

EXPLANATORY MEMORANDUM TO

The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2015

2015 No. 145

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations amend the Sex Discrimination (Northern Ireland) Order 1976 (the "1976 Order") to comply with an EU Pilot investigation concerning the transposition of Council Directive 2004/113/EC in Northern Ireland ("the Gender Directive"). The Gender Directive implements the principle of equal treatment between men and women in the access to and supply of goods and services.
- 2.2. The Regulations amend paragraph (1B) of Article 36 of the 1976 Order to clarify that the type of services covered by the exception in Articles 36(1B) and 36ZA(c) of the 1976 Order are those related to religious worship and observance that are not normally provided on a commercial basis.
- 2.3. Articles 36(1B) and 36ZA(c) of the 1976 Order ensure that the prohibition to discriminate on grounds of sex in the access to and supply of goods and services does not cut across the doctrinal requirements of any organised religion. The exception is narrowly drawn and is there to provide clarity and certainty, notwithstanding that matters of religious worship and doctrinal requirements are outside the scope of the Gender Directive. As a consequence, there is no requirement for the exception to comply with Article 4(5) of the Gender Directive in terms of being justified by a legitimate aim, with the means of achieving that aim being appropriate and necessary.

3. Background

- 3.1. In July 2012, the EU Commission launched an EU Pilot investigation regarding transposition of the Gender Directive in the UK. One of the issues raised by the Commission was the derogation in the 1976 Order for religious organisations and doctrines of the religion to limit the provision of services.
- 3.2. The EU Commission sought clarification on the interaction of Articles 36(1B) and 36ZA(c) of the 1976 Order and, in particular, whether Article 36(1B) would permit a person to discriminate in the religious context even in the provision of services normally provided on a commercial basis. Because Article 36ZA expressly states "not normally provided on a

commercial basis" and Article 36(1B) does not, the EU Commission queried whether Article 36(1B) could include commercial services. In responding to the EU Commission, OFMDFM contended that Article 36(1B) is intended to cover only non-commercial services and, as such, the type of services covered within that provision were not intended to be within the scope of the Gender Directive.

- 3.3. The Gender Directive was implemented on a UK-wide basis by the Sex Discrimination (Amendment of Legislation) Regulations 2008 (the "1998 Regulations") - S.I. 2008/963. These Regulations amended the Sex Discrimination Act 1975 and the 1976 Order. Paragraph 9 of Schedule 2 to the 2008 Regulations inserted a new Article 36ZA (Excluded Matters) in the 1976 Order. This provision was added for the avoidance of doubt as an interpretative provision to ensure that the listed matters were not amended by the 2008 Regulations because they were outside the scope of the Gender Directive.
- 3.4. In light of the EU Commission's query, OFMDFM decided remove any legal uncertainty produced by the interaction of Articles 36(1B) and 36ZA. The Commission has subsequently confirmed that the proposed amendment to Article 36(1B) meets its concerns on this matter.

4. Consultation

- 4.1. As the amendment to the 1976 Order is presentational and does not alter the current policy position, the Statutory Rule was not subject to public consultation. The Equality Commission and the Committee for the Office of the First Minister and deputy First Minister were advised of the Department's intention to make these Regulations.

5. Equality Impact

- 5.1. The Regulations make a technical amendment to Article 36(1B) of the 1976 Order. The purpose of the amendment is to clarify existing law. It does not alter or amend current policy and therefore does not raise any equality issues.

6. Regulatory Impact

- 6.1. The Regulations make a technical amendment to existing law. It does not, of itself, impose any burdens on business. An Impact Assessment accompanied the making of the UK-wide 2008 Regulations.

7. Financial Implications

- 7.1. There are no financial implications associated with these Regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The amendment to Article 36(1B) of the 1976 Order is in response to an EU Pilot investigation initiated by the EU Commission. The amendment is intended to provide legal certainty and to put beyond doubt that Article 36(1B) of the 1976 Order is outside the scope of the Directive. The

amendment does not change the previous policy position on this matter. A UK-wide Transposition Note accompanied the making of the UK-wide 2008 Regulations.

10. Parity or Replicatory Measure

- 10.1. There is no need for corresponding amending legislation in Great Britain. Since the making of the 2008 Regulations, Great Britain has consolidated and harmonised its discrimination law through the enactment of the Equality Act 2010. The EU Commission is satisfied that provision at paragraph 29 of Schedule 3 to the Equality Act 2010 is outside the scope of the Gender Directive.

11. Additional Information

- 11.1. Not applicable.