STATUTORY INSTRUMENTS

1988 No. 1303 (N.I. 13)

The Sex Discrimination (Northern Ireland) Order 1988

- - - - - - *26th July 1988*

Title and commencement

1.—(1) This Order may be cited as the Sex Discrimination (Northern Ireland) Order 1988.

(2) This Order shall, except as provided by paragraphs (3) and (4), come into operation on the expiration of three months from the day on which it is made.

(3) Subject to paragraph (4), Articles 4 and 5 shall come into operation on such day or days as the Head of the Department may by order appoint.

(4) Except in so far as they come into operation at an earlier time under paragraph (3), Articles 4 and 5 shall come into operation on the expiration of six months from the day on which this Order is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F1] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the Department" means the Department of Economic Development;

"the principal Order" means the Sex Discrimination (Northern Ireland) Order 1976[F2].

F1 1954 c. 33 (NI)
F2 1976 NI 15

Private households and small undertakings and partnerships

3.—(1) In Article 8 of the principal Order (unlawful discrimination against women in the employment fi;eld), paragraph (3) (which exempts private households and undertakings of fi;ve employees or less) shall cease to have eff;ect.

(2) In Article 10(2) of the principal Order (cases where being a man is a genuine occupational qualifi;cation), after sub#paragraph (b) there shall be inserted the following sub#paragraph—

"(bb) 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 by a man because objection might reasonably be taken to allowing to a woman—

(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; or" .

(3) In Article 14(1) of the principal Order (unlawful discrimination against a woman in relation to a position as a partner by fi;rms consisting of six or more partners), the words "consisting of six or more partners" shall cease to have eff;ect.

Discrimination as to retirement, etc.

4.—(1) In Article 2 of the principal Order (interpretation), after paragraph (2) there shall be inserted the following paragraph—

"(2A) In this Order references to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references—

(a) to the termination of that person's employment or partnership 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 or partnership is renewed on the same terms; and

(b) to the termination of that person's employment or partnership 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 or, as the case may be, the conduct of the other partners." .

(2) In Article 8 of the principal Order (unlawful discrimination against women in the employment fi;eld), at the end of paragraph (4) (exemption for provision in relation to death or retirement) there shall be added the words "except in so far as, in their application to provision in relation to retirement, they render it unlawful for a person to discriminate against a woman—

(a) in such of the terms on which he off;ers her employment as make provision in relation to the way in which he will aff;ord her access to opportunities for promotion, transfer or training or as provide for her dismissal or demotion; or

(b) in the way he aff;ords her access to opportunities for promotion, transfer or training or by refusing or deliberately omitting to aff;ord her access to any such opportunities; or

(c) by dismissing her or subjecting her to any detriment which results in her dismissal or consists in or involves her demotion" .

Para. (3) rep. by SR 2005/426

(4) In section 6 of the Equal Pay Act (Northern Ireland) 1970[F3] (exclusion of sections 1 to 5)—

(a) at the end of subsection (1A)(b) (terms related to, or provision in connection with, death or retirement), there shall be added the words " other than a term or provision which, in relation to retirement, aff;ords access to opportunities for promotion, transfer or training or provides for a woman's dismissal or demotion "; and

(b) at the end of subsection (2) (meaning of retirement) there shall be added the words " and the reference in subsection (1A) to a woman's dismissal shall be construed in accordance with Article 2(2A) of the Sex Discrimination (Northern Ireland) Order 1976 as a reference to her dismissal from employment ".

F3 1970 c. 32 (NI)

Art. 5 rep. by 1993 NI 11

Discrimination in relation to training

6.—(1) In Article 48 of the principal Order (discrimination in relation to training by a training body)—

(a) in paragraph (1)—

(i) for the words "a training body" there shall be substituted the words " any person ";

(ii) for the words "appears to the training body" there shall be substituted the words " reasonably appears to that person ";

(b) in paragraph (2)—

(i) for the words "appears to a training body" there shall be substituted the words " reasonably appears to that person ";

(ii) for the words "the training body" there shall be substituted the words " that person ";

(c) in paragraph (3)—

(i) for the words "a training body" there shall be substituted the words " any person ";

(ii) for the words "appears to the training body" there shall be substituted the words " reasonably appears to that person ".

(2) For paragraph (4) of that Article (defi;nition of, and power to designate, training body) there shall be substituted the following paragraph—

"(4) Paragraphs (1) to (3) shall not apply in relation to any discrimination which is rendered unlawful by Article 8." .

Issue of codes of practice by Equal Opportunities Commission

7. After Article 56 of the principal Order there shall be inserted the following cross#heading and Article—

"Codes of practice

Codes of practice

56A.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fi;t for either or both of the following purposes, namely—

(a) the elimination of discrimination in the fi;eld of employment;

(b) the promotion of equality of opportunity in that fi;eld between men and women.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this Article may include such practical guidance as the Commission thinks fi;t as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Order.

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice for eventual publication under paragraph (3), the Commission shall consult with—

(a) such organisations or associations of organisations representative of employers or of workers; and

(b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) If the Commission determines to proceed with the draft, it shall transmit the draft to the Department of Economic Development which shall—

(a) if it approves of the draft, lay it before the Assembly; and

(b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Commission shall issue the code in the form of the draft and the code shall come into eff;ect on such day as the Department of Economic Development may by order appoint.

(8) The Commission may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code, and paragraphs (3) to (7) shall apply (with appropriate modifi;cations) to such a revised code as they apply to the fi;rst issue of a code.

(9) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings, but in any proceedings under this Order before an industrial tribunal—

(a) any code of practice issued under this Article shall be admissible in evidence; and

(b) any provision of the code which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.".

Terms of reference for formal investigations by Equal Opportunities Commission

8.—(1) In Article 58 of the principal Order (terms of reference for formal investigations by the Equal Opportunities Commission), after paragraph (3) there shall be inserted the following paragraph—

"(3A) Where the terms of reference of the investigation confi;ne it to the activities of persons named in them and the Commission in the course of the investigation proposes to investigate any act made unlawful by this Order which they believe that a person so named may have done, the Commission shall—

(a) inform that person of the Commission's belief and of the Commission's proposal to investigate the act in question; and

(b) off;er him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fi;t);

and a person so named who avails himself of an opportunity under this paragraph of making oral representations may be represented—

(i) by counsel or a solicitor; or

(ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable." .

(2) In paragraph (4) of that Article, for "and (3)" there shall be substituted " , (3) and (3A) ".

Art. 9 rep. by SR 1993/478

Forms of assistance by Equal Opportunities Commission

10. In Article 75(2) of the principal Order (forms of assistance by Equal Opportunities Commission in relation to proceedings or prospective proceedings under the principal Order, etc.), after sub#paragraph (d) there shall be inserted the following sub#paragraph—