STATUTORY RULES OF NORTHERN IRELAND

2003 No. 341

RACE RELATIONS

Race Relations Order (Amendment) Regulations (Northern Ireland) 2003

Made - - - -	*18th July 2003*
Coming into operation	*19th July 2003*

The Office of the First Minister and deputy First Minister, being a department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to discrimination(**2**), in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 and shall come into operation on 19th July 2003.

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

(3) In these Regulations "the Race Relations Order" means the Race Relations (Northern Ireland) Order 1997(**4**).

Transitional provisions

2.—(1) Regulations 39 and 41 shall not apply to proceedings commenced before 19th July 2003.

(2) Regulations 40 and 43 apply to proceedings commenced before 19th July 2003, as well as proceedings instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

(3) The amendment made to Article 63(2)(b) of the Race Relations Order by regulation 48 shall not apply in the case of a question served on a respondent before 19th July 2003.

(4) In paragraph (3) "question" and "respondent" have the same meanings as in Article 63 of the Race Relations Order.

(**1**) 1972 c. 68
(**2**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1997/869 (N.I. 6)

Definitions

3. In Article 2(2) of the Race Relations Order (interpretation) insert the following definitions at the appropriate place in alphabetical order –

""criminal proceedings" includes –

(a) proceedings on dealing summarily with a charge under the Army Act 1955(**5**) or the Air Force Act 1955(**6**) or on summary trial under the Naval Discipline Act 1957(**7**);

(b) proceedings before a summary appeal court constituted under any of those Acts;

(c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Act of 1957;

(d) proceedings before the Courts-Martial Appeal Court; and

(e) proceedings before a Standing Civilian Court;";

""detriment" does not include conduct of a nature such as to constitute harassment;";

""harassment" has the meaning given by Article 4A;";

""social protection" and "social advantage" have the same meaning as in Article 3 of Council Directive 2000/43/EC;".

Racial discrimination

4.—(1) In Article 3 of the Race Relations Order (racial discrimination) after paragraph (1) insert –

"(1A) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in paragraph (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but –

(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons;

(b) which puts that other at that disadvantage; and

(c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in paragraph (1A) are –

(a) Part II;

(b) Articles 18 and 19;

(c) Article 20A;

(d) Articles 21 to 24;

(e) Article 26;

(f) Article 72 ZA; and

(g) Part IV in its application to the provisions referred to in sub-paragraphs (a) to (f).

(1C) Where, by virtue of paragraph (1A), a person discriminates against another, paragraph (1)(b) does not apply to him.".

(2) In paragraph (3) of that Article, after the words "paragraph (1)", insert "or (1A)".

Harassment

5. After Article 4 of the Race Relations Order insert –

(**5**) 1955 c. 18
(**6**) 1955 c. 19
(**7**) 1957 c. 53

"**Harassment**

4A.—(1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(1B) where, on grounds of race or ethnic or national origins, A engages in unwanted conduct which has the purpose or effect of –

(a) violating B's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.".

Meaning of "racial grounds" "racial group" etc

6. In Article 5 of the Race Relations Order (meaning of "racial grounds", "racial group" etc) after paragraph (3) insert –

"(3A) In this Order "race or ethnic or national origins" includes origins within the Irish Traveller community.".

Harassment by employers

7.—(1) For the heading to Part II of the Race Relations Order there shall be substituted "DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD" and for the cross heading immediately thereafter there shall be substituted "*Discrimination and harassment by employers*".

(2) In the heading to Article 6 of the Race Relations Order (discrimination against applicants and employees), omit the words "discrimination against".

(3) That Article is amended as follows –

(a) after paragraph (2) insert –

"(2A) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.";

(b) in paragraph (3) (exception for employment for purposes of private household), after the words "Article 4", insert "or discrimination on grounds of race or ethnic or national origins", and

(c) after paragraph (4) insert –

"(4A) In paragraph (2)(c) the reference to the dismissal of a person from employment includes, where the discrimination is on grounds of race or ethnic or national origins, references –

(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;

(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"; and

(d) in paragraph (5), after the words "an employer" insert ", on grounds other than those of race or ethnic or national origins,".

8. In Article 7 of the Race Relations Order (discrimination by persons with statutory power to select employees for others) –

(1) the existing provision shall be numbered as paragraph (1) of that Article.

(2) After that provision insert –

"(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.".

Exception for genuine occupational requirement

9. After Article 7 of the Race Relations Order insert –

"**Exception for genuine occupational requirement**

7A.—(1) In relation to discrimination on grounds of race or ethnic or national origins –

(a) Article 6(1) (a) or (c) does not apply to any employment,

(b) Article 6(2) (b) does not apply to promotion or transfer to, or training for, any employment, and

(c) Article 6(2)(c) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out –

(a) being of a particular race or of particular ethnic or national origins is a genuine and determining occupational requirement;

(b) it is proportionate to apply that requirement in the particular case, and –

(c) either –

(i) the person to whom that requirement is applied does not meet it, or

(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that the person meets it.".

10. In Article 8 of the Race Relations Order (exceptions for genuine occupational qualifications), in paragraph (1), after the words "racial discrimination" insert "in cases where Article 7A does not apply".

Other harassment in employment etc

11.—(1) In the heading to Article 9 of the Race Relations Order (discrimination against contract workers), omit the words "discrimination against".

(2) That Article is amended as follows: –

(a) in paragraph (3) –

(i) after the words "racial group", in the first place where they occur, insert ", or not of a particular race or particular ethnic or national origins,";

(ii) after the words "racial group" in the second place where they occur, insert "or of that race or those origins"; and

(iii) after the word "qualification" insert "or, as the case may be, that act would be lawful by virtue of Article 7A"; and

(b) after paragraph (3), insert –

"(3A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.", and

(c) in paragraph (4) after the word "principal" insert "on grounds other than those of race or ethnic or national origins,".

Meaning of employment at establishment in Northern Ireland

12.—(1) In Article 10 of the Race Relations Order (meaning of employment at establishment in Northern Ireland), in paragraph (1), for the words "unless the employee" to the end, substitute –

"if the employee –

(a) does his work wholly or partly in Northern Ireland; or

(b) does his work wholly outside Northern Ireland and paragraph (1A) applies.".

(2) After paragraph (1) of that Article insert –

"(1A) This paragraph applies if, in a case involving discrimination on grounds of race or ethnic or national origins, or harassment –

(a) the employer has a place of business at an establishment in Northern Ireland;

(b) the work is for the purposes of the business carried on at that establishment; and

(c) the employee is ordinarily resident in Northern Ireland –

(i) at the time when he applies for or is offered the employment, or

(ii) at any time during the course of the employment.".

Partnerships

13. In Article 12 of the Race Relations Order (partnerships),

(a) after paragraph (1), insert –

"(1A) The limitation of paragraph (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.

(1B) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.".

(b) in paragraph (2) for the words "paragraph (1)" substitute "paragraphs (1), (1A) and (1B)";

(c) in paragraph (3), for the words "being of a particular racial group" to the end, substitute "Article 7A or 8 would apply to such employment"; and

(d) at the end insert –

"(5) The reference in paragraph (1)(d)(ii) to the expulsion of a person from a position as partner includes, where the discrimination is on grounds of race or ethnic or national origins, references –

(a) to the termination of that person's partnership 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 partnership is renewed on the same terms; and

(b) to the termination of that person's partnership 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 other partners.".