STATUTORY RULES OF NORTHERN IRELAND

2003 No. 520

FAIR EMPLOYMENT

Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003

Made - - - -	*9th December 2003*
Coming into operation	*10th December 2003*

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 measures relating 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 Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 and shall come into operation on 10th December 2003.

(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 Fair Employment and Treatment Order" means the Fair Employment and Treatment (Northern Ireland) Order 1998(**4**).

Transitional provisions

2.—(1) Regulations 23 and 26 shall not apply to proceedings instituted before 10th December 2003.

(2) Regulations 24 and 27 apply in relation to proceedings instituted before 10th December 2003, as well as those instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

(3) The amendment made to Article 44(2)(b) of the Fair Employment and Treatment Order by regulation 28 shall not apply in the case of a question served on a respondent before 10th December 2003.

(**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. 1998/3162 (N.I. 21)

(4) In paragraph (3) "question" and "respondent" shall be construed in accordance with Article 44 of the Fair Employment and Treatment Order.

Definitions

3. In Article 2(2) of the Fair Employment and Treatment Order (general interpretation) –

(a) in the definition of "benefits", before the words "includes all opportunities", insert ", except in Article 25A ," ;

(b) in the definitions of "complainant" and "complaint" after the word "discrimination" in each case insert "or unlawful harassment"; and

(c) insert the following definitions at the appropriate place in alphabetical order –

""detriment" does not include conduct of a nature such as to constitute harassment;"

""harassment" shall be construed in accordance with Article 3A;"

""provision, criterion or practice" includes requirement or condition;"

""religious belief" in relation to discrimination or harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) includes any religion or similar philosophical belief;"

""unlawful harassment" shall be construed in accordance with Article 3A(3);"

""vocational training" and "vocational guidance" have the same meaning as in Article 3 of Council Directive 2000/78/EC;".

Definition of "discrimination" and "unlawful discrimination"

4.—(1) In Article 3 of the Fair Employment and Treatment Order (definition of "discrimination" and "unlawful discrimination") –

(a) in paragraph (2), for the words "this Order", substitute "a provision of this Order, other than a provision to which paragraph (2A) applies,"; and

(b) after paragraph (2) insert –

"(2A) A person also discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of any provision referred to in paragraph (2B) if –

(a) on either of those grounds he treats that other less favourably than he treats or would treat other persons; or

(b) he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but –

(i) which puts or would put persons of the same religious belief or of the same political opinion as that other at a particular disadvantage when compared with other persons;

(ii) which puts that other at that disadvantage; and

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

(2B) The provisions mentioned in paragraph (2A) are –

(a) Part III;

(b) Article 27, so far as it applies to vocational training or vocational guidance;

(c) Article 32; and

(d) Part V, in its application to the provisions referred to in sub-paragraphs (a) to (c).".

(2) In paragraph (3) of that Article, after the words "paragraph (2)", insert "or (2A)".

(3) In paragraph (7)(a) of that Article, after the words "he does an act", insert "other than an act of harassment".

Harassment

5. After Article 3 of the Fair Employment and Treatment Order insert –

""**"Harassment" and "unlawful harassment"**

3A.—(1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) where, on the ground of religious belief or political opinion, 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 sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.

(3) For the purposes of this Order a person subjects another to unlawful harassment if he engages in conduct in relation to that other which is unlawful by virtue of any provision mentioned in Article 3(2B).".

Meaning of employment in Northern Ireland

6.—(1) In Article 6 of the Fair Employment and Treatment Order (meaning of employment in Northern Ireland and occupation in Northern Ireland), in paragraph (1), for the words from "unless the employee" to the end, substitute –

"if the employee –

(a) does his work wholly or partly in Northern Ireland; or

(b) does his work wholly outside Northern Ireland and paragraph (1A) applies.".

(2) After paragraph (1) of that Article insert –

"(1A) This paragraph applies if –

(a) the employer has a place of business at an establishment in Northern Ireland;

(b) the work is for the purposes of the business carried on at that establishment; and

(c) the employee is ordinarily resident in Northern Ireland –

(i) at the time when he applies for or is offered the employment, or

(ii) at any time during the course of the employment.".

(3) For paragraph (3) of that Article substitute –

"(3) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Department may by order provide that –

(a) paragraph (1) shall have effect as if the references to Northern Ireland in sub-paragraphs (a) and (b) included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964, or any part of such an area, in which the law of Northern Ireland applies; and

(b) paragraph (2) shall have effect as if the last reference to Northern Ireland included such an area, or any part of such an area.".

Functions of the Equality Commission

7. In Article 7 of the Fair Employment and Treatment Order (general duty of Commission), in paragraph (c), after the word "discrimination" insert "and unlawful harassment".

8. In Article 9 of the Fair Employment and Treatment Order (codes of practice), in paragraphs (1) and (3) after the word "discrimination" in each case, insert "and harassment".

Harassment by employers

9.—(1) For the heading to Part III of the Fair Employment and Treatment Order there shall be substituted "DISCRIMINATION AND HARASSMENT IN THE EMPLOYMENT FIELD" and for the cross heading immediately thereafter there shall be substituted "*Discrimination and harassment in the employment field*".

(2) In the heading to Article 19 of the Fair Employment and Treatment Order (discrimination against applicants and employees), omit the words "Discrimination against".

(3) After paragraph (1) of that Article insert –

"(1A) It is unlawful for an employer, in relation to employment by him in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.".

(4) After paragraph (2) of that Article insert –

"(3) In paragraph (1)(b)(iii) 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.".

Contract workers

10.—(1) In the heading to Article 20 of the Fair Employment and Treatment Order (discrimination against contract workers), omit the words "Discrimination against".

(2) After paragraph (2) of that Article insert –

"(2A) It is unlawful for the principal, in relation to work to which this Article applies, to subject a contract worker to harassment.".

Office holders etc.

11. After Article 20 of the Fair Employment and Treatment Order insert –

"**Office-holders etc.**

20A.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this Article applies, to discriminate against a person –

(a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;

(b) in the terms on which he offers him the appointment; or

(c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this Article applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person –

(a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or

(b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this Article applies, to discriminate against him –

(a) in the terms of the appointment;

(b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;

(c) by terminating the appointment; or

(d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this Article applies, to subject to harassment a person –

(a) who has been appointed to the office or post;

(b) who is seeking or being considered for appointment to the office or post; or

(c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of Article 70 and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of Article 70 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless –

(a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or

(b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or

(c) the benefits relate to training.

(7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference –