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—

"(e) any other form of assistance which the Commission may consider appropriate," .

Collective agreements and rules of undertakings

11. After Article 77 of the principal Order (validity and revision of contracts) there shall be inserted the following Article—

"**Collective agreements and rules of undertakings**

77A.—(1) Without prejudice to the generality of Article 77, that Article shall apply, as it applies in relation to a term of a contract, to the following, namely—

(a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;

(b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;

(c) any rule made by an organisation, authority or body to which paragraph (2) applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifi;cations or who are seeking the authorisations or qualifi;cations which it has power to confer;

and Article 77 shall so apply whether the agreement was entered into, or the rule made, before or after the commencement of Article 11 of the Sex Discrimination (Northern Ireland) Order 1988.

(2) This paragraph applies to—

(a) any organisation of workers;

(b) any organisation of employers;

(c) any organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

(d) any authority or body which can confer an authorisation or qualifi;cation which is needed for, or facilitates, engagement in a particular profession or trade.

(3) For the purposes of Article 77 a term or rule shall be deemed to provide for the doing of an act which would be rendered unlawful by this Order if—

(a) it provides for the inclusion in any contract of employment of any term which by virtue of an equality clause would fall either to be modifi;ed or to be supplemented by an additional term; and

(b) that clause would not be prevented from operating in relation to that contract by section 1(3) of the Equal Pay Act (Northern Ireland) 1970 (material factors justifying discrimination).

(4) Nothing in Article 77 shall aff;ect the operation of any term or rule in so far as it provides for the doing of a particular act in circumstances where the doing of that act would not be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order.

(5) The avoidance by virtue of Article 77 of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights except

in so far as they enable any person to require another person to be treated less favourably than himself, namely—

(a) such of the rights of the person to be discriminated against; and

(b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modifi;ed wholly or partly in pursuance of, or by reference to, that term or rule.

(6) In this Article "collective agreement" means any agreement relating to one or more of the matters mentioned in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1976[F4] (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

(7) This Article shall have eff;ect as if the terms of any service to which Parts III and V apply by virtue of paragraph (2) of Article 82 (Crown application) were terms of a contract of employment and in relation to the terms of any such service, as if service for the purposes of any person mentioned in that paragraph were employment by that person.".

F4 1976 NI 16

Art. 12 rep. by 1990 NI 2

Discrimination required by entertainment licences

13. In Schedule 1 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985[F5] (licensing of places of entertainment), after paragraph 16 there shall be inserted the following cross#heading and paragraph—

"Sex discrimination

16A.—(1) Nothing in any licence granted under this Schedule (whether before or after the commencement of Article 13 of the Sex Discrimination (Northern Ireland) Order 1988) shall have eff;ect at any time after the said commencement so as to require any person to do any act which, apart from Article 52 of the 1976 Order (acts done under statutory authority), is rendered unlawful by Part III of the 1976 Order (discrimination in relation to employment) or by so much of Part V of the 1976 Order as relates to acts rendered unlawful by Part III of the 1976 Order.

(2) In this paragraph—

"act" has the same meaning as in the 1976 Order; and

"the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976.".

F5 1985 NI 15

Consequential amendment, repeals and saving

14.—(1) In section 6(1) of the Equal Pay Act (Northern Ireland) 1970[F6] (exclusion of operation of equality clause and section 3(4) in relation to certain matters), for the words from "Neither" to "shall" there shall be substituted the words " An equality clause shall not ".

(2) The statutory provisions set out in the Schedule are hereby repealed to the extent specifi;ed in the third column of the Schedule.

(3) Neither the repeal by this Order of section 3 of the Equal Pay Act (Northern Ireland) 1970 (collective agreements and pay structures) nor the amendment made by paragraph (1) shall aff;ect—

(a) the continuing eff;ect, after the coming into operation of that repeal, of any declaration made under that section before the coming into operation of that repeal; or

(b) the operation, at any time after the coming into operation of that repeal, of section 5(1) of that Act in so far as it refers to the rules which apply under subsection (4) of the said section 3.

F6 1970 c. 32 (NI)

Schedule—Repeals

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the The Sex Discrimination (Northern Ireland) Order 1988.