
EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement (in Northern Ireland) provisions of Council Directive [2000/78/EC](#) (O.J. No. L303, 2.12.2000, p. 16) establishing a general framework for equal treatment in employment and occupation (“the Directive”), so far as it relates to disability discrimination. For this purpose, they amend the Disability Discrimination Act [1995 \(c. 50\)](#) (“the Act”) and make minor or consequential amendments to other legislation.

Regulations 4 to 18 insert new sections into, and amend existing provisions of, Part II of the Act (which concerns discrimination in the employment field):

- New sections 3A and 3B provide (respectively) for a definition of “discrimination” and “harassment” applying to the whole of Part II. (*Regulation 4*)
- New sections 4 and 4A (replacing existing sections 4 to 6) prohibit discrimination and harassment by employers and impose on employers a duty to make reasonable adjustments. New section 4B (replacing existing section 12) prohibits discrimination against, and harassment of, contract workers and makes provision about the making of reasonable adjustments for such workers. New sections 4C to 4F prohibit discrimination against, and harassment of, certain types of office-holders, and require reasonable adjustments to be made for them. New sections 4G to 4K (replacing existing section 17) prohibit discrimination against, and harassment of, disabled people by trustees and managers of occupational pension schemes, and require them to make reasonable adjustments; provide an employer with the right to appear and be heard in proceedings before a tribunal; set out provisions on remedies applicable to certain occupational pension scheme claims under the Act; ensure that, in relation to communications, sections 4G to 4J apply to a disabled person entitled to present payment of dependants' or survivors' benefits, and to a disabled person who is a pension credit member of an occupational pension scheme, as they apply to a disabled pensioner member of the scheme and contain definitions. (*Regulation 5*)
- New sections 6A to 6C prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to partners in firms. (*Regulation 6*)
- Existing section 7 (exemption for small businesses) is repealed. (*Regulation 7*)
- New sections 7A and 7B relate to barristers. They prohibit discrimination and harassment, and impose duties to make reasonable adjustments. (*Regulation 8*)
- Section 8 (enforcement, remedies and procedure) is amended to make provision about complaints about qualifications bodies, and about the burden of proof in industrial tribunal proceedings. It is also renumbered as section 17A. (*Regulation 9*)
- Existing section 9 (validity of certain agreements), section 11 (advertisements) and section 12 (contract workers) are repealed in consequence of their replacement by new provisions; and existing section 10 (charities) is also repealed (new section 18C covers charities and support for particular groups of persons). (*Regulations 10 to 12*)
- New sections 13 and 14 (replacing existing sections 13 to 15) prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to trade organisations. New sections 14A to 14D prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to qualifications bodies and persons who provide work placements. (*Regulation 13*)

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- Consequential amendments are made to existing section 16 (alterations to premises occupied under leases), which is also moved and renumbered as section 18A. (*Regulation 14*)
- New section 16A prohibits discrimination and harassment, and imposes duties to make reasonable adjustments in relationships which have come to an end; new section 16B prohibits employers and others from publishing or causing to be published advertisements which indicate an intention to discriminate; and new section 16C prohibits instructions and pressure to discriminate. (*Regulation 15*)
- New section 17B provides for the Equality Commission for Northern Ireland to enforce sections 16B (discriminatory advertisements) and 16C (instructions and pressure to discriminate); and new section 17C and new Schedule 3A deal with validity of certain agreements and rules of undertakings etc. (replacing existing section 9). (*Regulation 16*)
- New section 18B makes supplementary provision about the duties to make reasonable adjustments contained in Part II of the Act; new section 18C covers charities and support for particular groups of persons; and new section 18D provides for the interpretation of Part II. (*Regulations 17 and 18*)

Regulation 19 amends Part III of the Act (which concerns discrimination in relation to goods, facilities and services, and the disposal of premises) in relation to the provision of employment services. It inserts new section 21A to prohibit harassment and to modify the application of sections 19 to 21 of the Act in relation to such services, and makes consequential amendments to section 19 (discrimination in relation to goods, facilities and services), section 25 (enforcement) and section 26 (validity and revision of certain agreements).

Regulations 20 to 23 amend Part VII of the Act (supplemental):

- Minor or consequential amendments are made to section 54A (codes of practice) and section 55 (victimisation) of the Act. (*Regulations 20 and 21*)
- Section 56 (help for persons suffering discrimination) is amended so as to substitute a period of eight weeks (instead of a “reasonable period”) within which a respondent is to reply to a questionnaire (without a reasonable excuse for deliberate failure to do so) under the Act in order to avoid the drawing of adverse inferences by an industrial tribunal. (*Regulation 22*)
- Section 59 (statutory authority and national security etc.) is amended, in relation to Part II of the Act (and Part III thereof, insofar as it relates to employment services) to provide that acts done for the purpose of safeguarding national security are not unlawful if the doing of the act was justified by that purpose. (*Regulation 23*)

Regulations 24 to 26 amend Part VIII of the Act (miscellaneous):

- In section 64 (application to Crown etc.), a new subsection (2A) is inserted in consequence of the new provisions on the police and other police bodies. Exemptions for service in the Ministry of Defence Police, as a prison officer, or in fire fighting contained in subsections (5) and (6) of the section are repealed, and consequential amendments made to subsection (8). (*Regulation 24*)
- New sections 64A (Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve) and 64B (other police bodies) are inserted. They provide that the holding of the office of constable as a police officer (section 64A) and otherwise than as a police officer (section 64B) is to be treated as employment for the purposes of Part II of the Act; and make provision about proceedings brought under Part II in relation to the police and other police bodies. (*Regulation 25*)
- Section 66 (government appointments outside Part II) is repealed. (*Regulation 26*)
- In section 68 (interpretation), new provisions are substituted and inserted so as to allow, in certain circumstances, for work done wholly outside Northern Ireland to be treated, for the purposes of Part II of the Act, as employment at an establishment in Northern Ireland and

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to make provision about employment on board ships, hovercraft and aircraft. The exception for employment on board ships, aircraft or hovercraft is repealed. Minor or consequential amendments are made to the remainder of section 68. (*Regulation 27*)

Regulations 28 to 30 make minor or consequential amendments to Schedules 2, 3, 4 and 8 to the Act, the Equality (Disability, etc.) (Northern Ireland) Order 2000 (N.I. 2) and to other legislation.

The Regulations make provision for commencement on the day after they are made so far as enabling anything to be done for the purposes of preparing and bringing into operation on or after 1st October 2004 a code of practice under section 54A of the Act concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations. Otherwise, the Regulations come into operation on 1st October 2004. (*Regulation 1*)

The Regulations also include transitional provisions concerning the burden of proof in industrial tribunal proceedings and concerning the new eight-week period (in section 56 of the Act) for respondents to answer a questionnaire. (*Regulation 2*)

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from: Anti-Discrimination Division, Office of the First Minister and deputy First Minister, Room E4.05, Castle Buildings, Stormont, Belfast, BT4 3SR. A copy of the assessment has been placed in the library of the Northern Ireland Assembly.