STATUTORY RULES OF NORTHERN IRELAND

2005 No. 426

SEX DISCRIMINATION

Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005

Made - - - -	*19th September 2005*
Coming into operation	*5th October 2005*

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 on it by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 and shall come into operation on 5th October 2005.

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

(3) In these Regulations, "the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976(**4**) and "the 1970 Act" means the Equal Pay Act (Northern Ireland) 1970(**5**).

Transitional provisions

2.—(1) The amendment made to Article 74 of the 1976 Order by regulation 29 shall not apply in the case of a question served on a respondent before 5th October 2005.

(2) In paragraph (1), "question" and "respondent" shall be construed in accordance with Article 74 of the 1976 Order.

Amendments to the 1976 Order interpretation provisions

3.—(1) Article 2 (Interpretation) of the 1976 Order is amended as follows.

(2) After the definition of "designate" insert—

(**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**) 1970 c. 32

"references in Parts III and IV to subjecting a person to a detriment do not include subjecting a person to harassment;".

(3) After the definition of "grant-aided" insert—

"references to subjecting a person to harassment, and to acts of harassment, shall be construed in accordance with Article 6A;".

(4) After the definition of "upper limit of compulsory school age" insert—

""vocational training"

(a) means all types, and all levels of—

(i) vocational training, advanced vocational training and retraining, and

(ii) vocational guidance, and

(b) includes practical work experience undertaken for a limited period for the purposes of a person's vocational training (as defined by sub-paragraph(a));".

(5) In paragraph (7)(b) (references to sex discrimination), for "Article 3 or 4" substitute "Article 3,4 or 5A".

Indirect discrimination

4.—(1) In Article 3(2) of the 1976 Order(**6**) for sub-paragraph (b) (definition of indirect discrimination) substitute—

"(b) he applies to her a provision criterion or practice which he applies or would apply equally to a man, but—

(i) which puts or would put women at a particular disadvantage when compared with men,

(ii) which puts her at that disadvantage, and

(iii) which he cannot show to be a proportionate means of achieving a legitimate aim.".

(2) In Article 5(1) of the 1976 Order(**7**), for sub-paragraph (b) (definition of indirect discrimination against married people) substitute—

"(b) he applies to that person a provision, criterion or practice which he applies or would apply equally to an unmarried person, but—

(i) which puts or would put married persons at a particular disadvantage when compared with unmarried persons of the same sex,

(ii) which puts that person at that disadvantage, and

(iii) which he cannot show to be a proportionate means of achieving a legitimate aim.".

Discrimination on the ground of pregnancy or maternity leave

5. In the 1976 Order, after Article 5 (Direct and indirect discrimination against married persons in employment field), insert—

"**Discrimination on the ground of pregnancy or maternity leave**

5A.—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if—

(**6**) Article 3 was substituted by regulation 2 of the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 282)

(**7**) Article 5 was substituted by regulation 3 of the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 282)

(a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably than he would treat her had she not become pregnant; or

(b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, the person treats her less favourably 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.

(2) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if, on the ground that Article 104(1) of the Employment Rights (Northern Ireland) Order 1996(**8**) (compulsory maternity leave) has to be complied with in respect of the woman, he treats her less favourably than he would treat her if that provision did not have to be complied with in respect of her.

(3) For the purposes of paragraph (1)—

(a) in relation to a woman a protected period begins each time she becomes pregnant, and the protected period associated with any particular pregnancy of hers ends in accordance with the following rules—

(i) if she is entitled to ordinary but not additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of ordinary maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;

(ii) if she is entitled to ordinary and additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of additional maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;

(iii) if she is not entitled to ordinary maternity leave in respect of the pregnancy, the protected period ends at the end of the 2 weeks beginning with the end of the pregnancy;

(b) where a person's treatment of a woman is on grounds of illness suffered by the woman as a consequence of a pregnancy of hers, that treatment is to be taken to be on the ground of the pregnancy;

(c) a "statutory right to maternity leave" means a right conferred by Article 103(1) or 105(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary and additional maternity leave).

(4) In paragraph 3 "ordinary maternity leave" and "additional maternity leave" shall be construed in accordance with Articles 103 and 105 of the Employment Rights (Northern Ireland) Order 1996.

(5) Paragraphs (1) and (2) apply to—

(a) any provision of Part III, and

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

Harassment and sexual harassment

6. In the 1976 Order, after Article 6 (Discrimination by way of victimisation) insert—

(**8**) S.I. 1996/1919 (N.I. 16); Part IX was substituted by Article 9 of and Schedule 4, Part 1 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))

"**Harassment, including sexual harassment**

6A.—(1) For the purposes of this Order, a person subjects a woman to harassment if—

(a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect—

(i) of violating her dignity, or

(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,

(b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect—

(i) of violating her dignity, or

(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or

(c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

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

(3) For the purposes of this Order, a person ("A") subjects another person ("B") to harassment if —

(a) A, on the ground that B intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect—

(i) of violating B's dignity, or

(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for B;

(b) A, on the ground of B's rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a), treats B less favourably than A would treat B had B not rejected, or submitted to, the conduct.

(4) Conduct shall be regarded as having the effect mentioned in paragraph (3)(a) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

(5) Paragraph (1) is to be read as applying equally to the harassment of men, and for that purpose shall have effect with such modifications as are requisite.

(6) For the purposes of paragraphs (1) and (3), a provision of Part III or IV framed with reference to harassment of women shall be treated as applying equally to the harassment of men and for that purpose will have effect with such modifications as are requisite.".

Applicants and employees

7.—(1) In the heading to Part III of the 1976 Order, for "DISCRIMINATION IN THE EMPLOYMENT FIELD", substitute "EMPLOYMENT FIELD".

(2) Article 8 of the 1976 Order (Discrimination against applicants and employees) is amended as follows.

(3) In the heading, for the words "Discrimination against applicants and employees", substitute the words "Applicants and employees".

(4) After paragraph (2), insert—

"(2A) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment—

(a) a woman whom he employs, or

(b) a woman who has applied to him for employment.".

Terms and conditions of employment during maternity leave

8. In the 1976 Order, after Article 8 (Discrimination against applicants and employees) insert—

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

8A.—(1) Subject to paragraphs (2) and (5), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on ordinary maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.

(2) Paragraph (1) does not apply to benefit by way of maternity-related remuneration.

(3) Subject to paragraphs (4) and (5), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on additional maternity leave of any benefit from the terms of her employment.

(4) Paragraph (3) does not apply to—

(a) benefit by way of maternity-related remuneration,

(b) the benefit of her employer's implied obligation to her of trust and confidence, or

(c) any benefit of terms and conditions in respect of—

(i) notice of the termination by her employer of her contract of employment,

(ii) compensation in the event of redundancy,

(iii) disciplinary or grievance procedures, or

(iv) membership of a pension scheme.

(5) Neither of paragraphs (1) and (3) applies to—

(a) benefit by way of remuneration in respect of times when the woman is neither on ordinary maternity leave nor on additional maternity leave, including increase-related remuneration in respect of such times; or

(b) benefit by way of maternity-related remuneration that is increase-related.

(6) For the purposes of paragraph (5), remuneration is increase-related so far as it falls to be calculated by reference to increases in remuneration that the woman would have received had she not been on ordinary or additional maternity leave.

(7) In this Article—

"maternity-related remuneration", in relation to a woman, means remuneration to which she is entitled as a result of being pregnant or being on ordinary or additional maternity leave;

"on additional maternity leave" means absent from work in exercise of the right conferred by Article 105(1) of the Employment Rights (Northern Ireland) Order 1996;

"on ordinary maternity leave" means absent from work in exercise of the right conferred by Article 103(1) of that Order (ordinary maternity leave), or in consequence of the prohibition in Article 104(1) of that Order (compulsory maternity leave);

"remuneration" means benefits—