STATUTORY RULES OF NORTHERN IRELAND

1999 No. 311

SEX DISCRIMINATION

Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999

Made - - - -	*5th July 1999*
Coming into operation	*1st August 1999*

The Department of Economic Development, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**), in relation to measures to prevent discrimination on the grounds of sex in the fields of pay and treatment 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 and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999 and shall come into operation on 1st August 1999.

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

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

Discrimination on the grounds of gender reassignment

2.—(1) In Article 2(2) of the Order (interpretation) after the definition of "further education" there shall be inserted the following definition—

> ""gender reassignment" means a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process;".

(2) After Article 4 of the Order there shall be inserted the following Article—

(**1**) 1972 c. 68
(**2**) S.I.1997/2563
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1976/1042 (N.I. 15)

"**Discrimination on the grounds of gender reassignment**

4A.—(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of—

(a) any provision of Part III; or

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

if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.

(2) Paragraph (3) applies to arrangements made by any person in relation to another's absence from work or from vocational training.

(3) For the purposes of paragraph (1), B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment—

(a) he is treated less favourably than he would be if the absence was due to sickness or injury; or

(b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.

(4) In paragraphs (2) and (3) "arrangements" includes terms, conditions or arrangements on which employment or vocational training is offered.

(5) For the purposes of paragraph (1), a provision mentioned in that paragraph framed with reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite.".

(3) In Article 7 of the Order (basis of comparison) after the words "or 5(1)" there shall be inserted the words ", or a comparison of the cases of persons required for the purposes of Article 4A,".

Discrimination in relation to pay, etc

3.—(1) In Article 8 of the Order (discrimination against applicants and employees), after paragraph (7) there shall be inserted the following paragraph—

"(8) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (4) to (6).".

(2) In Article 11 of the Order (Equal Pay Act (Northern Ireland) 1970) after paragraph (6) there shall be inserted the following paragraph—

"(7) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (3), (4) and (5)(b).".

Exceptions for genuine occupational qualifications

4.—(1) After Article 10 of the Order (exception where sex is a genuine occupational qualification) there shall be inserted the following Articles—

"**Corresponding exception relating to gender reassignment**

10A.—(1) In their application to discrimination falling within Article 4A, paragraphs (1) and (2) of Article 8 do not make unlawful an employer's treatment of another person if—

(a) in relation to the employment in question—

(i) being a man is a genuine occupational qualification for the job; or

(ii) being a woman is a genuine occupational qualification for the job; and

(b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant sub-paragraph of Article 10(2) and any other relevant circumstances.

(2) In paragraph (1) the reference to the employment in question is a reference—

(a) in relation to any sub-paragraph of Article 8(1), to the employment mentioned in that sub-paragraph;

(b) in relation to Article 8(2)—

(i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;

(ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.

(3) In determining for the purposes of paragraph (1) whether being a man or being a women is a genuine occupational qualification for a job, Article 10(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

Supplementary exceptions relating to gender reassignment

10B.—(1) In relation to discrimination falling within Article 4A—

(a) Article 8(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job;

(b) Article 8(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment; and

(c) Article 8(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.

(2) Subject to paragraph (3), there is a supplementary genuine occupational qualification for a job only if—

(a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;

(b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—

(i) the degree of physical or social contact with a person living in the home, or

(ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;

(c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—

(i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and

(ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or

(d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

(3) Sub-paragraphs (c) and (d) of paragraph (2) apply only in relation to discrimination against a person who—

(a) intends to undergo gender reassignment; or

(b) is undergoing gender reassignment.".

(2) In Article 12 of the Order (discrimination against contract workers), in paragraph (3) at the beginning there shall be inserted the words "Subject to paragraph (3A),".

(3) After that paragraph there shall be inserted the following paragraphs—

"(3A) Paragraph (3) does not apply in relation to discrimination falling within Article 4A.

(3B) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—

(a) he does it at a time when, if the work were to be done by a person taken into his employment—

(i) being a man would be a genuine occupational qualification for the job; or

(ii) being a woman would be a genuine occupational qualification for the job; and

(b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of sub-paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.".

(4) In Article 14 of the Order (partnerships), in paragraph (3) at the beginning there shall be inserted the words "Subject to paragraph (3A),".

(5) After that paragraph there shall be inserted the following paragraphs—

"(3A) Paragraph (3) does not apply in relation to discrimination falling within Article 4A.

(3B) In relation to discrimination falling within Article 4A, paragraph (1) does not make unlawful a firm's treatment of a person in relation to a position as partner where—

(a) if it were employment—

(i) being a man would be a genuine occupational qualification for the job; or

(ii) being a woman would be a genuine occupational qualification for the job; and

(b) the firm can show that the treatment is reasonable in view of the circumstances relevant for the purposes of sub-paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within Article 4A, paragraph (1)(a), (c) and, so far as it relates to expulsion, (d)(ii) do not apply to a position as partner where, if it were employment, there would be a supplementary genuine occupational qualification for the job.".