STATUTORY INSTRUMENTS

1976 No. 1042 (N.I. 15)

NORTHERN IRELAND

The Sex Discrimination (Northern Ireland) Order 1976

Laid before Parliament in draft

Made 2*nd July* 1976

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

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At the Court at Buckingham Palace, the 2nd day of July 1976

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 (**a**) 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:—

(a) 1974 c. 28.

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Sex Discrimination (Northern Ireland) Order 1976.

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

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (**a**) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"access" shall be construed in accordance with Article 51;

"act" includes a deliberate omission;

"advertisement" includes every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;

"associated employer" shall be construed in accordance with paragraph (3);

"the Commission" means the Equal Opportunities Commission for Northern Ireland;

"Commissioner" means a member of the Commission;

"designate" shall be construed in accordance with paragraph (4);

"discrimination" and related terms shall be construed in accordance with paragraph (7);

"dispose", in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

"education" includes any form of training or instruction;

"Education and Library Board" has the same meaning as in the Education and Libraries (Northern Ireland) Order 1972 (**b**);

"employment" means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

"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;

"enactment" includes an enactment contained in an Act of Parliament or in an Act of the Parliament of Northern Ireland or a Measure or an Order in Council having the same effect as such an Act or a Measure;

"equality clause" has the meaning given in section 1 (2) of the Equal Pay Act;

"the Equal Pay Act" means the Equal Pay Act (Northern Ireland) 1970 (**c**);

(a) 1954 c. 33 (N.I.). (b) S.I. 1972/1263 (N.I. 12). (c) 1970 c. 32 (N.I.).

"estate agent" means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;

"final" shall be construed in accordance with paragraph (5);

"firm" has the meaning given by section 4 of the Partnership Act 1890 (**a**);

"formal investigation" means an investigation under Article 57;

"further education" includes such education within the meaning of Article 5 (*c*) of the Education and Libraries (Northern Ireland) Order 1972;

"general notice", in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

"genuine occupational qualification" shall be construed in accordance with Article 10 (2);

"government department" includes a department of the Government of the United Kingdom;

"grant-aided" in relation to an educational establishment has the meaning given by Article 2 (2) of the Education and Libraries (Northern Ireland) Order 1972;

"independent school" has the meaning given by Article 2 (2) of the Education and Libraries (Northern Ireland) Order 1972;

"industrial tribunal" means a tribunal established under section 13 of the Industrial Training Act (Northern Ireland) 1964 (**b**);

" the interim period" has the meaning given by section 1 (4) of the Northern Ireland Act 1974 for purposes of that Act;

"man" includes a male of any age;

"near relative" shall be construed in accordance with paragraph (6);

"non-discrimination notice" means a notice under Article 67;

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

"notice" means a notice in writing;

"prescribed", except in relation to anything required or permitted to be prescribed by order or county court rules, means prescribed by regulations made by the Department of Manpower Services;

"profession" includes any vocation or occupation;

"proprietor", in relation to any school, has the meaning given by Article 2 (2) of the Education and Libraries (Northern Ireland) Order 1972;

"retirement" includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

"school" has the meaning given by Article 2 (2) of the Education and Libraries (Northern Ireland) Order 1972;

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

"trade" includes any business;

"training" includes any form of education or instruction;

(a) 1890 c. 39. (b) 1964 c. 18 (N.I.).

"upper limit of compulsory school age" means, subject to paragraph (2) of Article 36 of the Education and Libraries (Northern Ireland) Order 1972, the age that is that limit by virtue of paragraph (1) of that Article;

"woman" includes a female of any age.

(3) For the purposes of this Order two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

(4) Any power conferred by this Order to designate establishments or persons may be exercised either by naming them or by identifying them by reference to a class or other description.

(5) For the purposes of this Order a non-discrimination notice or a finding by a court or tribunal becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against a non-discrimination notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under Article 68 (3).

(6) For the purposes of this Order a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half-blood or by affinity), and "child" includes an illegitimate child and the wife or husband of a child.

(7) In this Order—

(*a*) references to discrimination refer to any discrimination falling within Articles 3 to 6; and

(*b*) references to sex discrimination refer to any discrimination falling within Article 3 or 4,

and related expressions shall be construed accordingly.

PART II

DISCRIMINATION TO WHICH ORDER APPLIES

Sex discrimination against women

3.—(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Order if—

(*a*) on the ground of her sex he treats her less favourably than he treats or would treat a man, or

(*b*) he applies to her a requirement or condition which he applies or would apply equally to a man but—

(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment because she cannot comply with it.

(2) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of paragraph (1) (*a*) to be compared to his treatment of a man having the like marital status.

Sex discrimination against men

4.—(1) Article 3 and the provisions of Parts III and IV relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

(2) In the application of paragraph (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

Discrimination against married persons in employment field

5.—(1) A person discriminates against a married person of either sex in any circumstances relevant for the purposes of any provision of Part III if—

(*a*) on the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex, or

(*b*) he applies to that person a requirement or condition which he applies or would apply equally to an unmarried person but—

(i) which is such that the proportion of married persons who can comply with it is considerably smaller than the proportion of unmarried persons of the same sex who can comply with it, and

(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and

(iii) which is to that person's detriment because he cannot comply with it.

(2) For the purposes of paragraph (1), a provision of Part III framed with reference to discrimination against women shall be treated as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

Discrimination by way of victimisation

6.—(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Order if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has—

(*a*) brought proceedings against the discriminator or any other person under this Order or the Equal Pay Act, or

(*b*) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Order or the Equal Pay Act, or

(*c*) otherwise done anything under or by reference to this Order or the Equal Pay Act in relation to the discriminator or any other person, or

(*d*) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Order or give rise to a claim under the Equal Pay Act,

or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done, or intends to do, any of them.

(2) Paragraph (1) 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.

(3) For the purposes of paragraph (1), a provision of Part III or IV framed with reference to discrimination against women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are requisite.

Basis of comparison

7. A comparison of the cases of persons of different sex or marital status under Article 3 (1) or 5 (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

PART III

DISCRIMINATION IN THE EMPLOYMENT FIELD

Discrimination by employers

Discrimination against applicants and employees

8.—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against a woman—

(*a*) in the arrangements he makes for the purpose of determining who should be offered that employment, or

(*b*) in the terms on which he offers her that employment, or

(*c*) by refusing or deliberately omitting to offer her that employment.

(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Northern Ireland, to discriminate against her—

(*a*) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(*b*) by dismissing her, or subjecting her to any other detriment.

(3) Except in relation to discrimination falling within Article 6, paragraphs (1) and (2) do not apply to employment—

(*a*) for the purposes of a private household, or

(*b*) where the number of persons employed by the employer, added to the number employed by any associated employers of his, does not exceed five (disregarding any persons employed for the purposes of a private household).

(4) Paragraphs (1) (*b*) and (2) do not apply to provision in relation to death or retirement.

(5) Subject to Article 11 (3), paragraph (1) (*b*) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly or by reference to a collective agreement or otherwise) in the contract under which she was employed.

(6) Paragraph (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman's contract of employment.

(7) Paragraph (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless—

(*a*) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or

(*b*) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or

(*c*) the benefits, facilities or services relate to training.

Discrimination by persons with statutory power to select employees for others

9. 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 discriminate against a person, in relation to employment at an establishment in Northern Ireland,—

(*a*) by refusing or deliberately omitting to select or nominate him for employment, or

(*b*) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

Exception where sex is a genuine occupational qualification

10.—(1) In relation to sex discrimination—

(*a*) Article 8 (1) (*a*) or (*c*) does not apply to any employment where being a man is a genuine occupational qualification for the job, and

(*b*) Article 8 (2) (*a*) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being a man is a genuine occupational qualification for a job only where—

(*a*) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or

(*b*) the job needs to be held by a man to preserve decency or privacy because—

(i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or

(ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities; or

(*c*) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—

(i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and

(ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women; or

(*d*) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because—

(i) it is, or is part of, a hospital, prison or other establishment for persons requiring special supervision, attention or care, and

(ii) those persons are all men (disregarding any woman whose presence is exceptional), and

(iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman; or

(*e*) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man, or

(*f*) the job needs to be held by a man because of restrictions imposed by the laws regulating the employment of women, or

(*g*) the job needs to be held by a man because it is likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or

(*h*) the job is one of two to be held by a married couple.

(3) Paragraph (2) applies where some only of the duties of the job fall within sub-paragraphs (*a*) to (*g*) as well as where all of them do.

(4) Sub-paragraph (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees—

(*a*) who are capable of carrying out the duties falling within that paragraph, and

(*b*) whom it would be reasonable to employ on those duties, and

(*c*) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Equal Pay Act (*Northern Ireland*) 1970

11.—(1) In section 1 of the Equal Pay Act, the following are substituted for subsections (1) to (4)—

"(1) If the terms of a contract under which a woman is employed at an establishment in Northern Ireland do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the "woman's contract"), and has the effect that—

(*a*) where the woman is employed on like work with a man in the same employment—

(i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term;

(*b*) where the woman is employed on work rated as equivalent with that of a man in the same employment—

(i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term.

(3) An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material difference (other than the difference of sex) between her case and his.".

(2) Section 1 (1) of the Equal Pay Act (as set out in paragraph (1)) does not apply in determining for the purposes of Article 8 (1) (*b*) the terms on which employment is offered.

(3) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene Article 8 (1) (*b*).

(4) Where a person offers a woman employment on certain terms, and paragraph (3) would apply but for the fact that, on her acceptance of the offer, section 1 (3) of the Equal Pay Act (as set out in paragraph (1)) would prevent the equality clause from operating, the offer shall be taken not to contravene Article 8 (1) (*b*).

(5) An act does not contravene Article 8 (2) if—

(*a*) it contravenes a term modified or included by virtue of an equality clause, or

(*b*) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1 (3) of the Equal Pay Act.

(6) The Equal Pay Act is further amended as specified in Part I of Schedule 1, and accordingly has effect as set out in Part II of Schedule 1.

Discrimination against contract workers

12.—(1) This Article applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this Article applies, to discriminate against a woman who is a contract worker—

(*a*) in the terms on which he allows her to do that work, or

(*b*) by not allowing her to do it or continue to do it, or

(*c*) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or

(*d*) by subjecting her to any other detriment.

(3) The principal does not contravene paragraph (2) (*b*) by doing any act in relation to a woman at a time when if the work were to be done by a person

taken into his employment being a man would be a genuine occupational qualification for the job.

(4) Paragraph (2) (*c*) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

Meaning of employment at establishment in Northern Ireland

13.—(1) For the purposes of this Part and section 1 of the Equal Pay Act ("the relevant purposes"), employment is to be regarded as being at an establishment in Northern Ireland unless the employee does his work wholly or mainly outside Northern Ireland.

(2) Paragraph (1) does not apply to—

(*a*) employment on board a ship registered at a port of registry in Northern Ireland, or

(*b*) employment on aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland;

but for the relevant purposes such employment is to be regarded as being at an establishment in Northern Ireland unless the employee does his work wholly outside Northern Ireland.

(3) In the case of employment on board a ship registered at a port of registry in Northern Ireland (except where the employee does his work wholly outside Northern Ireland, and outside any area added under paragraph (5)) the ship shall for the relevant purposes be deemed to be the establishment.

(4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

(5) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department of Manpower Services may by order provide that paragraphs (1) and (2) shall each have effect as if the last reference to Northern Ireland included any area for the time being designated under section 1 (7) of the Continental Shelf Act 1964 (**a**), in which the law of Northern Ireland applies.

(6) An order under paragraph (5) may provide that, in relation to employment to which the order applies, this Part and section 1 of the Equal Pay Act are to have effect with such modifications as are specified in the order.

(7) The Department of Manpower Services shall not make an order under paragraph (5) unless a draft of the order has been approved by resolution of the Assembly.

Discrimination by other bodies

Partnerships

14.—(1) It is unlawful for a firm consisting of six or more partners, in relation to a position as partner in the firm, to discriminate against a woman—

(*a*) in the arrangements they make for the purpose of determining who should be offered that position, or

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(**a**) 1964 c. 29.

(*b*) in the terms on which they offer her that position, or

(*c*) by refusing or deliberately omitting to offer her that position, or

(*d*) in a case where the woman already holds that position—

(i) in the way they afford her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(ii) by expelling her from that position, or subjecting her to any other detriment.

(2) Paragraph (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Paragraph (1) (*a*) and (*c*) do not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.

(4) Paragraph (1) (*b*) and (*d*) do not apply to provision made in relation to death or retirement.

(5) In the case of a limited partnership references in paragraph (1) to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907 (**a**).

Trade unions etc.

15.—(1) This Article applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) It is unlawful for an organisation to which this Article applies, in the case of a woman who is not a member of the organisation, to discriminate against her—

(*a*) in the terms on which it is prepared to admit her to membership ,or

(*b*) by refusing, or deliberately omitting to accept, her application for membership.

(3) It is unlawful for an organisation to which this Article applies, in the case of a woman who is a member of the organisation, to discriminate against her—

(*a*) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(*b*) by depriving her of membership, or varying the terms on which she is a member, or

(*c*) by subjecting her to any other detriment.

(4) This Article does not apply to provision made in relation to the death or retirement from work of a member.

Qualifying bodies

16.—(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a woman—

(*a*) in the terms on which it is prepared to confer on her that authorisation or qualification, or

(a) 1907 c. 24.

(*b*) by refusing or deliberately omitting to grant her application for it, or

(*c*) by withdrawing it from her or varying the terms on which she holds it.

(2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorisation or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees, or agents (whether past or present), has practised unlawful discrimination in, or in connection with, the carrying on of any profession or trade.

(3) In this Article—

(*a*) "authorisation or qualification" includes recognition, registration, enrolment, approval and certification,

(*b*) "confer" includes renew or extend.

(4) Paragraph (1) does not apply to discrimination which is rendered unlawful by Article 24 or 25.

Vocational training bodies

17.—(1) It is unlawful for a person to whom this paragraph applies, in the case of a woman seeking or undergoing training which would help to fit her for any employment, to discriminate against her—

(*a*) in the terms on which that person affords her access to any training courses or other facilities, or

(*b*) by refusing or deliberately omitting to afford her such access, or

(*c*) by terminating her training.

(2) Paragraph (1) applies to—

(*a*) industrial training boards established under section 1 of the Industrial Training Act (Northern Ireland) 1964;

(*b*) any association which comprises employers and has as its principal object, or one of its principal objects, affording their employees access to training facilities;

(*c*) any other person providing facilities for training for employment, being a person designated for the purposes of this sub-paragraph in an order made by the Department of Manpower Services.

(3) Paragraph (1) does not apply to discrimination which is rendered unlawful by Article 24 or 25.

Employment agencies

18.—(1) It is unlawful for an employment agency to discriminate against a woman—

(*a*) in the terms on which the agency offers to provide any of its services, or

(*b*) by refusing or deliberately omitting to provide any of its services, or

(*c*) in the way it provides any of its services.

(2) References in paragraph (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This Article does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.

(4) An employment agency shall not be subject to any liability under this Article if it proves—

(*a*) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful, and

(*b*) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (*a*) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding £400.

Special cases

Police

19.—(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

(*a*) by the chief officer of police as respects any act done by him in relation to a constable or that office;

(*b*) by the police authority as respects any act done by them in relation to a constable or that office.

(2) Regulations made under section 10, 25 or 26 of the Police Act (Northern Ireland) 1970 **(a)** shall not treat men and women differently except—

(*a*) as to requirements relating to height, uniform or equipment, or allowances in lieu of uniform or equipment, or

(*b*) so far as special treatment is accorded to women in connection with pregnancy or childbirth, or

(*c*) in relation to pensions.

(3) Nothing in this Part renders unlawful any discrimination between male and female constables as to matters such as are mentioned in paragraph (2) (*a*).

(4) There shall be defrayed as expenses of the police authority—

(*a*) any compensation or costs awarded against a chief officer of police in any proceedings brought against him under this Order, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

(*b*) any sum required by a chief officer of police for the settlement of any claim made against him under this Order if the settlement is approved by the police authority.

(5) Paragraphs (1) and (3) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(6) In this Article—

"chief officer of police"—

(*a*) in relation to a person appointed, or an appointment falling to be made, to the police force or as a police cadet in relation to that force, means the Chief Constable of the Royal Ulster Constabulary,

(*b*) in relation to any other person or appointment means the officer who has the direction and control of the body of constables or cadets in question;

(a) 1970 c. 9 (N.I.).

"police authority"—

(*a*) in relation to a person appointed, or an appointment falling to be made, to the police force or as a police cadet in relation to that force, means the Police Authority for Northern Ireland,

(*b*) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

"police cadet" means any person appointed to undergo training with a view to becoming a constable;

"police force" has the same meaning as in the Police Act (Northern Ireland) 1970.

Prison officers

20. Nothing in this Part renders unlawful any discrimination between male and female prison officers as to requirements relating to height.

Ministers of religion etc.

21.—(1) Nothing in this Part applies to employment for purposes of an organised religion where the employment is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

(2) Nothing in Article 16 applies to an authorisation or qualification (as defined in that Article) for purposes of an organised religion where the authorisation or qualification is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

Midwives

22.—(1) Article 8 (1) does not apply to employment as a midwife.

(2) Article 8 (2) (a) does not apply to promotion, transfer or training as a midwife.

(3) Article 17 does not apply to training as a midwife.

(4) In the Nurses and Midwives Act (Northern Ireland) 1970 (**a**) the following section is inserted after section 54—

"Extension of Act to men.

54A. From 1st September 1976, references in this Act to women (except to a woman in childbirth) apply equally to men.".

Mineworkers

23.—(1) The following shall be substituted for section 106 (1) of the Mines Act (Northern Ireland) 1969 (**b**) (which provides that no female shall be employed below ground at a mine)—

"(1) No female shall be employed in a job the duties of which ordinarily require the employee to spend a significant proportion of his time below ground at a mine which is being worked.".

(2) Throughout the Coal Mines Regulation Act 1908 (**c**) for "workman" or "man" there is substituted "worker", and for "workmen" or "men" there is substituted "workers".

(a) 1970 c. 11 (N.I.). (b) 1969 c. 6 (N.I.). (c) 1908 c. 57.

PART IV

DISCRIMINATION IN OTHER FIELDS

Education

Discrimination by bodies in charge of educational establishments

24. It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the "responsible body") to discriminate against a woman—

(*a*) in the terms on which it offers to admit her to the establishment as a pupil, or

(*b*) by refusing or deliberately omitting to accept an application for her admission to the establishment as a pupil, or

(*c*) where she is a pupil of the establishment—

(i) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(ii) by excluding her from the establishment or subjecting her to any other detriment.

TABLE

Establishment	*Responsible body*
1. Educational establishment which is grant-aided.	Education and Library Board or managers or governors, according to which of them has the function in question.
2. Independent school.	Proprietor.
3. University.	Governing body.
4. The Ulster College.	The Governors.
5. An establishment providing facilities for further education in respect of which contributions are paid to a body other than an Education and Library Board under Article 23 (3) (b) of the Education and Libraries (Northern Ireland) Order 1972.	Governing body.

Other discrimination by Education and Library Boards

25. It is unlawful for an Education and Library Board, in carrying out such of its functions under the Education and Libraries (Northern Ireland) Order 1972 as do not fall under Article 24, to do any act which constitutes sex discrimination.

General duty in public sector of education

26.—(1) Without prejudice to its obligation to comply with any other provision of this Order, a body to which this paragraph applies shall be under a general duty to secure that facilities for education provided by it, and any ancillary benefits or services, are provided without sex discrimination.

(2) Article 90 of the Education and Libraries (Northern Ireland) Order 1972 (power of Department of Education to prevent unreasonable exercise of functions) shall apply to the performance by a body to which paragraph (1)

applies of the duties imposed by Articles 24 and 25 and shall also apply to the performance of the general duty imposed by paragraph (1), as it applies to the performance by an Education and Library Board of a duty imposed by that Order.

(3) The sanctions in paragraph (2) shall be the only sanctions for breach of the general duty in paragraph (1), but without prejudice to the enforcement of Articles 24 and 25 under Article 66 or otherwise (where the breach is also a contravention of either of those Articles).

(4) Paragraph (1) applies to—

(*a*) an Education and Library Board; and

(*b*) any other body which is a responsible body in relation to an establishment falling within paragraph 1, 4 or 5 of the table in Article 24.

Exception for single-sex establishments

27.—(1) Articles 24 (*a*) and (*b*) and 26 do not apply to the admission of pupils to any establishment (a "single-sex establishment") which admits pupils of one sex only, or which would be taken to admit pupils of one sex only if there were disregarded pupils of the opposite sex—

(*a*) whose admission is exceptional, or

(*b*) whose numbers are comparatively small and whose admission is confined to particular courses of instruction or teaching classes.

(2) Where a school which is not a single-sex establishment has some pupils as boarders and others as non-boarders, and admits as boarders pupils of one sex only (or would be taken to admit as boarders pupils of one sex only if there were disregarded boarders of the opposite sex whose numbers are comparatively small), Articles 24 (*a*) and (*b*) and 26 do not apply to the admission of boarders and Articles 24 (*c*) (i) and 26 do not apply to boarding facilities.

(3) Where an establishment is a single-sex establishment by reason of its inclusion in paragraph (1) (*b*), the fact that pupils of one sex are confined to particular courses of instruction or teaching classes shall not be taken to contravene Article 24 (*c*) (i) or the duty in Article 26.

Exception for single-sex establishments turning co-educational

28.—(1) Where at any time—

(*a*) the responsible body for a single-sex establishment falling within column 1 of the table in Article 24 determines to alter its admissions arrangements so that the establishment will cease to be a single-sex establishment, or

(*b*) Article 27 (2) applies to the admission of boarders to a school falling within column 1 of that table but the responsible body determines to alter its admissions arrangements so that Article 27 (2) will cease so to apply,

the responsible body may apply in accordance with Schedule 2 for an order (a "transitional exemption order") authorising discriminatory admissions during the transitional period specified in the order.

(2) Where during the transitional period specified in a transitional exemption order applying to an establishment the responsible body refuses or deliberately

omits to accept an application for the admission of a person to the establishment as a pupil the refusal or omission shall not be taken to contravene any provision of this Order.

(3) Paragraph (2) does not apply if the refusal or omission contravenes any condition of the transitional exemption order.

(4) Except as mentioned in paragraph (2), a transitional exemption order shall not afford any exemption from liability under this Order.

(5) Where, during the period between the making of an application for a transitional exemption order in relation to an establishment and the determination of the application, the responsible body refuses or deliberately omits to accept an application for the admission of a person to the establishment as a pupil the refusal or omission shall not be taken to contravene any provision of this Order.

Exception for physical training

29. Articles 24, 25 and 26 do not apply to any further education course being—

(*a*) a course in physical training, or

(*b*) a course designed for the training of teachers of physical training.

Goods, facilities, services and premises

Discrimination in provision of goods, facilities or services

30.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services—

(*a*) by refusing or deliberately omitting to provide her with any of them, or

(*b*) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section.

(2) The following are examples of the facilities and services mentioned in paragraph (1)—

(*a*) access to and use of any place which members of the public or a section of the public are permitted to enter;

(*b*) accommodation in a hotel, boarding house or other similar establishment;

(*c*) facilities by way of banking or insurance or for grants, loans, credit or finance;

(*d*) facilities for education;

(*e*) facilities for entertainment, recreation or refreshment;

(*f*) facilities for transport or travel;

(*g*) the services of any profession or trade, or any local or other public authority.

(3) For the avoidance of doubt it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it does not contravene paragraph (1) for a person who does not normally exercise it for women to insist on exercising it for a woman only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her case, to refuse or deliberately omit to exercise it.

Discrimination in disposal or management of premises

31.—(1) It is unlawful for a person, in relation to premises in Northern Ireland of which he has power to dispose, to discriminate against a woman—

(*a*) in the terms on which he offers her those premises, or

(*b*) by refusing her application for those premises, or

(*c*) in his treatment of her in relation to any list of persons in need of premises of that description.

(2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a woman occupying the premises—

(*a*) in the way he affords her access to any benefits or facilities, or by refusing or deliberately omitting to afford her access to them, or

(*b*) by evicting her, or subjecting her to any other detriment.

(3) Paragraph (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless he uses the services of an estate agent for the purposes of the disposal of the premises or publishes or causes to be published an advertisement in connection with the disposal.

Discrimination: consent for assignment or sub-letting

32.—(1) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Northern Ireland comprised in a tenancy, it is unlawful for the landlord or other person to discriminate against a woman by withholding the licence or consent for disposal of the premises to her.

(2) Paragraph (1) does not apply if—

(*a*) the person withholding a licence or consent, or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises, and

(*b*) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and

(*c*) the premises are small premises as defined in Article 33 (2).

(3) In this Article "tenancy" means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance of any statutory provision; and "disposal", in relation to premises comprised in a tenancy, includes assignment of the tenancy and sub-letting or parting with possession of the premises or any part of the premises.

(4) This Article applies to tenancies created before the commencement of this Article, as well as to others.

Exception for small dwellings

33.—(1) Articles 30 (1) and 31 do not apply to the provision by a person of accommodation in any premises, or the disposal of premises by him, if—

(*a*) that person or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises, and

(*b*) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation

or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and

(*c*) the premises are small premises.

(2) Premises shall be treated for the purposes of paragraph (1) as small premises if—

(*a*) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than two such households and only the relevant occupier and any member of his household reside in the accommodation occupied by him;

(*b*) in the case of premises not falling within sub-paragraph (*a*), there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.

Exception for political parties

34.—(1) This Article applies to a political party if—

(*a*) it has as its main object, or one of its main objects, the promotion of parliamentary candidatures for the Parliament of the United Kingdom, or the Assembly, or

(*b*) it is an affiliate of, or has as an affiliate, or has similar formal links with, a political party within sub-paragraph (*a*).

(2) Nothing in Article 30 (1) shall be construed as affecting any special provision for persons of one sex only in the constitution, organisation or administration of the political party.

(3) Nothing in Article 30 (1) shall render unlawful an act done in order to give effect to such a special provision.

Exception for voluntary bodies

35.—(1) This Article applies to a body—

(*a*) the activities of which are carried on otherwise than for profit, and

(*b*) which was not set up by any statutory provision.

(2) Articles 30 (1) and 31 shall not be construed as rendering unlawful—

(*a*) the restriction of membership of any such body to persons of one sex (disregarding any minor exceptions), or

(*b*) the provision of benefits, facilities or services to members of any such body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(3) Nothing in Article 30 or 31 shall—

(*a*) be construed as affecting a provision to which this paragraph applies, or

(*b*) render unlawful an act which is done in order to give effect to such a provision.

(4) Paragraph (3) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a body within paragraph (1).

Further exceptions from Articles 30 (1) *and* 31

36.—(1) A person who provides at any place facilities or services restricted to men does not for that reason contravene Article 30 (1) if—

(*a*) the place is, or is part of, a hospital or other establishment for persons requiring special supervision, attention or care, or

(*b*) the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers, or

(*c*) the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and

(i) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or

(ii) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.

(2) A person who provides facilities or services restricted to men does not for that reason contravene Article 30 (1) if the facilities or services are such that physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a woman.

(3) Articles 30 (1) and 31 do not apply—

(*a*) to discrimination which is rendered unlawful by any provision in column 1 of the table below, or

(*b*) to discrimination which would be so unlawful but for any provision in column 2 of that table, or

(*c*) to discrimination which contravenes a term modified or included by virtue of an equality clause.

TABLE

Provision creating illegality	*Exception*
PART III	Articles 8 (3), 10 (1) (*b*), 18 (4), 21 and 22.
	Schedule 5 paragraphs 1 and 2.
Article 24 or 25	Articles 27, 28 and 29.
	Schedule 5 paragraph 4.

Extent

Extent of Part IV

37.—(1) Article 30 (1)—

(*a*) does not apply to goods, facilities or services outside Northern Ireland except as provided in paragraphs (2) and (3); and

(*b*) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Northern Ireland.

(2) Article 30 (1) applies to the provision of facilities for travel outside Northern Ireland where the refusal or omission occurs in Northern Ireland or on a ship, aircraft or hovercraft within paragraph (3).

(3) Article 30 (1) applies on and in relation to—

(*a*) any ship registered at a port of registry in Northern Ireland, and

(*b*) any aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland, and

(*c*) any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland,

even if the ship, aircraft or hovercraft is outside Northern Ireland.

(4) This Article shall not render unlawful an act done in or over a country outside the United Kingdom, or in or over that country's territorial waters, for the purpose of complying with the laws of that country.

(5) Articles 24, 25 and 26 do not apply to benefits, facilities or services outside Northern Ireland except—

(*a*) travel on a ship registered at a port of registry in Northern Ireland, and

(*b*) benefits, facilities or services provided on a ship so registered.

PART V

OTHER UNLAWFUL ACTS

Discriminatory practices

38.—(1) In this Article "discriminatory practice" means the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part III or IV taken with Article 3 (1) (b) or 5 (1) (b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex.

(2) A person acts in contravention of this Article if and so long as—

(*a*) he applies a discriminatory practice, or

(*b*) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this Article shall be brought only by the Commission in accordance with Articles 67 to 71.

Discriminatory advertisements

39.—(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part III or IV.

(2) Paragraph (1) does not apply to an advertisement if the intended act would not in fact be unlawful.

(3) For the purposes of paragraph (1), use of a job description with a sexual connotation (such as "waiter", "salesgirl", "postman" or "stewardess") shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

(4) The publisher of an advertisement made unlawful by paragraph (1) shall not be subject to any liability under that paragraph in respect of the publication of the advertisement if he proves—

(*a*) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of paragraph (2), the publication would not be unlawful, and

(*b*) that it was reasonable for him to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding £400.

Instructions to discriminate

40. It is unlawful for a person—

(*a*) who has authority over another person, or

(*b*) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of Part III or IV, or procure or attempt to procure the doing by him of any such act.

Pressure to discriminate

41.—(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part III or IV by—

(*a*) providing or offering to provide him with any benefit, or

(*b*) subjecting or threatening to subject him to any detriment.

(2) An offer or threat is not prevented from falling within paragraph (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

Liability of employers and principals

42.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Order as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Order as done by that other person as well as by him.

(3) In proceedings brought under this Order against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

Aiding unlawful acts

43.—(1) A person who knowingly aids another person to do an act made unlawful by this Order shall be treated for the purposes of this Order as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 42 (or would be so liable but for Article 42 (3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this Article knowingly aid another to do an unlawful act if—

(*a*) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Order, the act which he aids would not be unlawful, and

(*b*) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3) (a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding £400.

PART VI

GENERAL EXCEPTIONS FROM PARTS III TO V

Charities

44.—(1) Nothing in Parts III to V shall—

(*a*) be construed as affecting a provision to which this paragraph applies, or

(*b*) render unlawful an act which is done in order to give effect to such a provision.

(2) Paragraph (1) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In this Article—

(*a*) "charitable instrument" means a statutory provision or other instrument passed or made for charitable purposes, or a statutory provision or other instrument so far as it relates to charitable purposes;

(*b*) "charitable purposes" means purposes which are exclusively charitable according to the law of Northern Ireland.

Sport etc.

45. Nothing in Parts III to V shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, render unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

Insurance etc.

46. Nothing in Parts III to V shall render unlawful the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment—

(*a*) was effected by reference to actuarial or other data from a source on which it was reasonable to rely, and

(*b*) was reasonable having regard to the data and any other relevant factors.

Communal accommodation

47.—(1) In this Article "communal accommodation" means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by men only, or by women only (but which may include some shared sleeping accommodation for men, and some for women, or some ordinary sleeping accommodation).

(2) In this Article "communal accommodation" also includes residential accommodation all or part of which should be used by men only, or by women only, because of the nature of the sanitary facilities serving the accommodation.

(3) Nothing in Part III or IV shall render unlawful sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women.

(4) In applying paragraph (3) account shall be taken of—

(*a*) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accomodation should be provided; and

(*b*) the frequency of the demand or need for use of the accommodation by men as compared with women.

(5) Nothing in Part III or IV shall render unlawful sex discrimination against a woman, or against a man, as respects the provision of any benefit, facility or service if—

(*a*) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation, and

(*b*) in the relevant circumstances the woman or, as the case may be, the man could lawfully be refused the use of the accommodation by virtue of paragraph (3).

(6) Neither paragraph (3) nor paragraph (5) is a defence to an act of sex discrimination under Part III unless such arrangements as are reasonably practicable are made to compensate for the detriment caused by the discrimination; but in considering under paragraph (5) (*b*) whether the use of communal accommodation could lawfully be refused (in a case based on Part III), it shall be assumed that the requirements of this paragraph have been complied with as respects paragraph (3).

(7) Article 26 shall not apply to sex discrimination within paragraph (3) or(5).

(8) This Article is without prejudice to the generality of Article 36 (1) (c).

Discriminatory training by certain bodies

48.—(1) Nothing in Parts III to V shall render unlawful any act done in relation to particular work by a training body in, or in connection with—

(*a*) affording women only, or men only, access to facilities for training which would help to fit them for that work, or

(*b*) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where it appears to the training body that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question doing that work in Northern Ireland, or the number of persons of that sex doing the work in Northern Ireland was comparatively small.

(2) Where in relation to particular work it appears to a training body that although the condition for the operation of paragraph (1) is not met for the whole of Northern Ireland it is met for an area within Northern Ireland, nothing in Parts III to V shall render unlawful any act done by the training body in, or in connection with—

(*a*) affording persons who are of the sex in question, and who appear likely to take up that work in that area, access to facilities for training which would help to fit them for that work, or

(*b*) encouraging persons of that sex to take advantage of opportunities in the area for doing that work.

(3) Nothing in Parts III to V shall render unlawful any act done by a training body in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it appears to the training body that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.

The discrimination in relation to which this paragraph applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

(4) In this Article "training body" means—

(*a*) a person mentioned in Article 17 (2) (*a*) or (*b*), or

(*b*) any other person being a person designated for the purposes of this Article in an order made by the Department of Manpower Services,

and a person may be designated under paragraph (*b*) for the purposes of paragraphs (1) and (2) only, or of paragraph (3) only, or for all those paragraphs.

Other discriminatory training etc.

49.—(1) Nothing in Parts III to V shall render unlawful any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with,—

(*a*) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work, or

(*b*) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

(2) Nothing in Article 15 shall render unlawful any act done by an organisation to which that Article applies in, or in connection with,—

(*a*) affording female members of the organisation only, or male members of the organisation only, access to facilities for training which would help to fit them for holding a post of any kind in the organisation, or

(*b*) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organisation,

where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among persons holding such posts in the organisation or the number of persons of that sex holding such posts was comparatively small.

(3) Nothing in Parts III to V shall render unlawful any act done by an organisation to which Article 15 applies in, or in connection with, encouraging women only, or men only, to become members of the organisation where at any time within the twelve months immediately preceding the doing of the act there

were no persons of the sex in question among those members or the number of persons of that sex among the members was comparatively small.

Trade unions etc.: elective bodies

50.—(1) If an organisation to which Article 15 applies comprises a body the membership of which is wholly or mainly elected, nothing in Article 15 shall render unlawful provision which ensures that a minimum number of persons of one sex are members of the body—

(*a*) by reserving seats on the body for persons of that sex, or

(*b*) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum,

where in the opinion of the organisation the provision is in the circumstances needed to secure a reasonable lower limit to the number of members of that sex serving on the body; and nothing in Parts III to V shall render unlawful any act done in order to give effect to such a provision.

(2) This Article shall not be taken as making lawful—

(*a*) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body, or

(*b*) discrimination in any arrangements concerning membership of the organisation itself.

Indirect access to benefits etc.

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

(2) Where by any provision of this Order the affording by any person of access to benefits, facilities or services 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 any actual provider.

Acts done under statutory authority

52.—(1) Nothing in Parts III to V shall render unlawful anything done in order to comply with a requirement—

(*a*) of an enactment enacted before this Order; or

(*b*) of an instrument made or approved (whether before or after the making of this Order) under an enactment enacted before the making of this Order.

(2) Where an enactment enacted after the making of this Order re-enacts (with or without modification) a provision of an enactment enacted before the making of this Order, paragraph (1) shall apply to that provision as re-enacted as if it continued to be contained in an enactment enacted before the making of this Order.

Acts safeguarding national security

53.—(1) Nothing in Parts III to V shall render unlawful an act done for the purpose of safeguarding national security or of protecting public safety or public order.

(2) A certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for a purpose mentioned in paragraph (1) shall be conclusive evidence that it was done for that purpose.

(3) A document purporting to be a certificate such as is mentioned in paragraph (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

PART VII

EQUAL OPPORTUNITIES COMMISSION FOR NORTHERN IRELAND

General

Establishment and duties of Commission

54.—(1) There shall be a body of Commissioners named the Equal Opportunities Commission for Northern Ireland consisting of at least six but not more than twelve individuals each appointed by the head of the Department of Manpower Services (in this Article and Schedule 3 referred to as "the Department"), on a full-time or part-time basis, which shall have the following duties—

(*a*) to work towards the elimination of discrimination,

(*b*) to promote equality of opportunity between men and women generally, and

(*c*) to keep under review the working of this Order and the Equal Pay Act and, when the Commission is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending them.

(2) The head of the Department shall appoint—

(*a*) one of the Commissioners to be chairman of the Commission, and

(*b*) either one or two of the Commissioners (as the head of the Department thinks fit) to be deputy chairman or deputy chairmen of the Commission.

(3) The Department may by order amend paragraph (1) so far as it regulates the number of Commissioners.

(4) Schedule 3 shall have effect with respect to the Commission.

Research and education

55.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of Article 54 (1).

(2) The Commission may make charges for educational or other facilities or services made available by it.

Review of discriminatory provisions in health and safety legislation

56.—(1) Without prejudice to the generality of Article 54 (1), the Commission, in pursuance of the duties imposed by sub-paragraphs (*a*) and (*b*) of that paragraph—

(*a*) shall keep under review the relevant statutory provisions in so far as they require men and women to be treated differently, and

(*b*) if so required by the relevant department, make to it a report on any matter specified by it which is connected with those duties and concerns the relevant statutory provisions.

Any such report shall be made within the time specified by the relevant department, and the relevant department shall cause the report to be published.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the relevant department proposals for amending the relevant statutory provisions.

(3) The Commission shall carry out its duties in relation to the relevant statutory provisions in consultation with the relevant department.

(4) In this Article "the relevant statutory provisions" means the provisions mentioned in Schedule 4 or, in relation to the relevant department, means such of those provisions as relates to matters falling within the scope of the functions of that department; and "the relevant department" means any government department on or for purposes of which functions are conferred by any of those provisions.

Investigations

Power to conduct formal investigations

57.—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under Article 54 (1), the Commission may if it thinks fit, and shall if required by the Department of Manpower Services, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the head of the Department of Manpower Services, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

Terms of reference

58.—(1) The Commission shall not embark on a formal investigation unless the requirements of this Article have been complied with.

(2) Terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

(4) The Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, the Department after consulting the Commission, may from time to time revise the terms of reference; and paragraphs (1) and (3) shall apply to the revised investigation and terms of reference as they applied to the original.

Power to obtain information

59.—(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner,—

(*a*) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;

(*b*) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by Article 69, a notice shall be served under paragraph (1) only where—

(*a*) service of the notice was authorised by an order made by the Department of Manpower Services, or

(*b*) the terms of reference of the investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—

(i) unlawful discriminatory acts,

(ii) contraventions of Article 38,

(iii) contraventions of Article 39, 40 or 41, and

(iv) acts in breach of a term modified or included by virtue of an equality clause,

and confine the investigation to those acts.

(3) A notice under paragraph (1) shall not require a person—

(*a*) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court, or

(*b*) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and if he fails without reasonable excuse to comply with any such order he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.

(5) A person commits an offence if he—

(*a*) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this Article to produce, or

(*b*) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,

and shall be liable on summary conviction to a fine not exceeding £400.

(6) Proceedings for an offence under paragraph (5) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted—

(*a*) against any person at any place at which he has an office or other place of business;

(*b*) against an individual at any place where he resides, or at which he is for the time being.

Recommendations and reports on formal investigations

60.—(1) If in the light of any of the Commissions's findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion,—

(*a*) to make to any persons, with a view to promoting equality of opportunity between men and women who are affected by any of their activities, recommendations for changes in their policies or procedures, or as to any other matters, or

(*b*) to make to the Department of Manpower Services any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Department of Manpower Services—

(*a*) the Commission shall deliver the report to the Department, and

(*b*) the Department shall cause the report to be published,

and unless required by the Department the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Department of Manpower Services, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).

(5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

(*a*) to inspect the report during ordinary office hours and take copies of all or any part of the report, or

(*b*) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may if it thinks fit determine that the right conferred by paragraph (5) (*a*) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give general notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

Restriction on disclosure of information

61.—(1) No information given to the Commission by any person ("the informant") in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except—

(*a*) on the order of any court, or

(*b*) with the informant's consent, or

(*c*) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates, or

(*d*) in a report of the investigation published by the Commission or made available for inspection under Article 60 (5), or

(*e*) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons, or

(*f*) for the purpose of any civil proceedings under this Order to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) commits an offence and shall be liable on summary conviction to a fine not exceeding £400.

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private affairs of any individual or business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

PART VIII

ENFORCEMENT

General

Restriction of proceedings for breach of Order

62.—(1) Except as provided by this Order no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Order.

(2) Paragraph (1) does not preclude the making of an order of certiorari, mandamus or prohibition.

Enforcement in employment field

Jurisdiction of industrial tribunals

63.—(1) A complaint by any person ("the complainant") that another person ("the respondent")—

(*a*) has committed an act of discrimination against the complainant which is unlawful by virtue of Part III, or

(*b*) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the complainant,

may be presented to an industrial tribunal.

(2) Paragraph (1) does not apply to a complaint under Article 16 (1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any statutory provision.

Conciliation in employment cases

64.—(1) Where a complaint is presented to an industrial tribunal under Article 63, or under section 2 (1) of the Equal Pay Act, the Secretary of the Central Office of the Industrial Tribunals shall send a copy of the complaint to the Department of Manpower Services and it shall be the duty of the Department—

(*a*) if it is requested to do so by both the complainant and the respondent, or

(*b*) if, in the absence of requests by the complainant and the respondent, it considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

(2) Where, before a complaint such as is mentioned in paragraph (1) has been presented to an industrial tribunal, a request is made to the Department of Manpower Services to make its services available in the matter by a person

who, if the complaint were so presented, would be the complainant or respondent, paragraph (1) shall apply as if the complaint had been so presented and a copy of it had been sent to the Department.

(3) In proceeding under paragraph (1) or (2), the Department of Manpower Services shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(4) Anything communicated to the Department of Manpower Services in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before an industrial tribunal except with the consent of the person who communicated it to the Department.

Remedies on complaint under Article 63

65.—(1) Where an industrial tribunal finds that a complaint presented to it under Article 63 is well-founded the tribunal shall make such of the following as it considers just and equitable—

(*a*) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;

(*b*) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court to pay to the complainant if the complaint had fallen to be dealt with under Article 66;

(*c*) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.

(2) The amount of compensation awarded to a person under paragraph (1) (*b*) shall not exceed the limit for the time being imposed by Article 37 of the Industrial Relations (Northern Ireland) Order 1976 (**a**).

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1) (*c*), then, if they think it just and equitable to do so,—

(*a*) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1) (*b*), or

(*b*) if an order under paragraph (1) (*b*) could have been made but was not, the tribunal may make such an order.

(4) Where compensation falls to be awarded in respect of any act both under the provisions of this Article and under any other statutory provision, an industrial tribunal shall not award compensation under this Article in respect of any loss or other matter which has been taken into account under that other statutory provision by the court in awarding compensation in an action in respect of that act.

Enforcement of Part IV

Claims under Part IV

66.—(1) A claim by any person ("the claimant") that another person ("the respondent")—

(*a*) has committed an act of discrimination against the claimant which is unlawful by virtue of Part IV, or

(*b*) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the claimant,

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(**a**) S.I. 1976/1043 (N.I. 16.).

may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Proceedings under paragraph (1) shall be brought only in a county court, but all such remedies shall be obtainable in such proceedings as, apart from this paragraph and Article 62 (1), would be obtainable in the High Court.

(3) As respects an unlawful act of discrimination falling within Article 3 (1) (*b*) (or, where this Article is applied by Article 65 (1) (*b*), Article 5 (1) (*b*)) no award of damages shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of his sex or marital status as the case may be.

(4) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.

(5) Civil proceedings in respect of a claim by any person that he has been discriminated against in contravention of Article 24 or 25 by a body to which Article 26 (1) applies (other than proceedings in respect of a claim against the Department of Education) shall not be instituted unless the claimant has given notice of the claim to the Department of Education and either that Department has by notice informed the claimant that it does not require further time to consider the matter, or the period of two months has elapsed since the claimant gave notice to that Department; but nothing in this paragraph applies to a counter-claim.

(6) For the purposes of proceedings under paragraph (1)—

(*a*) section 62 (1) (power of judge to appoint assessors) of the County Courts Act (Northern Ireland) 1959 (**a**) shall apply with the omission of the words "on the application of any party", and

(*b*) the remuneration of assessors appointed under the said section 62 (1) shall be at such rate as may be determined by the Lord Chancellor with the approval of the Minister for the Civil Service and may be defrayed as part of the expenses of the county court service.

(7) A county court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its district, including such an act done outside Northern Ireland.

Non-discrimination notices

Issue of non-discrimination notice

67.—(1) This Article applies to—

(*a*) an unlawful discriminatory act, and

(*b*) a contravention of Article 38, and

(*c*) a contravention of Article 39, 40 or 41, and

(*d*) an act in breach of a term modified or included by virtue of an equality clause,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form ("a non-discrimination notice") requiring him—

(*a*) not to commit any such acts, and

(**a**) 1959 c. 25 (N.I.).

(*b*) where compliance with sub-paragraph (*a*) involves changes in any of his practices or other arrangements—

(i) to inform the Commission that he has effected those changes and what those changes are, and

(ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than five years after the notice has become final.

(5) The Commission shall not serve a non-discrimination notice in respect of any person unless it has first—

(*a*) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so, and

(*b*) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice, and

(*c*) taken account of any representations so made by him.

(6) Paragraph (2) does not apply to any acts in respect of which the Department of Education could exercise the powers conferred on it by Article 26 (2); but if the Commission becomes aware of any such acts it shall give notice of them to that Department.

(7) Article 59 (4) shall apply to requirements under paragraph (2) (*b*), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under Article 59 (1).

Appeal against non-discrimination notice

68.—(1) Not later than six weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice—

(*a*) to an industrial tribunal, so far as the requirement relates to acts which are within the jurisdiction of the tribunal;

(*b*) to a county court so far as the requirement relates to acts which are within the jurisdiction of the court and are not within the jurisdiction of an industrial tribunal.

(2) Where the court or tribunal considers a requirement in respect of which an appeal is brought under paragraph (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the court or tribunal shall quash the requirement.

(3) On quashing a requirement under paragraph (2) the court or tribunal may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Paragraph (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under paragraph (3).

Investigation as to compliance with non-discrimination notice

69.—(1) If—

(*a*) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination notice are being or have been carried out, but Article 59 (2) (*b*) does not apply, and

(*b*) Article 58 (3) is complied with in relation to the investigation on a date ("the commencement date") not later than the expiration of the period of five years beginning when the non-discrimination notice became final,

the Commission may within the period referred to in paragraph (2) serve notices under Article 59 (1) for the purposes of the investigation without needing to obtain the consent of the Department of Manpower Services.

(2) The said period begins on the commencement date and ends on the later of the following dates—

(*a*) the date on which the period of five years mentioned in paragraph (1) (*b*) expires;

(*b*) the date two years after the commencement date.

Register of non-discrimination notices

70.—(1) The Commission shall establish and maintain a register ("the register") of non-discrimination notices which have become final.

(2) Any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission,—

(*a*) to inspect the register during ordinary office hours and take copies of any entry, or

(*b*) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by paragraph (2) (*a*) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

Persistent discrimination

71.—(1) If, during the period of five years beginning on the date on which either of the following became final in the case of any person, namely,—

(*a*) a non-discrimination notice served on him,

(*b*) a finding by a court or tribunal under Article 63 or 66, or section 2 of the Equal Pay Act, that he has done an unlawful discriminatory act or an act in breach of a term modified or included by virtue of an equality clause,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within sub-paragraph (*b*), or contravening Article 38, the Commission may apply to a county court for an injunction restraining him from doing so; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(2) In proceedings under this Article the Commission shall not allege that the person to whom the proceedings relate has done an act which is within the

jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

Enforcement of Articles 39 *to* 41

72.—(1) Proceedings in respect of a contravention of Article 39, 40 or 41 shall be brought only by the Commission in accordance with the following provisions of this Article.

(2) The proceedings shall be—

(*a*) an application for a decision whether the alleged contravention occurred, or

(*b*) an application under paragraph (4),

or both.

(3) An application under paragraph (2) (*a*) shall be made—

(*a*) in a case based on any provision of Part III, to an industrial tribunal, and

(*b*) in any other case to a county court.

(4) If it appears to the Commission—

(*a*) that a person has done an act which by virtue of Article 39, 40 or 41 was unlawful, and

(*b*) that unless restrained he is likely to do further acts which by virtue of that Article are unlawful,

the Commission may apply to a county court for an injunction restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.

(5) In proceedings under paragraph (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful under this Order and within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

Preliminary action in employment cases

73.—(1) With a view to making an application under Article 71 (1) or 72 (4) in relation to a person the Commission may present to an industrial tribunal a complaint that he has done an act within the jurisdiction of an industrial tribunal, and if the tribunal considers that the complaint is well-founded they shall make a finding to that effect and, if they think it just and equitable to do so in the case of an act contravening any provision of Part III may also (as if the complaint had been presented by the person discriminated against) make an order such as is referred to in Article 65 (1) (*a*), or a recommendation such as is referred to in Article 65 (1) (*c*), or both.

(2) Paragraph (1) is without prejudice to the jurisdiction conferred by Article 72 (2).

(3) Any finding of an industrial tribunal under—

(*a*) this Order, or

(*b*) the Equal Pay Act,

in respect of any act shall, if it has become final, be treated as conclusive—

(i) by the county court on an application under Article 71 (1) or 72 (4) or in proceedings on an equality clause,

(ii) by an industrial tribunal on a complaint made by the person affected by the act under Article 63 or in relation to an equality clause.

(4) In Articles 71 and 72 and this Article, the acts "within the jurisdiction of an industrial tribunal" are those in respect of which such jurisdiction is conferred by Articles 63 and 72 and by section 2 of the Equal Pay Act.

Help for persons suffering discrimination

Help for aggrieved persons in obtaining information etc.

74.—(1) With a view to helping a person ("the person aggrieved") who considers he may have been discriminated against in contravention of this Order to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Secretary of State shall by order prescribe—

(*a*) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;

(*b*) forms by which the respondent may if he so wishes reply to any questions.

(2) Where the person aggrieved questions the respondent (whether in accordance with an order under paragraph (1) or not)—

(*a*) the question, and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this Article, be admissible as evidence in the proceedings;

(*b*) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse omitted to reply within a reasonable period or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) The Secretary of State may by order—

(*a*) prescribe the period within which questions must be duly served in order to be admissible under paragraph (2) (*a*), and

(*b*) prescribe the manner in which a question, and any reply by the respondent, may be duly served.

(4) County court rules may enable the court entertaining a claim under Article 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this Article or not.

(5) This Article is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(6) An order made by the Secretary of State under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 (**a**) shall apply accordingly.

(7) In this Article "respondent" includes a prospective respondent.

Assistance by Commission

75.—(1) Where, in relation to proceedings or prospective proceedings either under this Order or in respect of an equality clause, an individual who

(**a**) 1946 c. 36.

is an actual or prospective complainant or claimant applies to the Commission for assistance under this Article, the Commission shall consider the application and may grant it if it thinks fit to do so on the ground that—

(*a*) the case raises a question of principle, or

(*b*) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided,

or by reason of any other special consideration.

(2) Assistance by the Commission under this Article may include—

(*a*) giving advice;

(*b*) procuring or attempting to procure the settlement of any matter in dispute;

(*c*) arranging for the giving of advice or assistance by a solicitor or counsel;

(*d*) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings,

but sub-paragraph (*d*) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in, any proceedings.

(3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this Article the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission—

(*a*) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given, and

(*b*) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) The charge conferred by paragraph (3) is subject to any charge under the Legal Aid and Advice Act (Northern Ireland) 1965 (**a**) and is subject to any provision in that Act for payment of any sum into the legal aid fund.

(5) In this Article "respondent" includes a prospective respondent and "rules or regulations"—

(*a*) in relation to county court proceedings, means county court rules;

(*b*) in relation to industrial tribunal proceedings, means regulations made under Article 59 of the Industrial Relations (Northern Ireland) Order 1976.

Period within which proceedings to be brought

Period within which proceedings to be brought

76.—(1) An industrial tribunal shall not consider a complaint under Article 63 unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done.

(a) 1965 c. 8 (N.I.)

(2) A county court shall not consider a claim under Article 66 unless proceedings in respect of the claim are instituted before the end of—

(*a*) the period of six months beginning when the act complained of was done; or

(*b*) in a case to which Article 66 (5) applies, the period of eight months so beginning.

(3) An industrial tribunal or county court shall not consider an application under Article 72 (2) (*a*) unless it is made before the end of the period of six months beginning when the act to which it relates was done; and a county court shall not consider an application under Article 72 (4) unless it is made before the end of the period of five years so beginning.

(4) An industrial tribunal shall not consider a complaint under Article 73 (1) unless it is presented to the tribunal before the end of the period of six months beginning when the act complained of was done.

(5) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of this Article—

(*a*) where the inclusion of any term in a contract renders the making of the contract an unlawful act that act shall be treated as extending throughout the duration of the contract, and

(*b*) any act extending over a period shall be treated as done at the end of that period, and

(*c*) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.

PART IX

SUPPLEMENTAL

Validity and revision of contracts

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

(*a*) its inclusion renders the making of the contract unlawful by virtue of this Order, or

(*b*) it is included in furtherance of an act rendered unlawful by this Order, or

(*c*) it provides for the doing of an act which would be rendered unlawful by this Order.

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

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

(4) Paragraph (3) does not apply—

(*a*) to a contract settling a complaint to which Article 63 (1) of this Order or section 2 of the Equal Pay Act applies where the contract is made with the assistance of the Department of Manpower Services;

(*b*) to a contract settling a claim to which Article 66 applies.

(5) On the application of any person interested in a contract to which paragraph (2) applies, a county court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice 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.

(6) An order under paragraph (5) may include provision as respects any period before the making of the order.

Educational charities

78.—(1) This Article applies to any trust deed or other instrument—

(*a*) which concerns property applicable for or in connection with the provision of education in any establishment in paragraphs 1 to 5 of the table in Article 24, and

(*b*) which in any way restricts the benefits available under the instrument to persons of one sex.

(2) If on the application of the trustees, or of the responsible body (as defined in Article 24), the Department of Finance is satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination that Department may by order make such modifications of the instrument as appear to it expedient for removing or modifying the restriction, and for any supplemental or incidental purposes.

(3) If the trust was created by gift or bequest, no order shall be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order.

(4) The Department of Finance shall require the applicant to publish notice—

(*a*) containing particulars of the proposed order, and

(*b*) stating that representations may be made to that Department within a period specified in the notice.

(5) The period specified in the notice shall not be less than one month from the date of the notice.

(6) The applicants shall publish the notice in such manner as may be specified by the Department of Finance, and the cost of any publication of the notice may be defrayed out of the property of the trust.

(7) Before making the order the Department of Finance shall take into account any representations duly made in accordance with the notice.

Power to amend certain provisions of Order

79.—(1) The Secretary of State may by an order the draft of which has been approved by the Assembly—

(*a*) amend any of the following provisions, namely, Articles 8 (3), 10, 21, 22 (1), (2) and (3), 32 (2), 33, 35, 36 and 44 to 49 (including any such provision as amended by a previous order under this paragraph);

(*b*) amend or repeal any of the following provisions, namely, Articles 14 (4), 15 (4), 34 and 50 (including any such provision as amended by a previous order under this paragraph);

(*c*) amend Part III, IV or V so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 8 (1) or (2), 30 (1), 31 or 32;

(*d*) amend Article 14 (1) so as to alter the number of partners specified in that provision.

(2) The Secretary of State shall not be recommended to cause to be laid before the Assembly the draft of an order under paragraph (1) unless the Commission has been consulted about the contents of the draft.

(3) An order under paragraph (1) (*c*) may make such amendments to the list of provisions given in paragraph (1) (*a*) as in the opinion of the Secretary of State are expedient having regard to the contents of the order.

Orders and regulations

80.—(1) An order made by a Northern Ireland department under the preceding provisions of this Order (except Article 13 (5), 17 (2) (*c*), 28, 48 (4) (*b*) or 59 (2)), and regulations made under this Order, shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 78 unless the order modifies an enactment.

(3) An order under this Order may contain transitional provisions and savings.

Transitional provisions, amendments and repeals

81.—(1) The provisions of Schedule 5 shall have effect for making transitional provision for the purposes of this Order.

(2) The statutory provisions specified in Schedule 6 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Order).

(3) The statutory provisions specified in Schedule 7 are hereby repealed to the extent shown in column 3 of that Schedule.

(4) An order under Article 1 (2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation, including such adaptations of those provisions, or of any provisions of this Order then in operation, as appear to the Secretary of State necessary or expedient in consequence of the partial operation of this Order.

Application to Crown

82.—(1) This Order applies—

(*a*) to an act done by or for purposes of a Minister of the Crown or government department, or

(*b*) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Parts III and V apply to—

(*a*) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or

(*b*) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(3) Part IV (except Article 26 (2) and (3)) applies to any educational establishment conducted in accordance with arrangements made by the Department of Education under Article 55 (1) of the Education and Libraries (Northern Ireland) Order 1972 as if that establishment were included in a paragraph in column 1 of the table in Article 24 and that Department were included in relation to it in column 2 of that table, and as if references to that paragraph were included in Article 24 and Article 26 (4) (*b*).

(4) Paragraphs (1) and (2) have effect subject to Article 19.

(5) Paragraphs (1) and (2) do not apply in relation to service in—

(*a*) the naval, military or air forces of the Crown, or

(*b*) any women's service administered by the Defence Council.

(6) Nothing in this Order renders unlawful discrimination in admission to the Army Cadet Force, Air Training Corps, Sea Cadet Corps or Combined Cadet Force, or any other cadet training corps for the time being administered by the Ministry of Defence.

(7) This Order (except Article 11 (1) and (6)) does not apply to employment in the case of which the employee may be required to serve in support of a force or service mentioned in paragraph (5) (*a*) or (*b*).

(8) Paragraph (2) of Article 13 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland as it has effect in relation to a ship, aircraft or hovercraft mentioned in sub-paragraph (*a*) or (*b*) of that paragraph, and Article 13 (5) shall apply accordingly.

(9) The provisions of Parts II to IV of the Crown Proceedings Act 1947 (**a**) shall apply to proceedings against the Crown under this Order as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under this Order section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(10) In this Article "statutory body" means a body set up by or in pursuance of a statutory provision, and "statutory office" means an office so set up; and service "for purposes of" a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 (**b**) as for the time being in force.

Government appointments outside Article 8

83.—(1) This Article applies to any appointment by a Minister of the Crown or government department to an office or post where Article 8 does not apply in relation to the appointment.

(**a**) 1947 c. 44. (**b**) 1975 c. 24.

(2) In making the appointment, and in making the arrangements for determining who should be offered the office or post, the Minister of the Crown or government department shall not do an act which would be unlawful under Article 8 if the Crown were the employer for the purposes of this Order.

N. E. Leigh

SCHEDULES

Article 11.

SCHEDULE 1

EQUAL PAY ACT (NORTHERN IRELAND) 1970

PART I

AMENDMENTS OF ACT

1.—(1) In section 1 (7), for "subsections (8) and (9)" there is substituted "the following subsections", paragraph (*b*) is repealed and the following is inserted after paragraph (*c*): "and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in Northern Ireland which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes".

(2) Section 1 (8) is repealed.

(3) The following is substituted for section 1 (9)—

"(9) This section shall apply to—

(*a*) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or

(*b*) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(10) Subsection (9) does not apply in relation to service in—

(*a*) the naval, military or air forces of the Crown, or

(*b*) any women's service administered by the Defence Council.

(11) In this section "statutory body" means a body set up by or in pursuance of a statutory provision (as defined by section 1 (*f*) of the Interpretation Act (Northern Ireland) 1954 (a)), and "statutory office" means an office so set up; and service "for purposes of" a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 (b) as for the time being in force.".

(4) The following subsections are inserted at the end of section 1—

"(12) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the proper law of a contract is the law of any part of the United Kingdom or not.

(13) In this Act "Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland.

(14) Provisions of this section and section 2 framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.".

2.—(1) The following is substituted for section 2 (1)—

"(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.".

(a) 1954 c. 33 (N.I.). (b) 1975 c. 24.

(2) After section 2 (1) there is inserted—

"(1A) Where a dispute arises in relation to the effect of an equality clause the employer may apply to an industrial tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.".

(3) In section 2 (2)—

(*a*) for "failing to comply with their equal pay clauses" there is substituted "contravening a term modified or included by virtue of their equality clauses", and

(*b*) after "the question may be referred by the Department" there is inserted "as respects all or any of them", and

(*c*) after "claim by the women" there is inserted "or woman".

(4) Section 2 (6) is repealed.

3. In section 6 the following is substituted for subsection (1)—

"(1) Neither an equality clause nor the provisions of section 3 (4) shall operate in relation to terms—

(*a*) affected by compliance with the laws regulating the employment of women, or

(*b*) affording special treatment to women in connection with pregnancy or childbirth.

(1A) An equality clause and those provisions—

(*a*) shall operate in relation to terms relating to membership of an occupational pension scheme (within the meaning of the Social Security Pensions (Northern Ireland) Order 1975 (a)) so far as those terms relate to any matter in respect of which the scheme has to conform with the equal access requirements of Part V of that Order; but

(*b*) subject to this, shall not operate in relation to terms related to death or retirement, or to any provision made in connection with death or retirement.".

4. Sections 7, 8 and 9 are repealed.

5. In section 10 at the end there is inserted—

"(3) In this Act references to its commencement shall be construed as references to 29th December 1975.".

6. For references to an equal pay clause in each place where they occur there are substituted references to an equality clause.

PART II

ACT AS AMENDED

1970 Chapter 32

An Act to prevent discrimination, as regards terms and conditions of employment, between men and women. [17th December 1970]

Be it enacted by the Queen's Most Excellent Majesty and the Senate and the House of Commons of Northern Ireland in this present Parliament assembled, and by the authority of the same, as follows:—

Requirement of equal treatment for men and women in same employment

1.—(1) If the terms of a contract under which a woman is employed at an establishment in Northern Ireland do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(a) S.I. 1975/1503 (N.I. 15).

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the "woman's contract"), and has the effect that—

(*a*) where the woman is employed on like work with a man in the same employment—

(i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term;

(*b*) where the woman is employed on work rated as equivalent with that of a man in the same employment—

(i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term.

(3) An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material difference (other than the difference of sex) between her case and his.

.. ..

(5) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

(6) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

(7) Subject to the following subsections, for the purposes of this section—

(*a*) "employed" means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

.. ..

(*c*) two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control;

and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in Northern Ireland which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.

.. ..

(9) This section shall apply to—

(*a*) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or

(*b*) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(10) Subsection (9) does not apply in relation to service in—

(*a*) the naval, military or air forces of the Crown, or

(*b*) any women's service administered by the Defence Council.

(11) In this section "statutory body" means a body set up by or in pursuance of a statutory provision (as defined by section 1 (*f*) of the Interpretation Act (Northern Ireland) 1954 (**a**)), and "statutory office" means an office so set up; and service "for purposes of" a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 (**b**) as for the time being in force.

(12) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the proper law of a contract is the law of any part of the United Kingdom or not.

(13) In this Act "Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland.

(14) Provisions of this section and section 2 framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.

Disputes as to, and enforcement of, requirement of equal treatment

2.—(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.

(1A) Where a dispute arises in relation to the effect of an equality clause the employer may apply to an industrial tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.

(2) Where it appears to the Department of Manpower Services (in this Act referred to as "the Department") that there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but that it is not reasonable to expect them to take steps to have the question determined, the question may be referred by the Department as respects all or any of them to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the employer.

(3) Where it appears to the court in which any proceedings are pending that a claim or counter-claim in respect of the operation of an equality clause could more conveniently be disposed of separately by an industrial tribunal, the court may direct that the claim or counter-claim shall be struck out; and (without prejudice to the foregoing) where in proceedings before any court a question arises as to the operation of an equality clause, the court may on the application of any party to the proceedings or otherwise refer that question, or direct it to be referred by a party to the proceedings, to an industrial tribunal for determination by the tribunal, and may stay the proceedings in the meantime.

(4) A claim in respect of the operation of an equality clause relating to a woman's employment shall not be referred to an industrial tribunal otherwise than by virtue of subsection (3), if she has not been employed in the employment within the six months preceding the date of the reference.

(**a**) 1954 c. 33 (N.I.). (**b**) 1975 c. 24.

(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than two years before the date on which the proceedings were instituted.

.. ..

(7) In this section "industrial tribunal" means a tribunal established under section 13 of the Industrial Training Act (Northern Ireland) 1964 (a), and there may be paid out of money provided by Parliament any additional amounts which by virtue of this section are so payable under section 13 (3) of that Act, as amended by section 52 (5) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (b).

Collective agreements and pay structures

3.—(1) Where a collective agreement made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the agreement may be referred, by any party to it or by the Department, to the Industrial Court constituted under Part I of the Industrial Courts Act 1919 (c) to declare what amendments need to be made in the agreement, in accordance with subsection (4), so as to remove that discrimination between men and women.

(2) Where on a reference under subsection (1) the Industrial Court have declared the amendments needing to be made in a collective agreement in accordance with that subsection, then—

(*a*) in so far as the terms and conditions of a person's employment are dependent on that agreement, they shall be ascertained by reference to the agreement as so amended, and any contract regulating those terms and conditions shall have effect accordingly; and

(*b*) if the Industrial Court make or have made, under Part I of the Terms and Conditions of Employment Act (Northern Ireland) 1963 (d) or any other transferred provision, an award or determination requiring an employer to observe the collective agreement, the award or determination shall have effect by reference to the agreement as so amended.

(3) On a reference under subsection (1) the Industrial Court may direct that all or any of the amendments needing to be made in the collective agreement shall be treated as not becoming effective until a date after their decision, or as having been effective from a date before their decision but not before the reference to them, and may specify different dates for different purposes; and subsection (2) and any such contract, award or determination as is there mentioned shall have or be deemed to have had effect accordingly.

(4) Subject to section 6, the amendments to be made in a collective agreement under this section shall be such as are needed—

(*a*) to extend to both men and women any provision applying specifically to men only or to women only; and

(*b*) to eliminate any resulting duplication in the provisions of the agreement in such a way as not to make the terms and conditions agreed for men, or those agreed for women, less favourable in any respect than they would have been without the amendments;

but the amendments shall not extend the operation of the collective agreement to men or to women not previously falling within it, and where accordingly a provision applying specifically to men only or to women only continues to be required for a category of men or of women (there being no provision in the agreement for women or, as the case may be, for men of that category), then the provision shall be limited to men or women of that category but there shall be made to it such amendments, if any, as are needed to secure that the terms and conditions of the men or women of that category are not in any respect less favourable than those of all persons of the other sex to whom the agreement applies.

(a) 1964 c. 18 (N.I.). (b) 1965 c. 19 (N.I.). (c) 1919 c. 69. (d) 1963 c. 2 (N.I.).

(5) For the purposes of this section "collective agreement" means any agreement as to terms and conditions of employment, being an agreement between—

(*a*) parties who are or represent employers or organisations of employers or associations of such organisations; and

(*b*) parties who are or represent organisations of employees or associations of such organisations;

but includes also any award modifying or supplementing such an agreement.

(6) Subsections (1) to (4) (except subsection (2) (*b*) and subsection (3) in so far as it relates to subsection (2) (*b*)) shall have effect in relation to an employer's pay structure as they have effect in relation to a collective agreement, with the adaptation that a reference to the Industrial Court may be made by the employer or by the Department, and for this purpose "pay structure" means any arrangements adopted by an employer (with or without any associated employer) which fix common terms and conditions of employment for his employees or any class of his employees, and of which the provisions are generally known or open to be known by the employees concerned.

(7) In this section—

(*a*) "employment" and related expressions, and the reference to an associated employer, shall be construed in the same way as in section 1;

(*b*) "transferred provision" has the meaning assigned to it by section 1 (*g*) of the Interpretation Act (Northern Ireland) 1954 (**a**);

and section 1 (9) shall have effect in relation to this section as well as in relation to that section.

Wages regulation orders

4.—(1) Where a wages regulation order made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the order may be referred by the Department to the Industrial Court to declare what amendments need to be made in the order, in accordance with the like rules as apply under section 3 (4) to the amendment under that section of a collective agreement, so as to remove that discrimination between men and women; and when the Court have declared the amendments needing to be so made, the Department may by order coming into operation not later than five months after the date of the Court's decision direct that (subject to any further wages regulation order) the order referred to the Court shall have effect subject to those amendments.

(2) A wages regulation order shall be referred to the Industrial Court under this section if the Department is requested so to refer it either—

(*a*) by a member or members of the wages council concerned with the order who was or who were appointed as representing employers; or

(*b*) by a member or members of that wages council who was or who were appointed as representing workers;

or if in any case it appears to the Department that the order may be amendable under this section.

(3) Where by virtue of section 11 (1) of the Wages Councils Act (Northern Ireland) 1945 (**b**) a contract between a worker and an employer is to have effect with modifications specified in section 11 (1), then (without prejudice to the general saving in section 10 (7) of that Act for rights conferred by or under other Acts) the contract so modified shall have effect subject to any further term implied by virtue of section 1.

(4) In this section "wages regulation order" means an order made or having effect as if made under section 10 of the Wages Councils Act (Northern Ireland) 1945.

Agricultural wages orders

5.—(1) Where an agricultural wages order made before or after the commencement of this Act contains any provision applying specifically to men only or to women

(**a**) 1954 c. 33 (N.I.). (**b**) 1945 c. 21 (N.I.).

only, the order may be referred by the Department to the Industrial Court to declare what amendments need to be made in the order, in accordance with the like rules as apply under section 3 (4) to the amendment under that section of a collective agreement, so as to remove that discrimination between men and women; and when the Court have declared the amendments needing to be so made, it shall be the duty of the Agricultural Wages Board, by a further agricultural wages order coming into operation not later than five months after the date of the Court's decision, either to make those amendments in the order referred to the Court or otherwise to replace or amend that order so as to remove the discrimination.

(2) Where the Agricultural Wages Board certify that the effect of an agricultural wages order is only to make such amendments of a previous order as have under this section been declared by the Industrial Court to be needed, or to make such amendments as aforesaid with minor modifications or modifications of limited application, or is only to revoke and reproduce with such amendments a previous order, then the Board may instead of complying with section 2 (8) and (9) of the Agricultural Wages Act serve notice of the proposed order in such manner as appears to the Board expedient in the circumstances, and may make the order at any time after the expiration of seven days from the service of the notice.

(3) An agricultural wages order shall be referred to the Industrial Court under this section if the Department is requested so to refer it either—

(*a*) by a body for the time being entitled to appoint to the Agricultural Wages Board persons representing employers; or

(*b*) by a body for the time being entitled to appoint to the Board persons representing workers;

or if in any case it appears to the Department that the order may be amendable under this section.

(4) In this section "the Agricultural Wages Board" means the Agricultural Wages Board for Northern Ireland, "the Agricultural Wages Act" means the Agricultural Wages (Regulation) Act (Northern Ireland) 1939 (**a**) and "agricultural wages order" means an order of the Agricultural Wages Board under the Agricultural Wages Act.

Exclusion from ss. 1 *to* 5 *of pensions etc.*

6.—(1) Neither an equality clause nor the provisions of section 3 (4) shall operate in relation to terms—

(*a*) affected by compliance with the laws regulating the employment of women, or

(*b*) affording special treatment to women in connection with pregnancy or childbirth.

(1A) An equality clause and those provisions—

(*a*) shall operate in relation to terms relating to membership of an occupational pension scheme (within the meaning of the Social Security Pensions (Northern Ireland) Order 1975 (**b**)) so far as those terms relate to any matter in respect of which the scheme has to conform with the equal access requirements of Part V of that Order; but

(*b*) subject to this, shall not operate in relation to terms related to death or retirement, or to any provision made in connection with death or retirement.

(2) Any reference in this section to retirement includes retirement, whether voluntary or not, on grounds of age, length of service or incapacity.

. . . . . .

Short title and interpretation

10.—(1) This Act may be cited as the Equal Pay Act (Northern Ireland) 1970.

(2) In this Act the expressions "man" and "woman" shall be read as applying to persons of whatever age.

(**a**) 1939 c. 25 (N.I.). (**b**) S.I. 1975/1503 (N.I. 15).

(3) In this Act references to its commencement shall be construed as references to 29th December 1975.

SCHEDULE 2 Article 28.

TRANSITIONAL EXEMPTION ORDERS FOR EDUCATIONAL ADMISSIONS

1. Any application for a transitional exemption order made by the responsible body in relation to an establishment falling with paragraph 1 or 5 of the table in Article 24 shall be made to the Department of Education and in relation to an establishment falling within paragraph 2 of that table shall be made to the Commission.

2. An application under paragraph 1 shall specify the transitional period proposed by the responsible body to be provided for in the order, the stages by which within that period the body proposes to move to the position where Article 24 (*b*) is complied with, and any other matters relevant to the terms and operation of the order applied for.

3. The Department of Education on any application under paragraph 1 may make a transitional exemption order on such terms and conditions as it may think fit.

4. The Commission on any application under paragraph 1 may if it thinks fit make a transitional exemption order, but shall not make such an order unless it is satisfied that the terms of the application are reasonable having regard to the nature of the premises at which the establishment is carried on, the accommodation, equipment and facilities available, and the financial resources of the responsible body.

SCHEDULE 3 Article 54.

THE EQUAL OPPORTUNITIES COMMISSION FOR NORTHERN IRELAND

Incorporation and status

1. On the appointment of the first members of the Commission, the Commission shall come into existence as a body corporate.

2.—(1) The Commission is not an emanation of the Crown, and shall not act or be treated as the servant or agent of the Crown.

(2) Accordingly—

(*a*) neither the Commission nor any of its members or members of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown;

(*b*) the members of the Commission and members of its staff as such are not civil servants; and

(*c*) the Commission's property is not property of, or held on behalf of, the Crown.

Tenure of office of chairman, deputy chairmen and Commissioners

3.—(1) A person shall hold and vacate his office as chairman, deputy chairman or other member of the Commission in accordance with the terms of his appointment:

Provided that no such appointment shall be for a period exceeding five years in the case of the chairman and three years in the case of another member.

(2) With the consent of the Commissioner concerned, the head of the Department may alter the terms of an appointment so as to make a full-time Commissioner into a part-time Commissioner or vice versa, or for any other purpose.

(3) A person may at any time resign office as chairman, deputy chairman or other member of the Commission by notice to the Department.

(4) Past service as chairman, deputy chairman or other member of the Commission is no bar to re-appointment.

Remuneration

4. The Department may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of the chairman, deputy chairmen and other members of the Commission, or any of them, as, with the approval of the Department of Finance, it may determine.

Additional Commissioners

5.—(1) Paragraphs 2 (2) and 3 (1) and (3) shall apply to additional Commissioners appointed under Article 57 (2) as they apply to Commissioners.

(2) The Commission may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of an additional Commissioner as the Department, with the consent of the Department of Finance, may determine.

(3) With the approval of the Department and the consent of the additional Commissioner concerned, the Commission may alter the terms of appointment of an additional Commissioner so as to make a full-time additional Commissioner into a part-time additional Commissioner or vice versa, or for any other purpose.

(4) An additional Commissioner may resign by notice to the Commission.

(5) The appointment of an additional Commissioner shall terminate at the conclusion of the investigation for which he was appointed, if not sooner.

Staff

6.—(1) The Commission may with the approval of the Department and the Department of Finance as to numbers and as to remuneration and other terms and conditions of employment—

(*a*) employ such officers and servants as the Commission considers necessary;

(*b*) employ the services of such other persons as the Commission considers expedient for any particular purpose.

(2) The Commission may, in the case of such persons employed by it as may be determined by the Commission with the approval of the Department and the Department of Finance, pay to or in respect of them such allowances (including allowances for expenses), pensions or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), or contributory or other pension arrangements, as may be so determined.

Proceedings

7.—(1) The Commission may regulate its own procedure and business including the formalities for affixing its common seal to any document and, subject to subparagraph (2), its quorum.

(2) The quorum for meetings of the Commission shall, in the first instance, be determined by a meeting of the Commission attended by not less than five members.

8. The validity of any proceedings of the Commission shall not be affected by any vacancy in the office of chairman, deputy chairman or other member of the Commission or by any defect in the appointment of the chairman, deputy chairman or any other member.

Instruments

9. A document purporting to be duly executed under the common seal of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

10. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission to

act for that purpose, and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

Discharge of functions

11.—(1) Without prejudice to Article 57 (3), the Commission may authorise the discharge, under the general direction of the Commission, of any of its functions by either a member or a group of members of the Commission selected by the chairman.

(2) Anything done by or in relation to a member or group of members in or in connection with the discharge of functions he or they are authorised to discharge under sub-paragraph (1) shall have the same effect as if done by or in relation to the Commission.

(3) A group of members authorised to discharge any functions under sub-paragraph (1) may regulate their own procedure and business, including their quorum.

(4) The validity of any proceedings of a member or group of members so authorised shall not be affected by any defect in his appointment or any of their appointments; and the validity of the proceedings of any such group shall not be affected by any vacancy in their number.

(5) The chairman may select himself as the member, or as one of the group of members, mentioned in this paragraph.

Expenses and accounts

12. All expenditure incurred by or on behalf of the Commission—

(*a*) within the terms of any general authorisation in writing given by the Department and the Department of Finance; or

(*b*) with the approval of those Departments;

may be defrayed as expenses of the Department.

13.—(1) The Commission shall keep proper accounts in such form as may be approved by the Department, and proper records in relation to the accounts, and shall prepare in respect of the period ending on 31st March 1977 and in respect of each subsequent financial year a statement of accounts in such form as the Department, with the approval of the Department of Finance, may direct.

(2) The accounts of the Commission shall be audited by auditors appointed by the Commission with the approval of the Department and shall be vouched to the satisfaction of the auditors.

(3) The Commission shall, at such time in each year as the Department may direct, transmit to the Department and the Comptroller and Auditor-General copies, certified by the auditors, of the annual statement of accounts.

(4) The Comptroller and Auditor-General—

(*a*) shall examine a copy of each annual statement of accounts of the Commission;

(*b*) may, in connection with such examination, examine any accounts kept by the Commission and any records relating to the accounts; and

(*c*) shall make a report on the copy of each annual statement of accounts and send the report to the Department.

(5) Subject to sub-paragraph (6), a copy of every annual statement of accounts of the Commission and a copy of the Comptroller and Auditor-General's report thereon shall be laid by the head of the Department before the Northern Ireland Assembly.

(6) During the interim period the copies mentioned in sub-paragraph (5) shall, instead, be sent by the Department to the Secretary of State and laid by him before Parliament.

Annual report

14.—(1) The Commission shall prepare in respect of the period ending on 31st March 1977 and in respect of each subsequent financial year a report on the Commission's activities during that period or year ("the annual report").

(2) The annual report shall include a general survey of developments, during the period to which it relates, in respect of matters falling within the scope of the Commission's functions.

(3) Subject to sub-paragraph (4), the annual report shall be made to the head of the Department and shall be laid by him before the Northern Ireland Assembly.

(4) During the interim period the annual report shall, instead, be made to the Secretary of State and laid by him before Parliament.

(5) The Department, or where sub-paragraph (4) applies the Secretary of State, shall cause the annual report to be published.

Article 56 (4). SCHEDULE 4

STATUTORY PROVISIONS RELEVANT FOR PURPOSES OF ARTICLE 56

1. The provisions of the Acts mentioned in the following table which are specified in the third column of the table:

TABLE

Chapter	Short title	Provisions which are relevant statutory provisions
1875 c. 17	The Explosives Act 1875.	The whole Act except sections 30 to 32 and 80.
1906 c. 14	The Alkali, &c. Works Regulation Act 1906.	The whole Act.
1919 c. 23	The Anthrax Prevention Act 1919.	The whole Act.
1920 c. 65	The Employment of Women, Young Persons and Children Act 1920.	The whole Act.
1924 c. 5	The Explosives Act (Northern Ireland) 1924.	The whole Act.
1927 c. 19	The Quarries Act (Northern Ireland) 1927.	The whole Act except section 12B.
1936 c. 22	The Hours of Employment (Conventions) Act 1936.	The whole Act.
1938 c. 4	The Hydrogen Cyanide (Fumigation) Act (Northern Ireland) 1938.	The whole Act.
1948 c. 37	The Radioactive Substances Act 1948.	Section 5 (1) (*a*).
1954 c. 5	The Agriculture (Poisonous Substances) Act (Northern Ireland) 1954.	The whole Act.
1959 c. 24	The Agriculture (Safety, Health and Welfare Provisions) Act (Northern Ireland) 1959.	The whole Act.

Chapter	Short title	Provisions which are relevant statutory provisions
1965 c. 20	The Factories Act (Northern Ireland) 1965.	The whole Act except section 135.
1966 c. 26	The Office and Shop Premises Act (Northern Ireland) 1966.	The whole Act.
1969 c. 6	The Mines Act (Northern Ireland) 1969.	The whole Act except section 129.
1970 c. 10	The Explosives Act (Northern Ireland) 1970.	Section 3.

2. The provisions of any regulations, orders or other instruments of a legislative character made or having effect under any provision specified in that table.

SCHEDULE 5

Article 81 (1).

TRANSITIONAL PROVISIONS

1. Article 15 does not apply, as respects any organisation,—

(*a*) to contributions or other payments falling to be made to the organisation by its members or by persons seeking membership, or

(*b*) to financial benefits accruing to members of the organisation by reason of their membership,

where the payment falls to be made, or the benefit accrues, before 1st January 1978 under rules of the organisation made before the making of this Order.

2. Until 1st January 1978, Article 15 (2) does not apply to any organisation of members of the teaching profession where at the making of this Order—

(*a*) the organisation is an incorporated company with articles of association, and

(*b*) the articles of association restrict membership to persons of one sex (disregarding any minor exceptions), and

(*c*) there exists another organisation within sub-paragraphs (*a*) and (*b*) which is for persons of the opposite sex and has objects, as set out in the memorandum of association, which are substantially the same as those of the first mentioned organisation, subject only to differences consequential on the difference of sex.

3.—(1) Until a date specified by order made by the Department of Health and Social Services the courses of training to be undergone by men as a condition of the issue of certificates to them as midwives under the Nurses and Midwives Act (Northern Ireland) 1970 (**a**) (as amended by Article 22) must be courses approved in writing by the Department of Health and Social Services for the purposes of this paragraph.

(2) Until the date specified under sub-paragraph (1), section 30 (1) of the Nurses and Midwives Act (Northern Ireland) 1970 (regulation of persons other than certified midwives attending women in childbirth) shall have effect as if for the words "any person who, not being a midwife," there were substituted the words—

"if a person other than—

(*a*) a woman who is a certified midwife, or

(*b*) in a place approved in writing by or on behalf of the Department a man who is a certified midwife",

and as if, after the word "doctor", there were inserted the words "that person".

(**a**) 1970 c. 11 (N.I.)

The amendment made by this sub-paragraph shall be read without regard to the section 54A inserted in the said Act of 1970 by Article 22 (4).

(3) On and after the said date the words to be substituted for those, in the said section 30 (1), first mentioned in sub-paragraph (2) are—

"if a person who is not a certified midwife".

4.—(1) If the responsible body for any educational establishment which (apart from this sub-paragraph) would be required to comply with the provisions of Article 24 (*b*) and of Article 26 so far as they apply to acts to which Article 24 (*b*) relates, from the commencement of those provisions, is of the opinion that it would be impracticable for it to do so, it may before that commencement apply for an order authorising discriminatory admissions during the transitional period specified in the order.

(2) Article 28 (2) to (5) and Schedule 2 shall apply for the purposes of sub-paragraph (1) as they apply in relation to transitional exemption orders.

5. So far as Article 39 relates to the publication of printed advertisements, it shall not be unlawful under that Article to publish or cause to be published before 1st January 1977 such an advertisement if it was printed for publication or made up for such printing before 1st September 1976.

6.—(1) Section 6 of the Equal Pay Act (Northern Ireland) 1970 (as amended by paragraph 3 of Schedule 1) shall apply as if the references to death or retirement in subsection (1A) (*b*) of that section included references to sums payable on marriage in pursuance of a contract of employment made before the making of this Order, or the commutation, at any time, of the right to such sums.

(2) In relation to service within section 1 (9) of the said Act of 1970 (service of the Crown) for the reference in this paragraph to a contract of employment made before the making of this Order there shall be substituted a reference to terms of service entered into before the making of this Order.

Article 81 (2).

SCHEDULE 6

AMENDMENTS

Factories Act (*Northern Ireland*) 1965 (*c.* 20)

1. In section 16 (2) (unfenced machinery: operations carried out by specified male persons) the word "male" shall be omitted.

Northern Ireland Assembly Disqualification Act 1975 (*c.* 25)

2.—(1) In Part II of Schedule 1 (bodies of which all members are disqualified under the Act) there shall (at the appropriate place in alphabetical order) be inserted the following entry:—

"The Equal Opportunities Commission for Northern Ireland".

(2) In Part III of Schedule 1 (other disqualifying offices) there shall (at the appropriate place in alphabetical order) be inserted the following entry:—

"Additional Commissioner of the Equal Opportunities Commission for Northern Ireland".

SCHEDULE 7 Article 81 (3).

FURTHER REPEALS

Chapter or Number	Short Title	Extent of Repeal
1965 c. 20.	Factories Act (Northern Ireland) 1965.	In section 16 (2) the word "male".
1971 c. 13	Licensing Act (Northern Ireland) 1971.	In section 61 (7) (*b*) the word "male".
S.I. 1972/1263 (N.I. 12).	Education and Libraries (Northern Ireland) Order 1972.	Article 56 (3).
S.I. 1975/1503 (N.I. 15).	Social Security Pensions (Northern Ireland) Order 1975.	In Schedule 5, paragraph 12.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order renders unlawful in Northern Ireland certain kinds of sex discrimination and discrimination on the ground of marriage, and establishes a Commission with the function of working towards the elimination of such discrimination and promoting equality of opportunity between men and women generally.

STATUTORY INSTRUMENTS

1976 No. 1042 (N.I. 15)

NORTHERN IRELAND

The Sex Discrimination (Northern Ireland) Order 1976

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