

2016 No. 191

SEX DISCRIMINATION

**The Sex Discrimination Order 1976 (Amendment) Regulations
(Northern Ireland) 2016**

Made - - - - - *22nd March 2016*

Coming into operation - *2nd May 2016*

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(a) in relation to discrimination(b), makes the following Regulations in exercise of the powers conferred by that section:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 2nd May 2016.

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

Amendment of the Sex Discrimination (Northern Ireland) Order 1976

2. The Sex Discrimination (Northern Ireland) Order 1976(d) (“the 1976 Order”) is amended in accordance with regulations 3 to 20.

Amendment of Article 2 of the 1976 Order

3. In Article 2 (interpretation)—

- (a) in paragraph (2)(e), omit the definition of “provision, criterion or practice”;
- (b) in paragraph (7)(b)(f), after “3,” insert “3A”.

Amendment of Article 3 of the 1976 Order

4.—(1) For Article 3(g) (direct and indirect discrimination against women), substitute the following—

(a) 1972 c. 68
(b) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(c) 1954 c. 33 (N.I.)
(d) S.I. 1976/1042 (N.I. 15)
(e) The definition of “provision, criterion or practice” was inserted by regulation 7(2) of S.R. 2001 No. 282
(f) Paragraph (7)(b) was amended by regulation 3(5) of S.R. 2005 No. 426 and by paragraph 3 of Schedule 2 to S.I. 2008/963
(g) Regulation 3 was substituted by regulation 2 of S.R. 2001 No. 282 and amended by regulation 4(1) of S.R. 2005 No. 426, paragraph 1 of Schedule 2 to S.I. 2008/963 and regulation 3 of S.R. 2011 No. 156

“Direct discrimination on the ground of sex

3. In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another (“B”) if, on the ground of sex, A treats B less favourably than A treats or would treat another person.”.

(2) After Article 3, insert the following—

“Indirect discrimination on the ground of sex

3A.—(1) In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another person (“B”) if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s sex.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s sex, if –

- (a) A applies, or would apply, it to persons of a different sex,
- (b) it puts, or would put, persons of the same sex as B at a particular disadvantage when compared with persons of a different sex,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”.

Amendment of Article 4 of the 1976 Order

5. In Article 4 (sex discrimination against men)—

- (a) in paragraph (1), omit “Article 3 and”;
- (b) in paragraph (2), after “paragraph (1)” insert “and Articles 3 and 3A,”.

Amendment of Article 4A of the 1976 Order

6.—(1) Article 4A(a) (discrimination on the grounds of gender reassignment) is amended as follows.

- (2) In the heading, for “Discrimination” substitute “Direct discrimination”.
- (3) In paragraph (1)(b), for the word “he” in each place, substitute “A”.
- (4) In paragraph (3)—
 - (a) for the word “he” in each place, substitute “B”;
 - (b) in sub-paragraph (b), for “him” substitute “B”.

Insertion of Article 4B into the 1976 Order

7. After Article 4A (discrimination on the ground of gender reassignment), insert the following—

“Indirect discrimination on the ground of gender reassignment

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

- (a) any provision of Part 3; or
- (b) any provision of Part 4, so far as it applies to vocational training,

(a) Article 4A was inserted by regulation 4(2) of S.R. 1999 No. 311 and amended by paragraph 2 of Schedule 2 to S.I. 2008/963

if A applies to B a provision, criterion or practice which is discriminatory in relation to B's gender reassignment.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B's gender reassignment if—

- (a) A applies, or would apply, it to persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (b) it puts, or would put, persons who intend to undergo, are undergoing or have undergone gender reassignment at a particular disadvantage when compared with persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (c) it puts, or would put, B at that disadvantage; and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”.

Amendment of Article 7 of the 1976 Order

8. In Article 7(a) (basis of comparison)—

(a) before paragraph (a), insert—

“(aa) a comparison of the cases of persons required for the purposes of Article 3,”.

(b) in paragraph (a), for “Article 3(1) or (2)” substitute “Article 3A”;

(c) in paragraph (b), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 8 of the 1976 Order

9. In Article 8(8)(b) (applicants and employees), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 10A of the 1976 Order

10. In Article 10A(1)(c) (corresponding exception relating to gender reassignment), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 10B of the 1976 Order

11. In Article 10B(1)(d) (supplementary exceptions relating to gender reassignment), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 11 of the 1976 Order

12. In Article 11(7)(e) (Equal Pay Act (Northern Ireland) 1970), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 12 of the 1976 Order

13. In Article 12(f) (contract workers)—

(a) in paragraph (3A), for “Article 4A” substitute “Article 4A or 4B”;

(a) Article 7 was substituted by section 252(3) of the Civil Partnership Act 2004 (c. 33)

(b) Article 8(8) was inserted by regulation 3(1) of S.R. 1999 No. 311

(c) Article 10A was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 7 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)

(d) Article 10B was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 8 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)

(e) Article 11(7) was inserted by regulation 3(2) of S.R. 1999 No. 311

(f) Paragraphs (3A), (3B) and (3C) were inserted in Article 12 by regulation 4(3) of S.R. 1999 No. 311

- (b) in paragraph (3B), for “Article 4A” substitute “Article 4A or 4B”;
- (c) in paragraph (3C), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 14 of the 1976 Order

14. In Article 14(a) (partnerships)—

- (a) in paragraph (3A), for “Article 4A” substitute “Article 4A or 4B”;
- (b) in paragraph (3B), for “Article 4A” substitute “Article 4A or 4B”;
- (c) in paragraph (3C), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 35 of the 1976 Order

15. In Article 35(5)(b) (exception for voluntary bodies), for “Article 3 or 4A” substitute “Article 3, 3A or 4A”.

Amendment of Article 38 of the 1976 Order

16. In Article 38(1)(c) (discriminatory practices)—

- (a) in sub-paragraph (a)—
 - (i) omit the word “(a)”;
 - (ii) for “3(2)(b)” substitute “3A”;
 - (iii) omit the word “,or” (at the end of sub-paragraph (a));
- (b) omit sub-paragraph (b).

Amendment of Article 44 of the 1976 Order

17. In Article 44(2A)(d) (charities), for “Article 3 or 4A” substitute “Article 3, 3A or 4A”.

Amendment of Article 47 of the 1976 Order

18. In Article 47(4)(c)(e) (communal accommodation), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 65 of the 1976 Order

19. In Article 65(1B)(f) (remedies on complaint under Article 63), for “Article 3(2)(b)” substitute “Article 3A”

Amendment of Article 66 of the 1976 Order

20. In Article 66 (claims under Part IV)—

- (a) omit paragraph (3)(g);
- (b) omit paragraph (3A)(h).

(a) Paragraphs (3A), (3B) and (3C) were inserted in Article 14 by regulation 4(5) of S.R. 1999 No. 311
(b) Paragraph (5) was inserted by paragraph 7 of Schedule 2 to S.I. 2008/963
(c) Article 38(1) was substituted by regulation 7(4) of S.R. 2001 No. 282
(d) Paragraph (2A) was inserted by paragraph 11 of Schedule 2 to S.I. 2008/963
(e) Article 47(4)(c) was inserted by paragraph 14(a) of Schedule 2 to S.I. 2008/963
(f) Article 65(1B) was inserted by regulation 2(2) of S.R. 1996 No. 418 and amended by regulation 7(5) of S.R. 2001 No. 282 and by section 252(5) of the Civil Partnership Act 2004 (c. 33)
(g) Article 66(3) was amended by regulation 2(4) of S.R. 1996 No. 418
(h) Article 66(3A) was inserted by regulation 6 of S.R. 2001 No. 282

Amendment of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990

21. In Article 3(3) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990(a)—

- (a) for “Article 3(2)(b)(i)”, substitute “Article 3A(2)(b)”;
- (b) in sub-paragraph (a), for “justifiable as mentioned in Article 3(2)(b)(ii) or 5(1)(b)(ii)” substitute “proportionate as mentioned in Article 3A(2)(d) or 5(1)(b)(iii)”;
- (c) in sub-paragraph (b), for “Article 3(2)(b)(ii) or 5(1)(b)(ii)” substitute “Article 3A(2)(d) or 5(1)(b)(iii)”.

Transitional provision

22. The amendments to Article 66(3) and (3A) of the 1976 Order made by regulation 20 do not apply to any proceedings which were commenced but not disposed of before 2nd May 2016.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 22nd March 2016.



Margaret Rose McNaughton
A senior officer of the
Office of the First Minister and deputy First Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) to give full effect in Northern Ireland to Council Directive 2006/54/EC of 5th July 2006 (“the Directive”) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Regulation 3 provides for the omission of the definition of “provision, criterion or practice” in Article 2(2) of the 1976 Order.

Regulation 4 inserts a new Article 3A into the 1976 Order to create a single definition of indirect discrimination which applies to all provisions of the 1976 Order. The regulation also substitutes Article 3 of the 1976 Order so that Article 3 only contains a single definition of direct discrimination which applies to all provisions of the 1976 Order.

Regulation 7 inserts a new Article 4B into the 1976 Order. This Article extends the 1976 Order to cover indirect discrimination on the ground of gender reassignment in employment and occupation.

Regulations 5, 6 and 8 to 20 make minor amendments to the 1976 Order consequential on the substitution of Article 3 of the 1976 Order with new Articles 3 and 3A (regulation 4) and the insertion of new Article 4B (regulation 7).

(a) S.I. 1990/246 (N.I. 2); Article 3(3) was amended by regulation 8 of S.R. 2001 No. 282

Regulation 21 amends Article 3(3) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 consequential on the substitution of Article 3 of the 1976 Order with new Articles 3 and 3A (regulation 4).

Regulation 22 contains a transitional provision to deal with cases before the court at the time of commencement of the Regulations.

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