STATUTORY RULES OF NORTHERN IRELAND

2006 No. 261

AGE DISCRIMINATION

The Employment Equality (Age) Regulations (Northern Ireland) 2006

Made - - - - 13th June 2006

Coming into operation in accordance with regulation 1

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**), in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Employment Equality (Age) Regulations (Northern Ireland) 2006 and with the exception of this regulation and regulations 2, 37, 38 and 39 shall come into operation on 1st October 2006.

(2) This regulation and regulations 2, 37, 38 and 39 shall come into operation on 14th June 2006.

Interpretation

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

(2) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of age), regulation 4 (discrimination by way of victimisation), or regulation 5 (instructions to discriminate), and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 6 (harassment on grounds of age).

(3) In these Regulations—

(**1**) 1972 c. 68
(**2**) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**3**) 1954 c. 33 (N.I.)

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**4**);

"act" includes a deliberate omission;

"benefits", except in regulation 12 and Schedule 1 (pension schemes), includes facilities and services;

"the Commission" means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998(**5**);

"Crown employment" means—

(a) service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department, other than service of a person holding a statutory office; or

(b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body;

"detriment" does not include harassment within the meaning of regulation 6;

"employment" means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions (such as "employee" and "employer") shall be construed accordingly, but this definition does not apply in relation to regulation 32 (exception for retirement) or to Schedules 1, 5, 6 and 7;

"Minister of the Crown" includes the Treasury and the Defence Council;

"Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

"Northern Ireland Minister" includes the First Minister and deputy First Minister acting jointly;

"proprietor", in relation to a school, has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(**6**);

"school" has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986;

"service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department" does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(**7**);

"statutory body" means a body set up by or in pursuance of a statutory provision, and "statutory office" means an office so set up;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954; and

"worker", in relation to regulations 34 and 36 and to Schedule 1, means, as the case may be—

(a) an employee;

(b) a person holding an office or post to which regulation 13 (office-holders etc) applies;

(c) a person holding the office of constable;

(d) a partner within the meaning of regulation 18 (partnerships);

(e) a member of a limited liability partnership within the meaning of that regulation or;

(f) a person in Crown employment.

(4) In these Regulations, references to "employer", in their application to a person at any time seeking to employ another, include a person who has no employees at that time.

(**4**) S.I. 1996/1919 (N.I. 16)
(**5**) 1998 c. 47
(**6**) S.I. 1986/594 (N.I. 3)
(**7**) 1975 c. 24

Discrimination on grounds of age

3.—(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if —

(a) on the grounds of B's age, A treats B less favourably than he treats or would treat other persons, or

(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—

(i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and

(ii) which puts B at that disadvantage,

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(3) In this regulation—

(a) "age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and

(b) the reference in paragraph (1)(a) to B's age, includes B's apparent age.

Discrimination by way of victimisation

4.—(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

(a) brought proceedings against A or any other person under these Regulations;

(b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;

(c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or

(d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

Instructions to discriminate

5. For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that—

(a) B has not carried out (in whole or in part) an instruction to do an act which is unlawful by virtue of these Regulations, or

(b) B, having been given an instruction to do such an act, complains to A or to any other person about that instruction.

Harassment on grounds of age

6.—(1) For the purposes of these Regulations, a person ("A") subjects another person ("B") to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

(a) violating B's dignity; or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

PART 2

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

Applicants and employees

7.—(1) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to discriminate against a person—

(a) in the arrangements he makes for the purpose of determining to whom he should offer employment;

(b) in the terms on which he offers that person employment; or

(c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Northern Ireland, to discriminate against that person—

(a) in the terms of employment which he affords him;

(b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;

(c) by refusing to afford him, or deliberately not affording him, any such opportunity; or

(d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Subject to paragraph (5), paragraph (1)(a) and (c) do not apply in relation to a person—

(a) whose age is greater than the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65; or

(b) who would, within a period of six months from the date of his application to the employer, reach the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65.

(5) Paragraph (4) only applies to a person to whom, if he was recruited by the employer, regulation 32 (exception for retirement) could apply.

(6) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

(a) that provision differs in a material respect from the provision of the benefits by the employer to his employees;

(b) the provision of the benefits to the employee in question is regulated by his contract of employment; or

(c) the benefits relate to training.

(7) In paragraph (2)(d), reference to the dismissal of a person from employment includes reference—

(a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and

(b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(8) In paragraph (4), "normal retirement age" is an age of 65 or more which meets the requirements of Article 130ZH of the 1996 Order(**8**).

Discrimination by persons with statutory power to select employees for others

8.—(1) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person, in relation to employment at an establishment in Northern Ireland—

(a) by refusing to select or nominate, or deliberately not selecting or nominating, him for employment; or

(b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment in relation to employment at an establishment in Northern Ireland.

Exception for genuine occupational requirement etc.

9.—(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age)—

(a) regulation 7(1)(a) or (c) does not apply to any employment;

(b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and

(c) regulation 7(2)(d) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

(a) possessing a characteristic related to age is a genuine and determining occupational requirement;

(b) it is proportionate to apply that requirement in the particular case; and

(c) either—

(i) the person to whom that requirement is applied does not meet it; or

(**8**) Article 130ZH of the 1996 Order is inserted into that Order by regulation 53(1) of, and paragraph 3(4) of Schedule 7 to, these Regulations