STATUTORY RULES OF NORTHERN IRELAND

2008 No. 159

SEX DISCRIMINATION

The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008

Made - - - -	*4th April 2008*
Coming into operation	*6th April 2008*

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, application and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 6th April 2008.

(2) The amendments made by regulation 5 apply only in relation to a case where a woman's expected week of childbirth as defined in regulation 2(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(**3**) (interpretation) begins on or after 5th October 2008.

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

(4) In these Regulations "the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976(**5**).

Discrimination on the ground of pregnancy or maternity leave

2.—(1) Article 5A of the 1976 Order(**6**) (discrimination on the ground of pregnancy or maternity leave) is amended as follows.

(2) In paragraph (1)(a) (definition of discrimination on the ground of pregnancy), omit the words "than he would treat her had she not become pregnant".

(**1**) 1972 c.68
(**2**) See the European Communities (Designation) (No. 3) Order 2002 (S.I.2002/1819)
(**3**) S.R. 1999 No. 471
(**4**) 1954 c.33 (N.I.)
(**5**) S.I. 1976/1042 (N.I.15)
(**6**) Article 5A was inserted by regulation 5 of S.R. 2005 No. 426

(3) In paragraph (1)(b) (definition of discrimination on the ground of maternity leave), omit the words "than he would treat her if she were neither exercising nor seeking to exercise, and had neither exercised nor sought to exercise, such a right".

(4) In paragraph (2) (definition of discrimination on the ground of compulsory maternity leave), omit the words "than he would treat her if that provision did not have to be complied with in respect of her".

Harassment

3. In Article 6A(1)(a) of the 1976 Order(**7**) (definition of harassment), for "on the ground of her sex, he engages in unwanted conduct that" substitute "he engages in unwanted conduct that is related to her sex or that of another person and".

Liability of employers for failing to protect employees from third party harassment

4. After Article 8(2A) of the 1976 Order(**8**) (unlawful harassment) insert—

"(2B) For the purposes of paragraph (2A), the circumstances in which an employer is to be treated as subjecting a woman to harassment shall include those where—

(a) a third party subjects the woman to harassment in the course of her employment, and

(b) the employer has failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

(2C) Paragraph (2B) does not apply unless the employer knows that the woman has been subject to harassment in the course of her employment on at least two other occasions by a third party.

(2D) In paragraphs (2B) and (2C), "third party" means a person other than—

(a) the employer, or

(b) a person whom the employer employs,

and for the purposes of those paragraphs it is immaterial whether the third party is the same or a different person on each occasion.".

Exception relating to terms and conditions during maternity leave

5.—(1) For Article 8A of the 1976 Order(**9**) (exception relating to terms and conditions during maternity leave) substitute—

"**Exception relating to terms and conditions during maternity leave**

8A.—(1) Subject to paragraph (2), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.

(2) The reference in paragraph (1) to benefit from the terms and conditions of a woman's employment relating to remuneration does not include a reference to—

(a) maternity-related remuneration (including maternity-related remuneration that is increase-related),

(**7**) Article 6A was inserted by regulation 6 of S.R. 2005 No. 426
(**8**) Subsection (2A) was inserted by regulation 7(4) of S.R. 2005 No. 426
(**9**) Article 8A was inserted by regulation 8 of S.R. 2005 No. 426