

Draft Regulations laid before the Assembly under paragraph 3 of Schedule 2 to the European Communities Act 1972 for approval.

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2007 No.

SEX DISCRIMINATION

**The Sex Discrimination Order 1976 (Amendment) Regulations
(Northern Ireland) 2007**

Made - - - - 2007
Coming into operation - 2007

[A draft of these Regulations was laid before the Assembly in accordance with paragraph 3 of Schedule 2 to the European Communities Act 1972 and was approved by the Assembly.]

The Office of the First Minister and deputy First Minister, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to discrimination, in exercise of the powers conferred by that section makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 21st December 2007.

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

(3) In these Regulations, “the 1976 Order” means the Sex Discrimination (Northern Ireland) Order 1976(d).

Amendment of the 1976 Order

2. The 1976 Order shall be amended in accordance with regulations 3 to 20.

Indirect discrimination

3. In Article 3 (direct and indirect discrimination against women)—

(a) in paragraph (3)—

(i) at the end of sub-paragraph (a) omit “and”;

(a) See the European Communities (Designation) (No.3) Order 2002 (S.I. 2002/1819)
(b) 1972 c.68
(c) 1954 c.33 (N.I.)
(d) S.I. 1976/1042 (N.I.15)

- (ii) after sub-paragraph (a) insert—
 - “(aa) Articles 30 to 32, except in so far as they relate to an excluded matter, and”;
- (iii) in sub paragraph (b) after “any” insert “other”.

- (b) after paragraph (3) insert—

“(3A) In paragraph (3)(aa), the excluded matters are—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

Discrimination on the grounds of gender reassignment

- 4. In Article 4A (discrimination on the grounds of gender reassignment)(a)—

- (a) in paragraph (1)—

- (i) at the end of sub-paragraph (a) omit “or”;

- (ii) after sub-paragraph (a) insert—

- (i) “(aa) Article 30, 31 or 32, except in so far as it relates to an excluded matter.”; and

- (iii) in sub-paragraph (b) after “any” insert “other”.

- (b) after paragraph (1), insert—

“(1A) But for the purposes of discrimination in the provision of insurance under Article 30, A discriminates against B if—

- (a) he treats B less favourably than he treats or would treat other persons of the sex to which B’s gender has been reassigned and does so on the ground that B has undergone gender reassignment; or,
- (b) he treats B less favourably than he treats or would treat other persons of B’s sex and does so on the ground that B intends to undergo, or is undergoing gender reassignment.”.

- (c) after paragraph (5) insert—

“(6) In paragraph (1)(aa), the excluded matters are—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

Pregnancy and maternity

- 5.—(1) After Article 5A (discrimination on the ground of pregnancy or maternity leave)(b), insert—

“Discrimination on the ground of pregnancy or maternity: goods, facilities or services(c)

5B.—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if—

(a) Article 4A was inserted by regulation 2(2) of S.R. 1999 No.311

(b) Article 5A was inserted by regulation 5 of S.R. 2005 No.426

(c) Regulation 5 is subject to change following the ruling in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin). See paragraph 30 of the consultation document *Implementing EU Equality Obligation in Northern Ireland: The Gender Goods and Services Directive*

- (a) on the ground of the woman's pregnancy he treats her less favourably than he would treat her had she not become pregnant, or
 - (b) on the ground that she has given birth at any time in the period of [52] weeks ending on the day the discrimination occurs or begins he treats her less favourably than he would treat her had she not given birth in that period.
- (2) Paragraph (1) applies to Articles 30 to 32, except in so far as they relate to—
- (a) education (other than vocational training);
 - (b) the content of media and advertisements; or
 - (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.
- (2) In Article 2A, in sub-paragraph (b) of paragraph 7, for “or 5A” substitute “, 5A or 5B”.

Goods, facilities or services

6. In Article 30 (discrimination in provision of goods, facilities or services) after paragraph (2) insert—

“(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment(a)—

- (a) a person who seeks to obtain or use those goods, facilities or services, or
- (b) a person to whom he provides those goods, facilities or services.

(2B) The excluded matters are—

- (a) education (other than vocational training);
- (b) the content of media and advertisements;
- (c) the provision of goods, facilities or services at a place occupied or used (permanently or for the time being) for the purposes of an organised religion.”

Premises

7. In Article 31 (discrimination in disposal or management of premises)—

(a) after paragraph (1) insert—

“(1A) It is unlawful for such a person to subject to harassment another who applies for the premises.”.

(b) after paragraph (2) insert—

“(2A) It is unlawful for such a person to subject to harassment another who occupies the premises.”.

(c) after paragraph (3) insert—

“(4) Paragraphs (1A) and (2A) do not apply in relation to an application for or occupation of premises in so far as it relates to—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

(a) For any references to harassment for the purposes of these Regulations see paragraph 11 of the consultation document *Implementing EU Equality Obligations in Northern Ireland: The Gender Goods and Services Directive*. This explains that we intend to amend the existing harassment provisions so that harassment is not limited to conduct caused by the sex of the claimant, to follow the ruling in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin)

Consent for assignment or sub-letting

8. In Article 32 (discrimination: consent for assignment or sub-letting) in paragraph (1), for the words “to discriminate” to the end substitute—

“—

- (a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or
- (b) in relation to such a consent or licence, to subject to harassment a woman who is seeking to have the premises disposed to her.”.

Exception for small dwellings

9. In Article 33 (exception for small dwellings), in paragraph (1) for “Articles 30(1) and 31 do not apply”, substitute “Article 31 does not apply”.

Gender reassignment

10. In Article 30 (discrimination in the provision of goods, facilities and services), in paragraph (4) omit the words “to vocational training”.

Exception for voluntary bodies

11. In Article 35 (exception for voluntary bodies) after paragraph (4), insert—

“(5) Paragraphs (2) to (4) do not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the treatment complained of is a proportionate means of achieving a legitimate aim.”.

Further exceptions from Articles 30(1) and 31

12. In Article 36 (further exceptions from Articles 30(1) and 31)—

(a) in paragraph (1) leave out sub-paragraphs (a) to (c) and insert “any of the conditions in paragraphs (1A) to (1C) is satisfied”.

(b) after paragraph (1) insert—

“(1A) The condition is that the place is, or is part of—

- (a) a hospital, or
- (b) other establishment for persons requiring special care, supervision or attention,

and the restriction is a proportionate means of achieving a legitimate aim at the place.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

- (a) the facilities or services are such, or the persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or
- (b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.”

(c) after paragraph (2), insert—

“(2A) In their application to discrimination falling within Article 4A, paragraphs (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.”.

- (d) in paragraph (3), after “discrimination”, (in each place where it occurs) insert “or harassment”.

Relationships which have come to an end

13. In Article 36A (relationships which have come to an end)(a)—

- (a) in paragraph (2), omit the words after “unlawful”, and insert—

“under—

- (a) Articles 30 to 32 except in so far as they relate to an excluded matter, or
(b) any other provision of this Part, so far as the provision applies to vocational training.”.

- (b) after paragraph (4) insert—

“(5) In paragraph (2)(a) the excluded matters are—

- (a) education (other than vocational training);
(b) the content of media and advertisements; or
(c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

Charities

14. In Article 44 (charities), after paragraph (2) insert—

“(2A) But paragraph (1) does not apply to discrimination under Articles 3 or 4A in its application to Articles 30 to 32 unless the conferral of benefits upon persons of one sex only is a proportionate means of achieving a legitimate aim.”.

Sport

15. At the end of Article 45 (sport etc) (which becomes paragraph (1)) insert—

“(2) Paragraph (1) applies to discrimination under Articles 30 to 32 which falls within Article 4A only if the discrimination is necessary to secure—

- (a) fair competition, or
(b) the safety of competitors,

at such events.”.

Insurance

16.—(1) Article 46 (insurance) is amended as follows.

(2) The existing text becomes paragraph (1).

(3) After paragraph (1) insert—

“(2) Paragraph (1) does not apply to discrimination under Articles 30 to 32 except in so far as they relate to—

- (a) education (other than vocational training);
(b) the content of media and advertisements;
(c) the provision of goods, facilities or services or premises at any place occupied or used (permanently or for the time being) for the purposes of an organised religion;
or

(a) Article 36A was inserted by S.R. 2004 No. 172, regulation 3

- (d) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into on or before 21st December 2007.
- (3) Despite paragraph (2), the treatment is not unlawful under Article 30(1) if—
 - (a) in the case of discrimination under a contract entered into after 21st December 2007 which relates to differences in premiums and benefits, each of the following conditions is satisfied—
 - (i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;
 - (ii) the data referred to in head (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;
 - (iii) the differences in treatment are proportionate having regard to the data in head (i);
 - (iv) the differences do not result from costs related to pregnancy or the fact that a woman has given birth at any time in the period of [52] weeks ending on the day the treatment occurs or begins; or
 - (b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.”.

Communal accommodation

17.—(1) Article 47 (communal accommodation) is amended as follows.

(2) In paragraph (4)—

- (a) at the end of sub-paragraph (b) insert “; and” and
- (b) after that paragraph, insert—

“(c) in respect of discrimination falling within Article 4A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.”.

(3) In paragraph (8) for “Article 36(1)(c)” substitute “Article 36(1) and (1C)”.

Acts done under statutory authority

18. In Article 52A (acts done under statutory authority to be exempt from certain provisions of Part 4), in paragraph (2) for “except so far as they apply to vocational training” substitute “in so far as they relate to—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

Burden of proof

19. Article 66A (burden of proof: county court)(a), in paragraph (2), for sub-paragraph (a) substitute—

- “(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of—
 - (i) Articles 30, 31 or 32, or
 - (ii) any other provision of Part 4 so far as it applies to vocational training, or”.

(a) Article 66A was inserted by S.R. 2001 No. 282, regulations 1(2) and 5

Time for answering questions from aggrieved persons

20. In Article 74(2A) (help for aggrieved persons in obtaining information etc)(a)—

(a) In sub-paragraph (a), after head (i) insert—

“(ia) Article 30, 31 or 32, except in so far as it relates to an excluded matter.”;

(b) After paragraph (5) insert—

“(5A) In paragraph (2A)(a)(ia) the excluded matters are—

(a) education (other than vocational training);

(b) the content of media and advertising; or

(c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

Transitional provisions

21.—(1) The amendment made by regulation 18 (burden of proof) shall not apply in relation to proceedings where the act (within the meaning of the 1976 Order) complained of took place before the date on which these Regulation come into operation.

(2) The amendment made to Article 74 by regulation 19 (time for answering questions from aggrieved persons) shall not apply in the case of a question served on a respondent before the date on which these Regulations come into operation.

(3) In paragraph (2) “question” and “respondent” shall be construed in accordance with Article 74.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on
xxxxxxx 2007.



A senior officer of the
Office of the First Minister and deputy First Minister

(a) Article 74(2A) was inserted by S.R. 2005 No. 426, regulation 29(1) and (4)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement in Northern Ireland Council Directive 2004/113 EC of 13th December 2004 (“the Directive”) and come into operation on 21st December 2007. The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Directive necessitates amendment of the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”), in particular to reflect the provisions of the Directive which deal with discrimination, harassment and sexual harassment, the burden of proof in court proceedings, and the amendment of statutory provisions which would otherwise be contrary to the requirements of the Directive.

Regulation 3 applies the Directive-based definition of indirect discrimination to the areas of the 1976 Order with which the Directive is concerned, namely Article 30 (discrimination in the provision of goods, facilities or services), Article 31 (discrimination in disposal or management of premises) and Article 32 (discrimination: consent for assignment or sub-letting), except in so far as these provisions relate to an “excluded matter”. The excluded matters are: (a) education (other than vocational training); (b) the content of media and advertisements; and (c) the provision of goods, facilities and services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.

Regulation 4 extends protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services and premises and makes provision as to how that protection works in the context of insurance.

Regulation 5 extends protection from discrimination on the grounds of pregnancy and introduces protection from discrimination on grounds of maternity in the provision of goods, facilities, services and premises.

Regulations 6 to 9 make it unlawful for any person in the connection with the provision of goods, facilities, services or premises to subject another to harassment.

Regulation 10 clarifies that Article 30(1)(b) (discrimination in the provision of goods, facilities or services) can apply to discrimination on grounds of gender reassignment.

Regulations 11, 12, 14, 15 and 17 provide exceptions from the principle of equal treatment in the provision of single-sex goods, facilities, services and premises in the areas with which the Directive is concerned.

Regulation 13 provides that in the provision of goods, facilities, services and premises, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 16 amends Article 46 of the 1976 Order (insurance) to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women, in the areas with which the Directive is concerned.

Regulation 18 removes the exception for acts which are done under statutory authority in the areas with which the Directive is concerned.

Regulation 19 reverses the burden of proof in court proceedings relating to discrimination in the areas with which the Directive is concerned.

Regulation 20 ensures that respondents must reply to a claimant’s preliminary questions relating to discrimination or harassment in the areas with which the Directive is concerned, within eight weeks of being served with them.

Regulation 21 sets out transitional provisions.

An initial regulatory impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector has been conducted. See the consultation document *Implementing EU Equality Obligations in Northern Ireland: The Gender Goods and Services Directive*.