

Appendices

Appendix A

The Race Relations (NI) Order 1997

In addition to Article 3(1) which defines direct and indirect racial discrimination and Article 5 which defines 'racial grounds' and 'racial group' (see section 4) other provisions of the Order relevant to this Guide include:

Segregation (Article 3(2))

For the purposes of the Order segregating a person from other persons on racial grounds is treating him or her less favourably than they are treated.

Victimisation (Article 4)

Article 4 extends the definition of discrimination to cover the victimisation of a person. A person is victimised if he or she is given less favourable treatment than others in the same circumstances because it is suspected or known that he or she has brought proceedings under the Order, or given evidence or information relating to such proceedings, or alleged that discrimination has occurred.

EXAMPLE:

- An administrator in a community health clinic gives evidence in the county court against a doctor accused of having made racially discriminatory remarks about pregnant Asian women. The administrator is subsequently dismissed from her post without good reason.

Instructions or pressure to discriminate

Articles 30 and 31 make it unlawful for a person who has authority over, or influence with, another person to instruct or attempt to put pressure on that person to contravene the Order. Such pressure need not be applied directly; it is unlawful even if it is applied in such a way that the other person is likely to hear about it.

EXAMPLE:

- A midwife refuses to follow what she thinks is a discriminatory policy and is threatened with disciplinary action by the health authority.
- Liability for discriminatory acts rests both with the person who does the discriminating as well as the person who gives the instruction or applies the pressure to discriminate.

EXAMPLE:

- Following a number of complaints, an inquiry shows that midwives at a maternity unit within an NHS Trust knowingly gave black and minority ethnic women fewer details about the services on offer. The hospital has a racial equality policy, but has not issued staff with any guidance on this subject. As the midwives' employer, the hospital is liable for their discriminatory actions.

Health provisions

Article 21 makes it unlawful for anyone concerned with the provision of health care services to discriminate on racial grounds by refusing or deliberately omitting to provide the services; or as regards their quality; or the manner in which, or the terms on which they are provided. (See Section 4 for examples).

Exceptions

Article 35 **permits** discrimination to provide access to facilities or services to people from a particular racial group in order to meet their needs in respect of education, training, welfare, or access to any other ancillary benefits.

Article 8 **permits** discrimination when recruiting for a job that involves providing people of a particular racial group with personal services concerning their welfare, and when these services could best be provided by someone from that racial group. This exemption only applies when an employer does not already have employees from the racial group in question

who could do the job. Employers should be able to demonstrate the need for such an appointment; it is not enough just to believe that someone from the same racial group would be preferable.

EXAMPLE:

- A district health authority advertises for a Chinese health visitor to give counselling and information on maternity services to other Chinese women. A large proportion of the Chinese women in the area understand very little English, and would find it easier to discuss their maternity needs with someone who understands, and shares, their cultural outlook.

Rights of individuals

Anyone who thinks he or she has been discriminated against on racial grounds has the right to bring legal proceedings.

Article 64 gives the Equality Commission NI power, in certain circumstances, to help individual complainants to take their cases before the tribunals or courts. Other voluntary and community organisations (for details, see Section 10) may also be able to assist individual complainants.

Appendix B

Northern Ireland Act 1998

Under **Section 75** of this Act, public authorities, in carrying out their functions, are required to have due regard to the need to promote equality of opportunity –

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- Between men and women generally
- Between persons with a disability and persons without
- Between persons with dependants and persons without

A public authority is also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Equality Schemes

The equality duties are implemented by the public bodies themselves. Public bodies are required to prepare Equality Schemes, which must be submitted for approval to the Equality Commission NI. The equality impact of policies must be assessed and the outcomes published.

Consultation

Consultation with those affected by public policy decisions is at the heart of these legislative provisions. Equality Schemes must spell out the authority's arrangements for consultation on matters relating to the duties and on the likely impact of policies. In addition, there is a requirement to consult on the Scheme itself.

Impact on Policy

Public authorities have to show that they have considered what measures might lessen any adverse impact the policy may have on the promotion of equality of opportunity and that they have also considered how any alternative policies might better achieve the promotion of equality of opportunity.

Appendix C

Enforcement of duties

The Equality Commission NI will keep under review the effectiveness of the duties imposed by Section 75 and offer advice to public authorities and others in connection with those duties.

Complaints

If the Equality Commission NI receives a complaint of the failure by a public body to comply with an approved Scheme, it can either investigate the complaint or give the complainant reasons for not investigating.

Further information

The Northern Ireland Council for Ethnic Minorities has produced the following information on Section 75 to assist the black and minority ethnic sector:

- A general leaflet on the statutory duty on equality.
- A general flow-chart on the statutory equality duty.
- A pamphlet on equality schemes and consultation.
- A pamphlet on screening and impact assessment.
- A specific pamphlet on complaints.
- A 'jargon buster' which identifies and explains key terms and concepts used in dealing with equality duty.

(See Section 10 for NICEM's contact details). Please also refer to the Equality Commission's guidelines on the implementation of the statutory duties and equality impact assessment.

Appendix C

The Equality Commission for Northern Ireland

Section 74 of the Northern Ireland Act 1998 established the Equality Commission for Northern Ireland which, on 1 October 1999, assumed the functions of the following bodies:

- Commission for Racial Equality for Northern Ireland
- Equal Opportunities Commission for Northern Ireland
- Fair Employment Commission for Northern Ireland
- Northern Ireland Disability Council

In relation to racial discrimination, the Equality Commission for Northern Ireland derives its remit from the provisions of the Race Relations (NI) Order 1997 which states in Article 42(2) that it has the duties to:

- Eliminate racial discrimination.
- Promote equality of opportunity and good relations.
- Keep under review the provisions of the Order and make recommendations for its amendment.

The Equality Commission for Northern Ireland has certain powers conferred upon it under the Order and under Section 75:

In relation to the Race Relations (NI) Order 1997 the Commission can:

- Advise and assist individuals who feel that they have been discriminated against on racial grounds.
- Conduct a formal investigation in certain circumstances into alleged discriminatory behaviour.
- Issue non-discrimination notices.
- Take action in relation to discriminatory advertisements.

In relation to the Section 75 statutory duties the Commission is to:

- Keep the effectiveness of the duties under review.
- Offer advice in connection with those duties.
- Carry out the functions set out in Schedule 9 of the Act.

Appendix D

References and Further Reading

Northern Ireland

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