Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2000 No. (N.I.)

NORTHERN IRELAND

Equality (Disability, etc.) (Northern Ireland) Order 2000

Made - - - - 2000

Coming into operation in accordance with Article 1(2)

At the Court at , the day of 2000

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(1) of the Schedule to the Northern Ireland Act 2000 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:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Equality (Disability, etc.) (Northern Ireland) Order 2000.

(2) Part II shall come into operation on such day or days as the Office of the First Minister and deputy First Minister may by order appoint.

(3) An order under paragraph (2) may contain transitional provisions and savings relating to the provisions brought into operation by the order.

Interpretation – general

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

PART II

DISABILITY DISCRIMINATION

Interpretation of this Part

3.—(1) In this Part—

"the Commission" means the Equality Commission for Northern Ireland;

"final", in relation to a non-discrimination notice, has the meaning given by paragraph 11 of Schedule 1;

"formal investigation" means an investigation under Article 5;

"non-discrimination notice" means a notice under Article 6;

"notice" means notice in writing;

"the Office" means the Office of the First Minister and deputy First Minister;

"prescribed" means prescribed by regulations made by the Office; and

"the 1995 Act" means the Disability Discrimination Act 1995.

(2) Expressions used in this Part which are defined for the purposes of the 1995 Act have the same meaning in this Part as in that Act.

General functions of Commission

4.—(1) The Commission shall have the following duties—

(a) to work towards the elimination of discrimination against disabled persons;

(b) to promote the equalisation of opportunities for disabled persons;

(c) to take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled persons; and

(d) to keep under review the working of the 1995 Act and this Part.

(2) The Commission may, for any purpose connected with the performance of its functions under this Part—

(a) make proposals or give other advice to any government department as to any aspect of the law or a proposed change to the law;

(b) make proposals or give other advice to any public authority as to the practical application of any law;

(c) undertake, or arrange for or support (whether financially or otherwise), the carrying out of research or the provision of advice or information.

Nothing in this paragraph is to be regarded as limiting the Commission's powers.

(3) The Commission shall make proposals or give other advice under paragraph (2)(a) on any matter specified in a request from a government department.

(4) The Commission may make charges for facilities or services made available by it for the purposes of its functions under this Part.

(5) In this Article—

"disabled persons" includes persons who have had a disability;

"discrimination" means anything which is discrimination for the purposes of any provision of Part II or Part III of the 1995 Act;

"the law" includes Community law and the international obligations of the United Kingdom; and

"public authority" has the same meaning as in section 75 of the Northern Ireland Act 1998.

Formal investigations

5.—(1) The Commission may decide to conduct a formal investigation for any purpose connected with the performance of its duties under Article 4(1).

(2) The Commission shall conduct a formal investigation if directed to do so by the Office for any such purpose.

(3) The Commission may at any time decide to stop or to suspend the conduct of a formal investigation; but any such decision requires the approval of the Office if the investigation is being conducted in pursuance of a direction under paragraph (2).

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

(5) The Commission may, as respects any formal investigation which it has decided or been directed to conduct—

(a) nominate one or more Commissioners, with or without one or more additional Commissioners appointed for the purposes of the investigation, to conduct the investigation on its behalf; and

(b) authorise those persons to exercise such of its functions in relation to the investigation (which may include drawing up or revising terms of reference) as it may determine.

(6) Schedule 1 (so far as relating to the conduct of formal investigations) has effect.

Non-discrimination notices

6.—(1) If in the course of a formal investigation the Commission is satisfied that a person has committed or is committing an unlawful act, it may serve on him a notice (referred to in this Part as a non-discrimination notice) which—

(a) gives details of the unlawful act which the Commission has found that he has committed or is committing; and

(b) requires him not to commit any further unlawful acts of the same kind (and, if the finding is that he is committing an unlawful act, to cease doing so).

(2) The notice may include recommendations to the person concerned as to action which the Commission considers he could reasonably be expected to take with a view to complying with the requirement mentioned in paragraph (1)(b).

(3) The notice may require the person concerned—

(a) to propose an adequate action plan (subject to and in accordance with Part III of Schedule 1) with a view to securing compliance with the requirement mentioned in paragraph (1)(b); and

(b) once an action plan proposed by him has become final, to take any action which—

(i) is specified in the plan; and

(ii) he has not already taken,

at the time or times specified in the plan.

(4) For the purposes of paragraph (3)—

(a) an action plan is a document drawn up by the person concerned specifying action (including action he has already taken) intended to change anything in his practices, policies, procedures or other arrangements which—

(i) caused or contributed to the commission of the unlawful act concerned; or

(ii) is liable to cause or contribute to a failure to comply with the requirement mentioned in paragraph (1)(b); and

(b) an action plan is adequate if the action specified in it would be sufficient to ensure, within a reasonable time, that he is not prevented from complying with that requirement by anything in his practices, policies, procedures or other arrangements;

and the action specified in an action plan may include ceasing an activity or taking continuing action over a period.

(5) In this Article "unlawful act" means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.

(6) Schedule 1 (so far as relating to non-discrimination notices and action plans) has effect.

Agreements in lieu of enforcement action

7.—(1) If the Commission has reason to believe that a person has committed or is committing an unlawful act, it may (subject to Article 5(3)) enter into an agreement in writing under this Article with that person on the assumption that that belief is well founded (whether or not that person admits that he committed or is committing the act in question).

(2) An agreement under this Article is one by which—

(a) the Commission undertakes not to take any relevant enforcement action in relation to the unlawful act in question; and

(b) the person concerned undertakes—

(i) not to commit any further unlawful acts of the same kind (and, where appropriate, to cease committing the unlawful act in question); and

(ii) to take such action (which may include ceasing an activity or taking continuing action over any period) as may be specified in the agreement.

(3) Those undertakings are binding on the parties to the agreement; but undertakings under paragraph (2)(b) are enforceable by the Commission only as provided by paragraph (8).

(4) For the purposes of paragraph (2)(a), "relevant enforcement action" means—

(a) beginning a formal investigation into the commission by the person concerned of the unlawful act in question;

(b) if such an investigation has begun (whether or not the investigation is confined to that matter), taking any further steps in the investigation of that matter; and

(c) taking any steps, or further steps, with a view to the issue of a non-discrimination notice based on the commission of the unlawful act in question.

(5) The action specified in an undertaking under paragraph (2)(b)(ii) must be action intended to change anything in the practices, policies, procedures or other arrangements of the person concerned which—

(a) caused or contributed to the commission of the unlawful act in question; or

(b) is liable to cause or contribute to a failure to comply with his undertaking under paragraph (2)(b)(i).

(6) An agreement under this Article—

(a) may include terms providing for incidental or supplementary matters (including the termination of the agreement, or the right of either party to terminate it, in certain circumstances); and

(b) may be varied or revoked by agreement of the parties.

(7) An agreement under this Article may not include any provisions other than terms mentioned in paragraphs (2) and (6)(a) unless their inclusion is authorised by regulations made by the Office for the purposes of this Article; but any provisions so authorised are not enforceable by the Commission under paragraph (8).

(8) The Commission may apply to a county court for an order under this paragraph if—

(a) the other party to an agreement under this Article has failed to comply with any undertaking under paragraph (2)(b); or

(b) the Commission has reasonable cause to believe that he intends not to comply with any such undertaking.

(9) An order under paragraph (8) is an order requiring the other party to comply with the undertaking or with such directions for the same purpose as are contained in the order.

(10) Nothing in this Article affects the Commission's powers to settle or compromise legal proceedings of any description.

(11) In this Article "unlawful act" means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.

(12) Schedule 1 (so far as relating to agreements under this Article) has effect.

Persistent discrimination

8.—(1) This Article applies during the period of five years beginning on the date on which—

(a) a non-discrimination notice served on a person,

(b) a finding by a court or tribunal in proceedings under section 8 or 25 of the 1995 Act that a person has committed an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of that Act, or

(c) a finding by a court or tribunal in any other proceedings that a person has committed an act of a description prescribed under paragraph (4),

has become final.

(2) If during that period it appears to the Commission that unless restrained the person concerned is likely to do one or more unlawful acts, the Commission may apply to a county court for an injunction restraining him from doing so.

(3) The court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(4) In this Article "unlawful act" means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.

(5) A finding of a court or tribunal becomes final for the purposes of this Article when an appeal against it is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought.

Assistance in relation to proceedings

9.—(1) This Article applies to—