STATUTORY RULES OF NORTHERN IRELAND

2001 No. 282

SEX DISCRIMINATION

Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001

Made - - - -	*20th July 2001*
Coming into operation	*20th August 2001*

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 sex discrimination in matters of employment, self-employment and vocational training(**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, transitional provisions and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001, and shall come into operation on 20th August 2001.

(2) Regulations 4 and 5 apply in relation to proceedings instituted before the commencement date, as well as those instituted on or after that date, but do not affect any case in which proceedings in the industrial tribunal or county court were determined before the date on which they came into operation.

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

Amendment of the Sex Discrimination (Northern Ireland) Order 1976

2. For Article 3 of the Sex Discrimination (Northern Ireland) Order 1976(**4**) ("the Order") there is substituted—

(**1**) 1972 c. 68
(**2**) *See* the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788)
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1976/1042 (N.I. 15)

"**Direct and indirect discrimination against women**

3.—(1) In any circumstances relevant for the purposes of any provision of this Order, other than a provision to which paragraph (2) applies, a person discriminates against a woman if—

(a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or

(b) he applies to her a requirement or condition which he applies or would apply equally to a man but—

(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it,

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment because she cannot comply with it.

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

(a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or

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

(i) which is such that it would be to the detriment of a considerably larger proportion of women than of men,

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment.

(3) Paragraph (2) applies to—

(a) any provision of Part III, and

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

(4) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of paragraph (1)(*a*) or (2)(*a*) to be compared to his treatment of a man having the like marital status.".

Discrimination against married persons

3. For Article 5 of the Order there is substituted—

"**Direct and indirect discrimination against married persons in employment field**

5.—(1) In any circumstances relevant for the purposes of any provision of Part III, a person discriminates against a married person of either sex if—

(a) on the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex, or

(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 is such that it would be to the detriment of a considerably larger proportion of married persons than of unmarried persons of the same sex,

(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and

(iii) which is to that person's detriment.

(2) For the purposes of paragraph (1), a provision of Part III framed with reference to discrimination against women shall be treated as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.".

Burden of proof: industrial tribunals

4. After Article 63 of the Order there is inserted—

"**Burden of proof: industrial tribunals**

63A.—(1) This Article applies to any complaint presented under Article 63 to an industrial tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

(a) has committed an act of discrimination against the complainant which is unlawful by virtue of Part III, or

(b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the complainant,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.".

Burden of proof: county court

5. After Article 66 of the Order there is inserted—

"**Burden of proof: county court**

66A.—(1) This Article applies to any claim brought under Article 66(1) in a county court.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

(a) has committed an act of discrimination against the claimant which is unlawful by virtue of any provision of Part IV, so far as it applies to vocational training, or

(b) is by virtue of Article 42 and 43 to be treated as having committed such an act of discrimination against the claimant,

the court shall uphold the claim unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.".

Claims under Part IV of the Order so far as it applies to vocational training

6. After Article 66(3) of the Order there is inserted—

"(3A) Paragraph (3) does not affect the award of damages in respect of an unlawful act of discrimination falling within Article 3(2)(*b*).".