RR63

RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

**THE QUESTIONS PROCEDURE**

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Order 1997

A complainant should obtain TWO copies of this booklet, one to send to

the respondent and the other to keep.

Before completing the questionnaire or the reply form (as appropriate),

the complainant and the respondent should read Part I of the Guidance

and (again as appropriate) Parts II or III.

**RACE RELATIONS (NORTHER IRELAND)**

**ORDER 1997**

**GUIDANCE ON THE QUESTIONS PROCEDURE**

**PART I – INTRODUCTION**

1. The purpose of this guidance is to explain the questions procedure under Article 63 of the Race Relations (Northern Ireland) Order 1997. The procedure is intended to help a person (referred to in this guide as the complainant) who thinks he has been discriminated against by another (the respondent) to obtain information from that person about the treatment in question in order to –
2. decide whether or not to bring legal proceedings, and
3. if proceedings are brought, to present his complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent (both are included in this booklet). The questionnaire and the reply form have been designed to assist the complainant and respondent to identify information which is relevant to the complaint. It is not, however, obligatory for the questionnaire or the reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.

1. This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part II; and guidance for the respondent on the use of the reply form, is set out in Part III. The main provisions of Race Relations Order are referred to in the appendix to this guidance.

**How the questions procedure can benefit both parties**

1. The procedure can benefit both the

complainant and the respondent in the following ways:

1. If the respondent’s answers satisfy the complainant that the treatment was not unlawful discrimination, there will be no need for legal proceedings.
2. Even if the respondent’s answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts whether they disagree on how the Order applies. In some cases, this may lead to a settlement of the grievance, again making legal proceedings unnecessary.
3. If it turns out that the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

**What happens if the respondent does not reply or replies evasively?**

1. The respondent cannot be compelled to reply to the complainant’s questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within a reasonable period, or replies in an evasive or ambiguous way, his position may be adversely affected should the complainant bring proceedings against him.

The respondent’s attention is drawn to these possible consequences in the note at the end of the questionnaire.

**Period within which questionnaire must be served on the respondent**

1. There are different time limits within which a questionnaire must be served in order to be admissible under the questions procedure in any ensuing legal proceedings. Which time limit applies depends on whether the

complaint would be under the employment, training and related provisions of the Order (in which case the proceedings would be before an industrial tribunal) or whether it would be under the education, goods, facilities and services or premises provisions (in which case proceedings would be before or county court).

1. **Industrial tribunal cases**

All complaints relating to discrimination in the employment field are dealt with by industrial tribunals. A complaint is made by submitting an originating application in writing, within three months of the date of the act complained of, to an industrial tribunal, giving details of the two parties and the grounds on which relief is sought. Form IT1 may be used for this purpose. It is available from the Office of the Industrial Tribunals and the Fair Employment Tribunal. A copy of the application is sent to the respondent.

In addition, the tribunal will send a copy of the application form to a conciliation officer of the Labour Relations Agency and will send copies of the respondent’s reply to the complainant and the conciliation officer.

1. In order to be admissible under the questions procedure in any ensuing industrial tribunal proceedings, the complainant’s questionnaire must be served on the respondent either:
2. before a complaint about the treatment concerned is made to an industrial tribunal, but not more than 3 months after the treatment in question (see section 6 above); or
3. if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending to

the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

**Court cases**

1. All complaints relating to discrimination in the fields of education, goods, facilities and services and premises are dealt with by way of civil proceedings in the county courts.

In order to be admissible under the questions procedure in any ensuing county court proceedings, the complainant’s questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment\*.

However, where proceedings have been brought, a questionnaire may still be served provided the leave of the court has been obtained.

\*Where the respondent is a body in charge of a public sector educational establishment, the six month period begins when the complaint has been referred to the Department of Education or the Department for Employment and Learning as appropriate, and 2 months have elapsed or, if this is earlier, the Department has informed the complainant that it requires no more time to consider the matter.

**PART II – GUIDANCE FOR THE COMPLAINANT**

NOTES ON PREPARING THE QUESTIONNAIRE

1. Before filling in the questionnaire, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the questionnaire for

what you want to say, you should continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

**Paragraph 2**

1. You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment you think may have been unlawful discrimination, and about the circumstances leading up to that treatment. You should also give the date, and if possible and if relevant, the place and approximate time of the treatment. You should bear in mind that in paragraph 4 of the questionnaire you will be asking the respondent whether he agrees with what you say in paragraph 2.

**Paragraph 3**

1. In paragraph 3 you are telling the respondent that you think the treatment you have described in paragraph 2 may have been unlawful discrimination by him against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided **why** you think the treatment may have been unlawful discrimination. However, you **do not have** to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word “because”. If you wish to complete the paragraph, but feel you need more information about the Race Relations (Northern Ireland) Order before doing so, you should look to the appendix to this guidance.
2. If you decide to complete paragraph 3, you may find it useful to indicate –
3. what **kind** of discrimination you think the treatment may have been ie whether it was

direct racial discrimination,

indirect racial discrimination,

victimisation

or harassment.

(For further information about the different kinds of discrimination, see paragraph 1 of the appendix.)

1. which provision of the Order you think may make unlawful the kind of discrimination you think you may have suffered. (For an indication of the provisions of the Order which may make the various kinds of discrimination unlawful, see paragraph 2 of appendix.)

**Paragraph 6**

1. You should insert here any other question which you think may help you to obtain relevant information. (For example, if you think you have been discriminated against by having been refused a job, you may want to know what were the qualifications of the person who did get the job and why that person got the job.)
2. Paragraph 5 contains questions which are especially important if you think you may have suffered direct racial discrimination because they ask the respondent whether racial considerations had anything to do with your treatment. Paragraph 5 does not, however, ask specific questions relating to indirect racial discrimination or victimisation. If you think you may have suffered indirect racial discrimination you may find it helpful to include the following question in the space provided in paragraph 6:

“Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to people regardless of their racial group?

If so –

1. what was the condition or requirement?
2. why was it applied?”
3. If you think you may have been victimised you may find it helpful to include the following question in the space provided in paragraph 6:

“Was the reason for my treatment the fact that I had done, or intended to do, or that you suspected I had done or intended to do, any of the following:

1. brought proceedings under the Race Relations (Northern Ireland) Order: or
2. gave evidence or information in connection with proceedings under the Order; or
3. did something else under or by reference to the Order?
4. made an allegation that someone acted unlawfully under the order?”

**Signature**

1. The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should –
2. describe himself (eg, “solicitor acting for (name of complainant)”), and
3. give his business (or home, if appropriate) address.

**WHAT PAPERS TO SERVE ON THE PERSON TO BE QUESTIONED**

1. You should send to the person to be questioned the whole of this document (ie the guidance, the questionnaire and the reply forms) with the questionnaire completed by you. **You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire** (and you might also find it useful to retain a copy of the guidance and the uncompleted reply form).

**HOW TO SERVE THE PAPERS**

1. You can either deliver the papers in person or send them by post. If you decide to send items by post you are advised to use the

recorded delivery service, so that, if necessary, you can produce evidence that they were delivered.

**WHERE TO SEND THE PAPERS**

1. You can send the papers to the person to be questioned at his usual or last known residence or place of business. If you know he is acting through a solicitor you should send them to him at his solicitor’s address. If you wish to question a limited company or other corporate body or a trade union or employer’s association, you should send the papers to the secretary or clerk at the registered or principal office of the company, etc. You should be able to find out where its registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk (eg at, or c/o, the company’s local office). It is your responsibility, however, to see that the secretary or clerk receives the papers.

**USE OF THE QUETSIONS AND REPLIES IN INDUSTRIAL TRIBUNAL PROCEEDINGS**

1. If you decide to make (or already have made) a complaint to an industrial tribunal about the treatment concerned and if you intend to use your questions and reply (if any) as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal.

**PART III GUIDANCE FOR THE RESPONDENT**

NOTES ON COMPLETING THE REPLY FORM

1. Before completing the reply form, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

**Paragraph 2**

1. Here you are answering the question in paragraph 4 of the questionnaire. If you **agree** that the complainant’s statement in paragraph 2 of the questionnaire is an accurate **description** of what happened, you should delete the second sentence.
2. If you **disagree** in any way that the statement is an accurate description of what happened, you should explain in the space provided in what respects you disagree, or your version of what happened, or both.

**Paragraph 3**

1. Here you are answering the question in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the complainant’s description of his treatment, you will be answering paragraph 5 on the basis of the facts in his description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of **your** version of the facts. To answer paragraph 5, you are advised to look at the appendix to this guidance. You need to know:
2. how the Order defines discrimination – see paragraph 1 of the appendix;
3. in what situations the Order makes discrimination unlawful – see paragraph 2 of the appendix; and
4. what exceptions the Order provides – see paragraph 3 of the appendix.
5. If you think that an exception (eg the exception for employment where being of a particular racial group is a genuine occupational qualification) applies to the treatment described in paragraph 2 of the complainant’s questionnaire, you should mention this in paragraph 3a of the reply form and explain why you think the exception applies.

**Signature**

1. The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should –
2. describe himself (eg “solicitor acting for (name of respondent) “ or” personnel manager of (name of firm)”), and
3. give his business (or home, if appropriate) address.

**SERVING THE REPLY FORM ON THE COMPLAINANT**

1. I wish to reply to the questionnaire you are strongly advised to do so without delay. **You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.**
2. You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send it by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.
3. You should send the reply form to the address indicated in paragraph 7 of the complainant’s questionnaire.

THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997 ARTICLE 63(1)(a)

**QUESTIONNAIRE OF THE PERSON AGGRIEVED (THE COMPLAINANT)**

|  |  |  |
| --- | --- | --- |
| Name of person to be questioned (the respondent) Address | | To…………………………………………………………………………  of………………………………………………………………………...  …………………………………………………………………………… |
| Name of complainant  Address  Give date, approximate time, place and factual description of the treatment received and of the circumstances leading up to the treatment (see paragraph 10 of the guidance).  Complete if you wish to give reasons, otherwise delete the word “because” (see paragraphs 11 and 12 of the guidance). | | 1. I……………………………………………………………………   of………………………………………………………………….  …………………………………………………………………….  consider that you may have discriminated against me contrary to the Race Relations (Northern Ireland) Order 1997.   1. On 2. I consider that this treatment may have been unlawful because |
| This is the first of your questions to the respondent. You are advised not to alter it.  This is the second of your questions to the respondent. You are advised | 1. Do you agree that the statement in paragraph 2 is an accurate description of what happened?   If not in what respect do you disagree or what is your version of what happened?   1. Do you accept that your treatment of me was unlawful discrimination by you against me?   If not | |
| not to alter it.  Enter here any other questions you wish to ask (see paragraphs 13-15 of the guidance).  \*Delete as appropriate. If you decide the first alternative, insert the address to which you want the reply to be sent.  See paragraph 16 of the guidance. | 1. why not? 2. for what reason did I receive the treatment accorded to me? 3. how far did considerations of colour, race, nationality (including citizenship) or ethnic or national origins affect your treatment of me?   6.   1. My address for any reply you wish to give to the questions raised above is \*that set out in paragraph 1 above/the following address   Signature of complainant………………………………………….  Date…………………………………………………………………. | |
|  |  | |

**NB** By virtue of Article 63 of the Order, this questionnaire and any reply are (subject to the provisions of the Article) admissible in proceedings under the Order and a court or tribunal may draw any such inference as is just as equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully.

THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997 ARTICLE 63(1)(B)

**REPLY BY RESPONDENT**

|  |  |
| --- | --- |
| Name of complainant  Address | To………………………………………………………………………..  of…………………………………………………………………………  …………………………………………………………………………… |
| Name of respondent  Address  Complete as appropriate  \*Delete as appropriate  If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete this sentence. If you disagree complete this sentence (see paragraphs 22 and 23 of the guidance).  \*Delete as appropriate  If you accept the complainant’s assertion of unlawful discrimination in paragraph 3 of the questionnaire delete the sentences at (a), (b) and (c). Unless completed a sentence should be deleted (see paragraphs 24 and 25 of the guidance). | 1. I ………………………………………………………………..   of…………………………………………………………………  ……………………………………………………………………  hereby acknowledge receipt of the questionnaire signed by you and dated…………….....which was served on me on (date)…….........   1. I **\*agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.   I disagree with the statement in paragraph 2 of the questionnaire in that   1. I \***accept/dispute** that my treatment of you was   unlawful discrimination by me against you.   1. My reasons for so disputing are |

|  |  |
| --- | --- |
|  | 1. The reason why you received the treatment accorded to you is 2. Considerations of colour, race, nationality (including citizenship) or ethnic or national origins affected my treatment of you to the following |
| Replies to questions in paragraph 6 of the questionnaire should be entered here.  Delete the whole of this sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.  See paragraph 26 of the guidance. | extent:-    2. I have deleted (in whole or in part) the paragraph(s) numbered ………………….above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:     Signature of respondent………………………………………  Date…………………………………………………………….. |

THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997 ARTICLE 63(1)(B)

**REPLY BY RESPONDENT**

|  |  |
| --- | --- |
| Name of complainant  Address | To………………………………………………………………………..  of…………………………………………………………………………  …………………………………………………………………………… |
| Name of respondent  Address  Complete as appropriate  \*Delete as appropriate  If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete this sentence. If you disagree complete this sentence (see paragraphs 22 and 23 of the guidance).  \*Delete as appropriate  If you accept the complainant’s assertion of unlawful discrimination in paragraph 3 of the questionnaire delete the sentences at (a), (b) and (c). Unless completed a sentence should be deleted (see paragraphs 24 and 25 of the guidance). | 1. I ………………………………………………………………..   of…………………………………………………………………  ……………………………………………………………………  hereby acknowledge receipt of the questionnaire signed by you and dated…………….....which was served on me on (date)…….........   1. I **\*agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.   I disagree with the statement in paragraph 2 of the questionnaire in that   1. I \***accept/dispute** that my treatment of you was   unlawful discrimination by me against you.   1. My reasons for so disputing are |

|  |  |  |
| --- | --- | --- |
|  | 1. The reason why you received the treatment accorded to you is 2. Considerations of colour, race, nationality (including citizenship) or ethnic or national origins affected my treatment of you to the following | |
| Replies to questions in paragraph 6 of the questionnaire should be entered here.  Delete the whole of this sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.  See paragraph 26 of the guidance. | extent:-    2. I have deleted (in whole or in part) the paragraph(s) numbered ………………….above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:     Signature of respondent………………………………………  Date…………………………………………………………….. | |
| **APPENDIX**  NOTES ON THE SCOPE OF THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997  **Definitions of discrimination**   1. The different kinds of discrimination covered by the Order are summarised below.   **Direct racial discrimination** arises where a person is treated less favourably than another is (or would be) treated because of his (or someone else’s) colour, race, nationality or ethnic or national origins.  **Indirect racial discrimination** on grounds of **colour or nationality** arises where a person is treated unfavourably because a condition or requirement which   1. is (or would be) applied regardless of racial group, and 2. is such that the proportion of persons of a particular racial group who can comply with it is considerably smaller then the proportion of persons not of that group who can comply with it, and 3. is to the detriment of the person in question because he cannot comply with it, and 4. is such that the person applying it cannot show that it is justifiable regardless of the colour, race, nationality or ethnic or national origins of the person to whom it is applied.   **Indirect racial discrimination** on **grounds of race or ethnic or national origins** arises where a provision, criterion or practice is applied or would apply equally but   1. which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with others; and 2. which puts the complainant at that disadvantage; and   (c) which cannot be shown to be a | | proportionate means of achieving a legitimate aim.  **Victimisation** arises where a person is treated less favourably than other persons are (or would be) treated because that person has done (or intends to do or is suspected of having done or intending to do) any of the following:   1. brought proceedings under the Order; or 2. given evidence or information in connection with proceedings brought under the Order; or 3. done anything else by reference to the Order (eg given information to the Equality Commission for Northern Ireland); or 4. made an allegation that someone acted unlawfully under the Order.   Victimisation does not, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.  **Harassment** on grounds of **race or ethnic or national origins** is defined as unwanted conduct on these grounds that has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.  **UNLAWFUL DISCRIMINATION**     1. The provisions of the Order which make discrimination unlawful are indicated in the table on the next page. Complaints about discrimination which is unlawful under the provisions in Group A (the employment provisions) must be made to an industrial tribunal. Complaints about discrimination which is unlawful under the provisions in Group B must be made to a county court.   **EXCEPTIONS**   1. Details of exceptions to the requirements of the Order not to discriminate may be found in Parts III and VI of the Order. |

PROVISIONS OF THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997 WHICH MAKE DISCRIMINATION UNLAWFUL

|  |  |
| --- | --- |
| **GROUP A**  Discrimination by employers in recruitment and treatment of employees  Discrimination against contract workers  Discrimination against partners  Discrimination by trade unions, employers’ associations etc  Discrimination by bodies which confer qualifications or authorisations needed for particular kinds of jobs  Discrimination in the provision of training for employment  Discrimination by employment agencies  **GROUP B**  Discrimination by bodies in charge of educational establishments  Discrimination (other than that covered by Article 18) by local education authorities  Discrimination in the provision of goods, facilities or services to the public or a section of the public  Discrimination in the disposal or management of premises  Discrimination by landlords against prospective assignees or sublessees  Discrimination by clubs or associations with 25 or more members (other than clubs or associations covered by Articles 13 or 21) | Article of Order  6  9  12  13  14  15  16  18  19  21  22(1) and (3)  22(4)  25 |

USEFUL ADDRESSES

**OFFICE OF THE INDUSTRIAL TRIBUNALS**

**AND THE FAIR EMPLOYMENT TRIBUNAL**

Killymeal House

5 Cromac Quay

Ormeau Road

BELFAST

BT7 2JD

Telephone: (028) 90 327 666

**LABOUR RELATIONS AGENCY**

2-8 Gordon Street

BELFAST

BT1 2LG

Telephone: 03300 552 220

**LABOUR RELATIONS AGENCY**

District Office

1-3 Guildhall Street

LONDONDERRY

BT48 6BJ

Telephone: 03300 552 220

**EQUALITY COMMISSION FOR NORTHERN IRELAND**

Equality Commission for Northern Ireland

Equality House

7-9 Shaftesbury Square

BELFAST

BT2 7DP

Telephone: (028) 90 500 600