with Article 6;

"equality of opportunity" shall be construed in accordance with Article 5;

"government department" means a Northern Ireland department or a department of the Government of the United Kingdom;

"member"—

(a) in relation to a vocational organisation, includes (except in Article 23) a person seeking to become a member and a person who has ceased to be a member; and

(b) in relation to such an organisation (other than an organisation of workers or employers) also includes any person belonging to a class of person recognised by the organisation as having any particular status in connection with an employment or occupation for the purposes of which the organisation exists, including students and associates, and "membership" shall be construed accordingly;

"Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

"Northern Ireland Minister" includes the First Minister and deputy First Minister acting jointly;

"notice" means notice in writing;

"occupation" means any trade, business, profession or vocation, but not any employment;

"occupation in Northern Ireland" shall be construed in accordance with Article 6;

"organisation" includes any society or association, whether corporate or unincorporate;

"practices" includes procedures and arrangements;

"premises" includes land of any description;

"the President" means the President of the Industrial Tribunals and the Fair Employment Tribunal;

"qualification" includes authorisation, recognition, registration, enrolment, approval and certification;

"the respondent"—

(a) in relation to a complaint, has the meaning given by Article 38(1); and

(b) in relation to a claim under Article 40, has the meaning given by Article 40(1);

"school" has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986;

"statutory body" means a body established by a statutory provision;

"statutory office" means an office established by a statutory provision;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"training" includes any form of education or instruction, except that in Articles 5(4)(b)(ii), 11(1)(e) and 24, it does not include education provided by—

(a) a school;

(b) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 or an institution providing further education in respect of which grants are paid under Article 5(1) of that Order;

(c) a college of education within the meaning of the Education and Libraries (Northern Ireland) Order 1986; or

(d) a university;

"the Tribunal" means the Fair Employment Tribunal for Northern Ireland;

"unlawful discrimination" shall be construed in accordance with Article 3(7);

"the Vice-President" means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal;

"vocational organisation" means—

(a) an organisation of workers;

(b) an organisation of employers;

(c) any other organisation of persons engaged in a particular employment or occupation, or employments or occupations of any class, for the purposes of which the organisation exists.

(3) In this Order references to a person's religious belief or political opinion include references to—

(a) his supposed religious belief or political opinion; and

(b) the absence or supposed absence of any, or any particular, religious belief or political opinion.

(4) In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.

(5) For the purposes of this Order a person is seeking employment if he is available for employment, whether or not he is aware of the existence of an opportunity for any particular employment.

(6) References in this Order to submitting a person for consideration for employment include references to making available to an employer in any way relevant particulars relating to him.

(7) References in this Order to the affording by any person of access to benefits are not limited to benefits provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits provided by any other person (the "actual provider").

(8) Where by any provision of this Order the affording by any person of access to benefits in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Order of the actual provider.

(9) Subject to paragraph (10), in this Order references (however expressed) to acts done or to power to do any acts include references to acts done or power to do the acts outside Northern Ireland.

(10) Paragraph (9)—

(a) is without prejudice to Article 6 or any order under paragraph (3) of that Article;

(b) is subject to any other provision of this Order which is by its express terms limited to acts done in Northern Ireland; and

(c) does not apply to references to acts which may be the subject of criminal proceedings under this Order.

(11) References in this Order to a contract include references to a contract which is not governed by the law of Northern Ireland.

(12) References in this Order to the Crown are to the Crown in right of the Government of the United Kingdom and in right of the Government of Northern Ireland.

"Discrimination" and "unlawful discrimination"

3.—(1) In this Order "discrimination" means—

(a) discrimination on the ground of religious belief or political opinion; or

(b) discrimination by way of victimisation;

and "discriminate" shall be construed accordingly.

(2) A person discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of this Order if—

(a) on either of those grounds he treats that other less favourably than he treats or would treat other persons; or

(b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—

(i) which is such that the proportion of persons of the same religious belief or of the same political opinion as that other who can comply with it is considerably smaller than the proportion of persons not of that religious belief or, as the case requires, not of that political opinion who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the religious belief or political opinion of the person to whom it is applied; and

(iii) which is to the detriment of that other because he cannot comply with it.

(3) A comparison of the cases of persons of different religious belief or political opinion under paragraph (2) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) A person ("A") discriminates by way of victimisation against another person ("B") in any circumstances relevant for the purposes of this Order if—

(a) he treats B less favourably than he treats or would treat other persons in those circumstances; and

(b) he does so for a reason mentioned in paragraph (5).

(5) The reasons are that—

(a) B has—

(i) brought proceedings against A or any other person under this Order; or

(ii) given evidence or information in connection with such proceedings brought by any person or any investigation under this Order; or

(iii) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or

(iv) otherwise done anything under or by reference to this Order in relation to A or any other person; or

(b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.

(6) Paragraph (4) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

(7) For the purposes of this Order a person commits unlawful discrimination against another if—

(a) he does an act in relation to that other which is unlawful by virtue of any provision of Part III or IV; or

(b) he is treated by virtue of any provision of Part V as doing such an act.

"Affirmative action"

4.—(1) In this Order "affirmative action" means action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community in Northern Ireland by means including—

(a) the adoption of practices encouraging such participation; and