STATUTORY RULES OF NORTHERN IRELAND

2016 No. 191

SEX DISCRIMINATION

The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016

Made - - - - *22nd March 2016*

Coming into operation *2nd May 2016*

The Office of the First Minister and deputy First Minister, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to discrimination(**2**), makes the following Regulations in exercise of the powers conferred by that section:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 2nd May 2016.

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

Amendment of the Sex Discrimination (Northern Ireland) Order 1976

2. The Sex Discrimination (Northern Ireland) Order 1976(**4**) ("the 1976 Order") is amended in accordance with regulations 3 to 20.

Amendment of Article 2 of the 1976 Order

3. In Article 2 (interpretation)—

(a) in paragraph (2)(**5**), omit the definition of "provision, criterion or practice";

(b) in paragraph (7)(b)(**6**), after "3," insert "3A".

(**1**) 1972 c. 68
(**2**) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1976/1042 (N.I. 15)
(**5**) The definition of "provision, criterion or practice" was inserted by regulation 7(2) of S.R. 2001 No. 282
(**6**) Paragraph (7)(b) was amended by regulation 3(5) of S.R. 2005 No. 426 and by paragraph 3 of Schedule 2 to S.I. 2008/963

Amendment of Article 3 of the 1976 Order

4.—(1) For Article 3(**7**) (direct and indirect discrimination against women), substitute the following—

"**Direct discrimination on the ground of sex**

3. In any circumstances relevant for the purposes of any provision of this Order, a person ("A") discriminates against another ("B") if, on the ground of sex, A treats B less favourably than A treats or would treat another person.".

(2) After Article 3, insert the following—

"**Indirect discrimination on the ground of sex**

3A.—(1) In any circumstances relevant for the purposes of any provision of this Order, a person ("A") discriminates against another person ("B") if A applies to B a provision, criterion or practice which is discriminatory in relation to B's sex.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B's sex, if –

(a) A applies, or would apply, it to persons of a different sex,

(b) it puts, or would put, persons of the same sex as B at a particular disadvantage when compared with persons of a different sex,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.".

Amendment of Article 4 of the 1976 Order

5. In Article 4 (sex discrimination against men)—

(a) in paragraph (1), omit "Article 3 and";

(b) in paragraph (2), after "paragraph (1)" insert "and Articles 3 and 3A,".

Amendment of Article 4A of the 1976 Order

6.—(1) Article 4A(**8**) (discrimination on the grounds of gender reassignment) is amended as follows.

(2) In the heading, for "Discrimination" substitute "Direct discrimination".

(3) In paragraph (1)(b), for the word "he" in each place, substitute "A".

(4) In paragraph (3)—

(a) for the word "he" in each place, substitute "B";

(b) in sub-paragraph (b), for "him" substitute "B".

Insertion of Article 4B into the 1976 Order

7. After Article 4A (discrimination on the ground of gender reassignment), insert the following—

(**7**) Regulation 3 was substituted by regulation 2 of S.R. 2001 No. 282 and amended by regulation 4(1) of S.R. 2005 No. 426, paragraph 1 of Schedule 2 to S.I. 2008/963 and regulation 3 of S.R. 2011 No. 156

(**8**) Article 4A was inserted by regulation 4(2) of S.R. 1999 No. 311 and amended by paragraph 2 of Schedule 2 to S.I. 2008/963

"**Indirect discrimination on the ground of gender reassignment**

4B.—(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of —

(a) any provision of Part 3; or

(b) any provision of Part 4, so far as it applies to vocational training,

if A applies to B a provision, criterion or practice which is discriminatory in relation to B's gender reassignment.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B's gender reassignment if—

(a) A applies, or would apply, it to persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;

(b) it puts, or would put, persons who intend to undergo, are undergoing or have undergone gender reassignment at a particular disadvantage when compared with persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;

(c) it puts, or would put, B at that disadvantage; and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.".

Amendment of Article 7 of the 1976 Order

8. In Article 7(**9**) (basis of comparison)—

(a) before paragraph (a), insert—

"(aa) a comparison of the cases of persons required for the purposes of Article 3,".

(b) in paragraph (a), for "Article 3(1) or (2)" substitute "Article 3A";

(c) in paragraph (b), for "Article 4A" substitute "Article 4A or 4B".

Amendment of Article 8 of the 1976 Order

9. In Article 8(8)(**10**) (applicants and employees), for "Article 4A" substitute "Article 4A or 4B".

Amendment of Article 10A of the 1976 Order

10. In Article 10A(1)(**11**) (corresponding exception relating to gender reassignment), for "Article 4A" substitute "Article 4A or 4B".

Amendment of Article 10B of the 1976 Order

11. In Article 10B(1)(**12**) (supplementary exceptions relating to gender reassignment), for "Article 4A" substitute "Article 4A or 4B".

(**9**) Article 7 was substituted by section 252(3) of the Civil Partnership Act 2004 (c. 33)

(**10**) Article 8(8) was inserted by regulation 3(1) of S.R. 1999 No. 311

(**11**) Article 10A was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 7 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)

(**12**) Article 10B was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 8 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)