

TRANSPOSITION NOTE - RECAST DIRECTIVE 2006/54/EC
OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER

Directive		
Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).		
<p>Directive 2006/54/EC prohibits discrimination on grounds of sex in relation to access to employment, including promotion, and vocational training, working conditions, including pay, and occupational social security schemes. It consolidates and updates the Equal Pay Directive (75/117/EEC), the Equal Treatment Directive (76/207/EEC), the Directive on Equal Treatment in Occupational Social Security Schemes (86/378/EEC) and the Burden of Proof Directive (97/80/EC), in each case as subsequently amended. Those Directives, which are repealed by the Recast Directive with effect from 15 August 2009, have been implemented in Northern Ireland by provisions of the Equal Pay Act (Northern Ireland) 1970, the Sex Discrimination (Northern Ireland) Order 1976, the Social Security (Northern Ireland) Order 1989 and the Pensions (Northern Ireland) Order 1995.</p> <p>This table has been prepared by the Office of the First Minister and deputy First Minister. It sets out the objective of each Article of the Recast Directive and how the corresponding provision of the earlier Directives has been implemented in Northern Ireland. The Office of the First Minister and Deputy First Minister and the Department for Social Development are responsible for its implementation in Northern Ireland.</p>		
Articles	Objective	Implementation
Article 1 <i>[Art.1 Dir.76/207; Art.1 Dir.86/378; Art.1 Dir.97/80]</i>	Sets out the purpose of the Directive	No implementation required.

Article 2 (1)	Requires the following definitions to apply for the purposes of the Directive:	
[Art.2(2) Dir.76/207]	(a) 'direct discrimination' where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;	<p><i>Direct discrimination</i></p> <p>Article 3(2)(a) of the Sex Discrimination (Northern Ireland) Order 1976 (the Sex Discrimination Order): a person discriminates against a woman if on the ground of her sex he treats her less favourably than he treats or would treat a man</p> <p>Article 4(1) of the Sex Discrimination Order: Article 3 is to be read as applying equally to the treatment of men.</p> <p>Article 4A(1) of the Sex Discrimination Order: a person (A) discriminates against another person (B) if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.</p> <p>Article 4A(5) of the Sex Discrimination Order: for the purposes of Article 4A(1), a provision mentioned in that paragraph framed with reference to discrimination against women shall be treated as applying equally to the treatment of men.</p> <p>Article 7 of the Sex Discrimination Order: a comparison of the cases of persons of different sex under Article 3(2), and a comparison of the cases of persons required for the purposes of Article 4A, must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.</p>

<p>[Art.2(2) Dir.76/207; Art.2(2) Dir.97/80]</p>	<p>(b) 'indirect discrimination'</p> <p>where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;</p>	<p><i>Indirect discrimination</i></p> <p>Article 3(2)(b) of the Sex Discrimination Order: a person discriminates against a woman if he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but-</p> <p>(i) which puts or would put women at a particular disadvantage when compared with men, (ii) which puts her at that disadvantage, and (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.</p> <p>Articles 4(1) and 7 of the Sex Discrimination Order apply as above.</p>
<p>[Art.2(2) Dir.76/207]</p>	<p>(c) 'harassment'</p> <p>where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;</p>	<p><i>Harassment</i></p> <p>Article 6A(1)(a) and (c) of the Sex Discrimination Order: a person subjects a woman to harassment if -</p> <p>(a) he engages in unwanted conduct that is related to her sex or that of another person and has the purpose or effect-</p> <p>(i) of violating her dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her</p> <p>. . . or</p> <p>(c) on the ground of her rejection of or submission to unwanted conduct of that kind, he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.</p>

		<p>Article 6A(2) of the Sex Discrimination Order: conduct shall be regarded as having the effect mentioned in paragraph (1)(a) ... only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.</p> <p>Article 6A(3) of the Sex Discrimination Order: a person (A) subjects another person (B) to harassment if A, on the ground that B intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect - (i) of violating B's dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, or (b) A, on the ground of B's rejection of or submission to unwanted conduct of that kind, treats B less favourably than A would treat B had B not rejected, or submitted to, the conduct.</p> <p>Article 6A(6) of the Sex Discrimination Order: for the purposes of paragraphs (1) and (3), an employment provision of the Order framed with reference to harassment of women shall be treated as applying equally to the harassment of men.</p>
<p>[Art.2(2) Dir.76/207]</p>	<p>(d) 'sexual harassment'</p> <p>where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;</p>	<p><i>Sexual harassment</i></p> <p>Article 6A(1)(b) and (c) of the Sex Discrimination Order: a person subjects a woman to harassment if he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect -</p> <ul style="list-style-type: none"> (i) of violating her dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or <p>(c) on the ground of her rejection of or submission to unwanted conduct of that kind, he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.</p>

		<p>Article 6A(2) of the Sex Discrimination Order: conduct shall be regarded as having the effect mentioned in paragraph (1)(b) ... only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.</p>
	<p><i>(e) 'pay'</i> the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;</p>	<p><i>Northern Ireland legislation distinguishes between <u>contractual pay and benefits</u> and <u>non-contractual pay and benefits</u></i></p> <p>The Equal Pay Act (Northern Ireland) 1970 covers contractual terms of employment such as contractual remuneration and benefits.</p> <p>The Sex Discrimination Order covers the terms on which employment is offered, non-contractual remuneration and contractual non-monetary benefits.</p> <p>Article 8(6) of the Sex Discrimination Order excludes from the prohibition of sex discrimination in the employment field benefits consisting of the payment of money when the provision of those benefits is regulated by the contract of employment (because the Equal Pay Act (Northern Ireland) 1970 would apply).</p> <p>The Pensions (Northern Ireland) Order 1995 covers the terms of access to, and treatment of members of, occupational pension schemes.</p>

<p>[Art.2(1) Dir.86/378]</p>	<p>(f) "occupational social security schemes": schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.</p>	<p>Section 1 of the Pension Schemes (Northern Ireland) Act 1993 (as amended by Article 216 of the Pensions (Northern Ireland) Order 2005) defines an occupational pension scheme, in essence, as a scheme established by an employer (subsection (2)) for the purpose of providing benefits to persons in employments of a description (subsection (1)). Subsection (3) clarifies the position as regards workers who are office holders. It provides that if a person is in an employment of a description by reason of holding office and is entitled to remuneration for holding that office, the person responsible for paying the remuneration shall be taken to employ the office holder.</p> <p>Section 1 of the Pension Schemes (Northern Ireland) Act 1993 also provides that pension schemes of a prescribed description are included in the definition of occupational pension scheme. The Pension Schemes (Categories) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 413) prescribes schemes which are contributed to by participating employers. Participating employers are employers who enter into arrangements with a view to the provision of benefits under the scheme to people with service in the employment of that employer.</p> <p>The above provisions cover self-employed persons, for example, where a self-employed person sets up a company of which they are the only employee. The employing company may then become a participating employer of a pension scheme arrangement. However, in the UK the self-employed are more likely to obtain a personal pension. Personal pensions are excepted from the Directive (see Article 8).</p>
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<p>Article 2(2) [Art.2(3) and (4) and Art.2(7) Dir.76/207]</p>	<p>2. For the purposes of the Directive, discrimination includes:</p>	
	<p>(a) harassment and sexual harassment as well as any less favourable treatment based on a person's rejection of or submission to such conduct;</p>	<p>Harassment and sexual harassment as well as such less favourable treatment are defined in Article 6A of the Sex Discrimination Order (see implementation of Article 2(1)(c) and 2(1)(d) of the Directive above).</p>
	<p>(b) instruction to discriminate against persons on grounds of sex;</p>	<p>Under the Sex Discrimination Order instructions to discriminate on the grounds of sex are covered as follows:</p> <p>(1) Where an individual refuses to carry out instructions to discriminate and subsequently suffers a detriment he/she has a remedy under the victimisation provisions:</p> <p>Article 6 of the Sex Discrimination Order (discrimination by way of victimisation) provides that:</p> <p>A person ("the discriminator") discriminates against another person ("the person victimised") if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has-</p> <p>(a) - (b) ...or</p>

		<p>(c) otherwise done anything under or by reference to this Order or the Equal Pay Act (Northern Ireland) 1970 or Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989 or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995 in relation to the discriminator or any other person, or ...</p> <p>(2) Where an individual carries out instructions to discriminate then the provisions on vicarious liability in Article 42 of the Sex Discrimination Order mean that the victim is able to claim a remedy against the employer or principal who gave the instructions as well as the person who actually discriminated.</p>
	<p>(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.</p>	<p>Article 5A of the Sex Discrimination Order provides that:</p> <p>(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if-</p> <p>(a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably; or</p> <p>(b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, the person treats her less favourably.</p> <p>(2) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if, on the ground that Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave) has to be complied with in respect of the woman, he treats her less favourably.</p>
<p>Article 3 [Art.2(8) Dir.76/207]</p>	<p>Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in</p>	<p>Articles 48 and 49 of the Sex Discrimination Order allow some limited forms of positive action with regard to training and encouragement to take up opportunities for work.</p>

	practice between men and women in working life.	
Article 4 [Art.1 Dir.75/117]	<p>Prohibition of discrimination</p> <p>For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.</p> <p>In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.</p>	<i>Please see below</i>

	<p><i>For the same work or for work to which equal value is attributed</i></p>	<p><u>Contractual terms including pay:</u></p> <p>Section 1(1) of the Equal Pay Act (Northern Ireland) 1970: provides that if the terms of a contract under which a woman is employed at an establishment in Northern Ireland do not include an equality clause they shall be deemed to include one.</p> <p>Section 1(2) of the Equal Pay Act (Northern Ireland) 1970: provides that an equality clause relates to terms (whether concerned with pay or not) of a contract under which a woman is employed.</p> <p>The effect of the above sections is to deem the insertion of an equality clause into a woman’s contract of employment where she is employed on:</p> <p>Section 1(2)(a) of the Equal Pay Act (Northern Ireland) 1970: <i>like work</i> with a man in the same employment</p> <p>Section 1(5) of the Equal Pay Act (Northern Ireland) 1970: <i>like work</i> is where a woman is carrying out work of the same or a broadly similar nature to her comparator. Any differences should not be of practical importance in relation to terms and conditions of employment. In comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice.</p> <p>Section 1(2)(c) of the Equal Pay Act (Northern Ireland) 1970: <i>work of equal value</i> in terms of the demands made on her (for instance under such headings as effort, skill and decision) to that of a man in the same employment.</p> <p>Section 1(2)(b) of the Equal Pay Act (Northern Ireland) 1970: <i>work rated as equivalent</i> with that of a man in the same employment;</p>
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	<p><i>In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.</i></p>	<p>Section 1(6) of the Equal Pay Act (Northern Ireland) 1970: provides that a woman can only be regarded as employed on work rated as equivalent with that of any men if her job and their jobs have been given equal value in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating the jobs to be done by all or any of the employees in an undertaking or group of undertakings (i.e. a job evaluation study (JES)) or would have been given equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.</p> <p>Section 2A(2) and (3) of the Equal Pay Act (Northern Ireland) 1970: If a JES has determined that a woman and a man’s job are not of equal value then the tribunal must accept this unless it has reasonable grounds for suspecting that the evaluation in the study was made on system which discriminates on grounds of sex (i.e. if a difference or coincidence in values set up by that system under the same or different headings is not justifiable irrespective of the sex of the person on whom the demands are made) or is otherwise unsuitable to be relied upon.</p> <p><i>Non-contractual pay</i></p> <p>Article 8(2) of the Sex Discrimination Order read in conjunction with Article 8(6) of the Sex Discrimination Order protect women and men against direct and indirect discrimination in the way employers afford them access to non-contractual benefits consisting of the payment of money.</p> <p>Article 8(2) of the Sex Discrimination Order makes it unlawful for a person in the case of a woman employed by him at an establishment in Northern Ireland to discriminate against her (a) in the way he affords her access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or (b) by dismissing her, or <u>subjecting her to any other detriment.</u></p>
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	<p><i>With regard to all aspects and conditions of remuneration</i></p>	<p>Article 8(6) of the Sex Discrimination Order provides that Article 8(2) of the Sex Discrimination Order does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman's contract of employment (since this will fall under the Equal Pay Act (Northern Ireland) 1970).</p>
	<p><i>Direct discrimination on grounds of sex shall be eliminated</i></p>	<p><u>Contractual terms including pay:</u></p> <p>The Equal Pay Act (Northern Ireland) 1970 operates by deeming an equality clause into a woman's contract of employment as follows:</p> <p>Section 1(2) of the Equal Pay Act (Northern Ireland) 1970: provides that an equality clause modifies a term of a woman's contract which is less favourable to a similar term in a man's contract to make it no less favourable. Where a term benefiting a man is included in a man's contract but not in the woman's contract, an equality clause includes that term in the woman's contract</p> <p>Under section 1(3) of the Equal Pay Act (Northern Ireland) 1970, the equality clause does not operate in relation to a variation between the woman's contract and the man's contract if the employer can establish that the difference is genuinely due to a material factor which is not the difference of sex.</p> <p>But the equality clause will operate if the reason for the variation in the contract is not a genuine material factor or is tainted by direct discrimination.</p> <p><u>Non-contractual pay:</u></p> <p>Article 3(2)(a) and (3)(a) of the Sex Discrimination Order provide that a person discriminates against a woman if on the ground of her sex he treats her less favourably than he treats or would treat a man in any circumstances relevant to Part III of the Sex Discrimination Order (Employment).</p>

		<p>Discrimination is unlawful in the field of employment by virtue of the provisions in Part III of the Sex Discrimination Order (e.g. Article 8 in relation to employees and Article 12 in relation to contract workers - see also implementation of Article 14 of the Directive below).</p>
	<p><i>Indirect discrimination on grounds of sex shall be eliminated</i></p>	<p><u>Contractual terms including pay:</u></p> <p>The above analysis of the Equal Pay Act (Northern Ireland) 1970 and direct discrimination also applies to indirect discrimination. An employer who wishes to rely on the defence in section 1(3) of the Equal Pay Act (Northern Ireland) 1970 needs to show that any disparate impact on persons of one sex which amounts to indirect discrimination is objectively justified.</p> <p><u>Non-contractual pay</u></p> <p>Article 3(2)(b) of the Sex Discrimination Order provides that a person discriminates against a woman if he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but which puts or would put women at a particular disadvantage when compared with men, which puts her at that disadvantage, and which he cannot show to be a proportionate means of achieving a legitimate aim.</p> <p>Discrimination is unlawful in the field of employment by virtue of the provisions in Part III of the Sex Discrimination Order (e.g. Article 8 in relation to employees and Article 12 in relation to contract workers - see also interpretation of Article 14 of the Directive below).</p>

<p>Article 5 [Art.5(1) Dir.86/378]</p>	<p>Equal treatment in occupational social security schemes</p> <p>There shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:</p> <p>(a) the scope of such schemes and the conditions of access to them</p> <p>(b) the obligation to contribute and the calculation of contributions;</p> <p>(c) the calculations of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits</p>	<p>Article 62(1) of the Pensions (Northern Ireland) Order 1995 deems the insertion of an equal treatment rule into an occupational pension scheme.</p> <p>Article 62(2) of the Pensions (Northern Ireland) Order 1995: An equal treatment rule is a rule which relates to the terms on which persons become members of the scheme and the terms on which members of the scheme are treated.</p> <p>Article 62(5) of the Pensions (Northern Ireland) Order 1995: The ‘terms’ include terms, or the effects of the exercise of such terms, which confer a discretion on the trustees or managers of an occupational pension scheme which may be exercised</p> <p>(a) so as to effect the way in which persons become members, or the way in which members of the scheme are treated;</p> <p>(b) may be exercised, but for the equal treatment rule, in a way which is less favourable to a woman than a man.</p> <p>Following the <i>Barber</i> case law which established that pensions were pay for the purposes of Article 141 of the Treaty and therefore that an actual comparator was relevant, Article 62(3) and (6) of the Pensions (Northern Ireland) Order 1995 provides that an equal treatment rule has the effect that where</p> <p>(a) a woman is employed on like work with a man in the same employment,</p> <p>(b) a woman is employed on work rated as equivalent with that of a man in the same employment, or</p> <p>(c) a woman is employed on work which, not being work in relation to which subparagraph (a) or (b) applies, in terms of demands made on her (for instance under such headings as effort, skill and decision) of equal value to that of a man in the same employment, but (apart from the rule) any of the terms referred to in paragraph (2) is or becomes less favourable to the woman than it is to the man,</p> <p>the term shall be treated as so modified as not to be less favourable or the discretion shall not be capable of being exercised in a discretionary manner.</p>
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		<p>Article 63(4) of the Pensions (Northern Ireland) Order 1995 is construed as one with the Equal Pay Act (Northern Ireland) 1970 and its enforcement provisions apply with the necessary modifications (e.g. references to employers to be read as reference to trustees or managers of occupational pension schemes).</p>
<p>Article 6 [Art.3 Dir.86/378]</p>	<p>Personal Scope This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.</p>	<p>Article 62 of the Pensions (Northern Ireland) Order 1995 provides that an occupational pension scheme will be treated as including an equal treatment rule which regulates the manner in which members and prospective members are treated. For the definition of occupational pension scheme see the response to Article 2(1)(f) of the Directive. The rule contained in Article 62 of the Pensions (Northern Ireland) Order 1995 will cover each of the categories of person referred to in Article 6 of the Directive where these persons are members or are eligible for membership of an occupational pension scheme.</p>
<p>Article 7 [Art.4 Dir.86/378]</p>	<p>Material Scope This Chapter applies to: (a) occupational social security schemes which provide protection against the</p>	<p>The equal treatment rule in Article 62 of the Pensions (Northern Ireland) Order 1995 relates to occupational pension schemes. For the definition of occupational pension scheme see the response to Article 2(1)(f) of the Directive. That definition enables an employer to include all matters in Article 7 as benefits under their pension scheme. Public service pension schemes are a form of occupational pension scheme and as a result they must comply with the equal treatment rule in Article 62 of the Pensions (Northern</p>

	<p>following risks:</p> <ul style="list-style-type: none"> (i) sickness, (ii) invalidity, (iii) old age, including early retirement, (iv) industrial accidents and occupational diseases, (v) unemployment; <p>(b) occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances, if such benefits constitute a consideration paid by the employer to the worker by reason of the latter's employment.</p>	<p>Ireland) Order 1995.</p> <p>The term “public service pension” scheme is defined in section 1(1) of the Pension Schemes (Northern Ireland) Act 1993 (as amended by Article 216 of the Pensions (NI) Order 2005)</p>
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	<p>(2) This Chapter also applies to pension schemes for a particular category of worker such as that of public servants if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer. The fact that such a scheme forms part of a general statutory scheme shall be without prejudice in that respect.</p>	
<p>Article 8 [Art.2(2) Dir.86/378]</p>	<p>Exclusions from the material scope</p> <ul style="list-style-type: none"> (a) individual contracts for self-employed persons; (b) single-member schemes for self-employed persons; (c) insurance contracts to which the employer is not a party, in the case of workers; 	<p>The equal treatment rule in Article 62 of the Pensions (Northern Ireland) Order 1995 relates to occupational pension schemes and therefore does not bite upon personal pension schemes which are defined in section 1(5) of the Pension Schemes (Northern Ireland) Act 1993 (as amended by Article 216 of the Pensions (Northern Ireland) Order 2005). A personal pension may cover any of the arrangements in Article 8 (a) to (d) of the Directive.</p> <p>Article 64(2) of the Pensions (Northern Ireland) Order 1995 allows differences of treatment in the amount of pensions permitted where those differences are attributable to differences between men and women in the State retirement pensions they are entitled to receive.</p>

<p><i>Art.2(3)</i> <i>Dir.86/378]</i></p>	<p>(d) optional provisions of occupational social security schemes offered to participants individually to guarantee them: (i) either additional benefits, (ii) or a choice of date on which the normal benefits for self-employed persons will start, or a choice between several benefits;</p> <p>(e) occupational social security schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.</p> <p>2 This Chapter does not preclude an employer granting to persons who have already reached the retirement age for the purposes of granting a pension by virtue of an</p>	
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	<p>occupational social security scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.</p>	
<p>Article 9 [Art.6 Dir.86/378]</p>	<p>Examples of discrimination 1(a) determining the persons who may participate in an occupational social security scheme:</p>	<p>The equal treatment rule at Article 62 of the Pension (Northern Ireland) Order 1995 covers the examples at Article 9(a) to (k) of the Directive. Exceptions allowed at Article 9(i) to (j) of the Directive have been implemented in Article 64 of the Pensions (Northern Ireland) Order 1995.</p>

	<p>(b) fixing the compulsory or optional nature of participation in an occupational social security scheme;</p> <p>(c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;</p> <p>(d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;</p>	
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	<p>(e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;</p> <p>(f) fixing different retirement ages;</p> <p>(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;</p> <p>(h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in</p>	
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	<p>the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;</p> <p>(i) setting different levels for workers' contributions;</p> <p>(j) setting different levels for employers' contributions, except:</p> <p>(i) in the case of defined-contribution schemes if the aim is to equalise the amount of the final benefits or to make them more nearly</p>	
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	<p>equal for both sexes,</p> <p>(ii) in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;</p> <p>(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.</p>	
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<p>Article 10 <i>[Art.8 Dir.86/378]</i></p>	<p>Implementation as regards self-employed persons</p> <p>Member States shall take the necessary steps to ensure that the provisions of occupational social security schemes for self-employed persons contrary to the principle of equal treatment are revised with effect from 1 January 1993 at the latest or for Member States whose accession took place after that date, at the date that Directive 86/378/EEC became applicable in their territory.</p> <p>This Chapter shall not preclude rights and obligations relating to a period of membership of an occupational social security scheme for self-employed persons prior to revision of that scheme from remaining subject to</p>	<p>See above in relation to Article 2(1)(f) of the Directive.</p>
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	the provisions of the scheme in force during that period.	
Article 11 [Art.9 Dir.86/378]	<p>Possibility of deferral as regards self-employed persons</p> <p>As regards occupational social security schemes for self-employed persons, Member States may defer compulsory application of the principle of equal treatment with regard to:</p> <p>(a) determination of pensionable age for the granting of old-age or retirement pensions, and the possible implications for other benefits:</p> <p>(i) either until the date on which such equality is achieved in statutory schemes,</p> <p>(ii) or, at the latest, until such equality is prescribed by a directive;</p>	N/A

	<p>(b) survivors' pensions until Community law establishes the principle of equal treatment in statutory social security schemes in that regard;</p> <p>(c) the application of Article 9(1)(i) in relation to the use of actuarial calculation factors, until 1 January 1999 or for Member States whose accession took place after that date until the date that Directive 86/378/EEC became applicable in their territory.</p>	
<p>Article 12 [Art.2 Dir.96/97]</p>	<p>Retroactive effect</p> <p>Any measure implementing this Chapter, as regards workers, shall cover all benefits under occupational social security schemes derived from periods of employment subsequent to</p>	<p>Article 63 of the Pensions (Northern Ireland) Order 1995 provides that Article 62 of that Order, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.</p>

	<p>17 May 1990 and shall apply retroactively to that date, without prejudice to workers or those claiming under them who have, before that date, initiated legal proceedings or raised an equivalent claim under national law. In that event, the implementation measures shall apply retroactively to 8 April 1976 and shall cover all the benefits derived from periods of employment after that date. For Member States which acceded to the Community after 8 April 1976, and before 17 May 1990, that date shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.</p> <p>2 The second sentence of paragraph 1 shall not prevent national rules relating to time limits for bringing actions under</p>	<p>N/A</p>
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	<p>national law from being relied on against workers or those claiming under them who initiated legal proceedings or raised an equivalent claim under national law before 17 May 1990, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice.</p> <p>3 For Member States whose accession took place after 17 May 1990 and which were on 1 January 1994 Contracting Parties to the Agreement on the European Economic Area, the date of 17 May 1990 in the first sentence of paragraph 1 shall be replaced by 1 January 1994.</p>	
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	<p>4 For other Member States whose accession took place after 17 May 1990, the date of 17 May 1990 in paragraphs 1 and 2 shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.</p>	
<p>Article 13 [Art.9a Dir.86/378]</p>	<p>Flexible pensionable age Where men and women may claim a flexible pensionable age under the same conditions, this shall not be deemed to be incompatible with this Chapter.</p>	
<p>Article 14 (1) [Art.2(1) and 3(1) Dir.76/207; Art.2(1) Dir.97/80]</p>	<p>There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors including public bodies in relation to:</p>	<p>By virtue of section 1(1) of the Equal Pay Act (Northern Ireland) 1970, the Act applies to contracts under which a woman is employed at an establishment in Northern Ireland. It catches employment in the public and private sectors.</p> <p>Similarly Article 8 of the Sex Discrimination Order prohibits discrimination by employers against women employed by them at establishments in Northern Ireland whether in the private or public sector.</p> <p>By virtue of Articles 4A and 6A of the Sex Discrimination Order, the provisions set out below apply to discrimination and harassment respectively on the grounds of gender reassignment.</p>

	<p>(a) conditions for access to employment, to self employment or to occupation, including selection criteria and recruitment conditions , whatever the branch of activity and at all levels of the professional hierarchy including promotion;</p>	<p>Article 8(1) of the Sex Discrimination Order makes it unlawful for an employer to discriminate against a woman seeking employment -</p> <ul style="list-style-type: none"> (a) in the arrangements he makes for the purpose of determining who should be offered employment, (b) in the terms on which employment is offered to her, or (c) by refusing or deliberately omitting to offer her employment. <p>Article 8(2) of the Sex Discrimination Order makes it unlawful for an employer to discriminate against a woman whom he employs in the way he affords her access to opportunities for transfer or promotion, or by refusing or deliberately omitting to afford her access to them.</p> <p>Article 12(2) of the Sex Discrimination Order makes it unlawful for a principal to discriminate against a contract worker in the terms on which he allows her to do work, or by not allowing her to do it or continue to do it.</p> <p>Article 18(1) of the Sex Discrimination Order makes it unlawful for employment agencies to discriminate against women or men in the terms on which they offer to provide any of their services, in the way they provide any of these, or by refusing or deliberately omitting to provide any of these.</p> <p>Article 14(1)(a),(b) and (c) and (2) of the Sex Discrimination Order make it unlawful for a partnership or those proposing to form themselves into a partnership to discriminate on grounds of sex in the selection of partners, and in the terms on which partnership is offered.</p> <p>Article 16(1)(a) and (b) of the Sex Discrimination Order make it unlawful for authorities or bodies which can confer an authorisation or qualification which is needed for or facilitates engagement in a particular profession to discriminate in the terms on which they are prepared to confer authorisation, or by refusing or omitting to grant applications for authorisation.</p>
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		<p>Article 13B of the Sex Discrimination Order makes it unlawful for those responsible for appointing office holders to discriminate in the terms on which office holders are appointed, and in the opportunities afforded for promotion.</p> <p><i>It is unlawful to subject a woman to harassment including sexual harassment in the cases of:</i></p> <p>Article 8(2A)(b) of the Sex Discrimination Order: an employer vis-a-vis a woman who has applied to him for employment.</p> <p>Article 18(1A) of the Sex Discrimination Order: employment agencies vis-a-vis a woman who has requested the provision of their services.</p> <p>Article 14(2A) of the Sex Discrimination Order: a firm vis-a-vis an applicant for partnership.</p> <p>Article 16(1A) of the Sex Discrimination Order: a qualifying body vis-a-vis a person who applies for an authorisation or qualification.</p> <p>Article 13B(4) of the Sex Discrimination Order: a relevant person vis-a-vis a woman who is seeking or being considered for appointment to an office or post.</p>
	<p>(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.</p>	<p>Article 17(1) of the Sex Discrimination Order: providers of vocational training must not discriminate against a woman seeking vocational training.</p> <p>Article 17(1A) of the Sex Discrimination Order: providers of vocational training must not subject to harassment a woman who is seeking vocational training.</p> <p>Article 8(2) of the Sex Discrimination Order: employers must not discriminate in the way they afford employees access to training.</p>

		<p>Article 13B(3) of the Sex Discrimination Order: relevant persons must not discriminate in the way they afford office holders access to training.</p> <p>Article 24(2) and (3) of the Sex Discrimination Order: discrimination by a “responsible body” (as defined in that provision) in relation to an educational establishment is prohibited.</p> <p>Other provisions provide that discrimination should not occur in the way access to benefits, facilities or services is afforded (Article 12(2)(c) and Article 14(1)(d)(i) of the Sex Discrimination Order).</p> <p>Article 18(2) of the Sex Discrimination Order: employment agencies are prohibited from discriminating in providing guidance on careers and any other services related to employment</p>
	<p>(c) employment and working conditions, including dismissals....</p>	<p>Article 8(1)(b) of the Sex Discrimination Order makes it unlawful for an employer to discriminate against a woman in the terms on which he offers her employment.</p> <p>Article 11(3) of the Sex Discrimination Order further provides that such discrimination occurs where any of the terms offered would fall to be modified or additional terms would fall to be included by virtue of an equality clause if the woman accepted the employment. However discrimination has not occurred if section 1(3) of the Equal Pay Act (Northern Ireland) 1970 (genuine or material factor defence) would prevent an equality clause from operating.</p> <p>Article 11 of the Sex Discrimination Order on the relationship with the Equal Pay Act (Northern Ireland) 1970 provides:</p> <p>(1) ...</p> <p>(2) Section 1(1) of the Equal Pay Act (Northern Ireland) 1970 (as set out in paragraph (1)) does not apply in determining for the purposes of Article 8(1)(b) [of</p>

		<p>the Sex Discrimination Order] the terms on which employment is offered.</p> <p>(3) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene Article 8(1)(b) [of the Sex Discrimination Order].</p> <p>(4) Where a person offers a woman employment on certain terms, and paragraph (3) would apply but for the fact that, on her acceptance of the offer, section 1(3) of the Equal Pay Act (Northern Ireland) 1970 (as set out in paragraph (1)) would prevent the equality clause from operating, the offer shall be taken not to contravene Article 8(1)(b) [of the Sex Discrimination Order].</p> <p>(5) An act does not contravene Article 8(2) [of the Sex Discrimination Order] if—</p> <ul style="list-style-type: none"> (a) it contravenes a term modified or included by virtue of an equality clause, or (b) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1(3) of the Equal Pay Act (Northern Ireland) 1970. <p>Article 8(2)(a) and (b) of the Sex Discrimination Order make it unlawful for an employer to discriminate against an employee in the way it affords her access to benefits, facilities and services or by dismissing her or subjecting her to another detriment.</p> <p>Article 12(2)(c) and (d) of the Sex Discrimination Order: a principal must not discriminate against a contract worker in the way he affords/ refuses or omits to afford her access to benefits, facilities or services or by refusing/omitting to afford access to them or by subjecting her to another detriment.</p> <p>Article 14(1)(d) and (2) of the Sex Discrimination Order: a firm or those proposing to form themselves into a partnership must not discriminate against a partner in the way they afford/ refuse or omit to afford her access to benefits, facilities or services.</p>
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		<p><i>Harassment including sexual harassment</i></p> <p>Article 8(2A)(a) of the Sex Discrimination Order: it is unlawful for an employer to subject an employee to harassment.</p> <p>Article 12(2A) of the Sex Discrimination Order: it is unlawful for a principal to subject a contract worker to harassment.</p> <p>Article 14(2A) of the Sex Discrimination Order: it is unlawful for a partnership to subject a partner to harassment.</p> <p>Article 24(3) of the Sex Discrimination Order: it is unlawful for the governing body of an institution of further or higher education to subject a woman to harassment if that woman is a student at the institution or has applied for admission to the institution.</p>
	<p>... as well as pay as provided for in Article 141 of the Treaty.</p>	<p><i>Northern Ireland legislation distinguishes between <u>contractual pay and benefits</u> and <u>non-contractual pay and benefits</u> (see also the commentary on Article 4 of the Directive above)</i></p> <p>Section 1(2) of the Equal Pay Act (Northern Ireland) 1970 provides that an equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed. An equality clause will only alter contracts where a term of a comparator's contract is <i>more favourable</i> than a similar term in the claimant's contract or where the comparator's contract includes a term <i>benefiting him</i> which is not included in the claimant's contract.</p> <p>Article 8(1)(b) of the Sex Discrimination Order makes it unlawful for a person in relation to employment....to discriminate against a woman in the terms on which he offers her that employment.</p> <p>Article 8(2)(a) of the Sex Discrimination Order makes it unlawful for a person in the case of woman employed by him to discriminate against her in the way he affords her access to opportunities for promotion, transfer or training, or to <u>any other benefits</u>.</p>

		<p><u>facilities or services</u> or by refusing or deliberately omitting to afford her access to them.</p> <p>By virtue of Article 8(6) of the Sex Discrimination Order benefits consisting of the payment of money are not covered by Article 8(2) of the Sex Discrimination Order where the provision of those benefits is regulated by the woman's contract of employment.</p> <p>Pursuant to Article 11(5) of the Sex Discrimination Order, acts do not contravene Article 8(2) of the Sex Discrimination Order if they contravene terms modified or included by an equality clause or which would contravene such terms but for section 1(3) of the Equal Pay Act (Northern Ireland) 1970.</p>
	(d) Membership of, and involvement in, an organisation of workers or employers or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.	<p>Article 15 of the Sex Discrimination Order: it is unlawful for an organisation of workers or employers, or any other organisation whose members carry on a particular profession or trade, to discriminate against a woman applicant for membership in the terms on which it is prepared to admit her to membership, or by refusing or deliberately omitting to accept her application for membership. It is also prohibited from discriminating against female members in the way it affords them/refuses or deliberately omits to afford them access to benefits, facilities or services, or by depriving them of membership or subjecting them to any other detriment.</p> <p>Article 15(3A) of the Sex Discrimination Order: it is unlawful for such an organisation to subject a member or an applicant for membership to harassment.</p>
Article 14(2) [Art.2(6) Dir.76/207]	Member States may provide, as regards access to employment, including the training leading thereto, that a difference of treatment which is based on a characteristic	<p>Article 10(1) of the Sex Discrimination Order: disapplies the prohibition on discrimination where being a man is a Genuine Occupational Qualification (GOQ) as defined in Article 10(2) of the Sex Discrimination Order.</p> <p>Articles 10A and 10B of the Sex Discrimination Order: provide GOQ exceptions in relation to gender reassignment.</p> <p>Article 12(3) of the Sex Discrimination Order: provides a GOQ exception covering</p>

	<p>related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirements is proportionate.</p>	<p>contract workers.</p> <p>Article 14(3) of the Sex Discrimination Order: provides a GOQ exception for partnerships.</p> <p>Article 18(3) of the Sex Discrimination Order: disapplies the prohibition on discrimination by employment agencies where it would be lawful to refuse the employment to a woman.</p> <p>Articles 20, 21 and 84 and 85 of the Sex Discrimination Order: permit limited exceptions in relation to the prison officers, Ministers of religion and police respectively.</p> <p>Article 82(5) of the Sex Discrimination Order: permits an exception in relation to the combat effectiveness of the armed forces.</p>
<p>Article 15 [Art.2(7) Dir.76/207]</p>	<p>A woman on maternity leave shall be entitled after the end of her period of maternity leave to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.</p>	<p>Employment Rights (Northern Ireland) Order 1996: Articles 71(4) and 73(4) provides that an employee who exercises her rights to Ordinary Maternity Leave (OML) or Additional Maternity Leave (AML) is entitled to the benefit of terms and condition which would have applied if she had not been absent and is entitled to return from leave to a job of a prescribed kind.</p> <p>Maternity and Parental Leave etc Regulations (Northern Ireland) 1999 (SR No. 471): Regulations 9, 17 and 18 - An employee taking OML is entitled to benefit from all terms and conditions of employment which would have applied if she had not been absent except terms and conditions about remuneration. An employee taking AML is entitled to terms and conditions of employment in relation to notice of termination, redundancy compensation, disciplinary or grievance procedures and the employer’s implied obligation to her of trust and confidence. An employee who returns after a period of OML is entitled to return to the same job, an employee who returns from a period of AML is entitled to the same job or if that is not reasonably practicable to a job that is suitable and appropriate for her to do in the circumstances.</p>

<p>Article 16 [Art.2(7) Dir.76/207]</p>	<p>This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/ or adoption leave. Those member states which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence.</p>	<p>Employment Rights (Northern Ireland) Order 1996: Articles 107A, 107B and 107C and Article 70C(2)(ca)</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (SR No. 377) - Regulation 12: an employee taking paternity leave is entitled during the period of leave to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent (but not remuneration).</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002: Regulation 13(2): an employee returning to work after paternity leave is entitled to return from leave to the job in which he was employed before absence, or another job which is suitable for him and appropriate for him to do in the circumstances.</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 14: an employee's right to return is a right to return with seniority, pension rights and similar rights and on terms and conditions not less favourable than those which would have applied if he had not been absent.</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 19: an employee taking ordinary adoption leave is entitled during the period of leave to benefit of all the terms and conditions of employment which would have applied if he had not been absent (but not remuneration).</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 21: an employee taking additional adoption leave is entitled to the benefit of his employer's implied obligation of trust and confidence and terms and conditions relating to notice of termination, redundancy compensation, disciplinary or grievance procedures</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 26(1): an employee who returns to work after a period of ordinary adoption leave Is entitled to return from leave to the job in which he was employed before his absence.</p>
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		<p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002: Regulation 26(2): An employee who returns to work after a period of additional adoption leave is entitled to return to the job in which he was employed before his absence or if not reasonably practicable to another suitable and appropriate job.</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 27(1): an employee has a right to return with his seniority, pension rights and similar rights and on terms and conditions not less favourable than those which would have been applied to him if he had not been absent.</p> <p>Regulation 28 of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 and Article 70C of the Employment Rights (Northern Ireland) Order 1996: protection from detriment for taking paternity or adoption leave</p> <p>Paternity and Adoption Leave Regulations (Northern Ireland) 2002 - Regulation 29: automatic unfair dismissal, if dismissed for reasons connected with seeking to take paternity or adoption leave.</p>
<p>Article 17(1) [Art.2 Dir.75/117; Art.6(1) Dir.76/207; Art.10 Dir.86/378]</p>	<p>Member States shall ensure that after possible recourse to other competent authorities including where they deem is appropriate conciliation procedures, judicial procedures for the enforcement of obligations under the Directive are available to all persons who consider themselves wronged by failure to</p>	<p>Sections 2, 2A, 5, 6, 6A and 6B of the Equal Pay Act (Northern Ireland) 1970 (contractual terms) together with Articles 11 to 13 and Part VIII of the Sex Discrimination Order (non-contractual terms) provide procedures enabling individuals to enforce the Directive's obligations. The usual rules of procedure in tribunals and courts apply, including time limits.</p> <p>Section 2 Equal Pay Act (Northern Ireland) 1970 provides for a complaint to be made to an industrial tribunal in respect of any claim concerning the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages.</p> <p>Article 63 of the Sex Discrimination Order provides that a complaint by a person that another person has committed an act of discrimination or harassment against them which is unlawful may be presented to an employment tribunal.</p>

	<p>apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.</p>	<p>Section 6B of the Equal Pay Act (Northern Ireland) 1970 and Article 74 of the Sex Discrimination Order provide for a complainant to issue a questionnaire to their employer in order to obtain information related to their complaint.</p> <p>Articles 22A and 36A of the Sex Discrimination Order prohibit, in certain circumstances, discrimination and harassment which take place after a relevant relationship has ended.</p>
<p>Article 17(2) [Art.6(3) Dir.76/207]</p>	<p>Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf, or in support of the complainant, with his or her approval in any judicial and/or administrative procedures provided for the enforcement of obligations under this Directive.</p>	<p>Article 54 of the Sex Discrimination Order: This Article provides that the Equality Commission for Northern Ireland has the following duties under the Sex Discrimination Order:</p> <ul style="list-style-type: none"> • to work towards the elimination of discrimination; • to work towards the elimination of harassment that is contrary to any of the provisions of the Order; • to promote equality of opportunity between men and women generally; • to promote equality of opportunity for persons who intend to undergo, are undergoing or have undergone gender reassignment; and • to keep under review the working of the Sex Discrimination Order and the Equal Pay Act (Northern Ireland) 1970. <p>The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. On 1 October 1999 it took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council.</p> <p>Articles 57 to 61 of the Sex Discrimination Order gives the Equality Commission the power to conduct investigations and to obtain information for the purpose of conducting formal investigations.</p>

		<p>Article 75 of the Sex Discrimination Order enables the Commission give advice to women and men who feel they have been discriminated against in the areas covered by the sex discrimination or equal pay legislation. Help can be given to enable someone to take a complaint through the legal system or to negotiate a settlement. In some cases this can include legal assistance and/or representation to bring a case to Tribunal or Court.</p> <p>Under Article 72 of the Sex Discrimination Order the Commission has powers (in specified circumstances) to bring actions in its own name before an industrial tribunal or county court.</p>
<p>Article 17(3) [Art.6(4) Dir.76/207]</p>	<p>Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment</p>	<p>No implementation required. See commentary on Article 17(1) of the Directive (above).</p>
<p>Article 18 [Art.6(2) Dir.76/207]</p>	<p>Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on</p>	<p>Section 2 of the Equal Pay Act (Northern Ireland) 1970 (contractual terms) provides that a complainant may be awarded arrears of remuneration and/or damages as compensation and reparation in respect of a claim for breach of an equality clause.</p> <p>Article 65 of the Sex Discrimination Order (non-contractual terms) provides that a complainant may be awarded a declaratory order; and/or damages and/or a recommendation to the respondent, by way of compensation and reparation for injury suffered. The amount of damages that can be awarded is uncapped.</p>

	<p>grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.</p>	
<p>Article 19(1) [Arts.3 and 4 Dir.97/80]</p>	<p>Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish,</p>	<p><i>Contractual pay and benefits</i></p> <p>Section 1 of the Equal Pay Act (Northern Ireland) 1970: it is for the claimant to show that she has been doing like work, work rated as equivalent or work of equal value with a valid comparator and that there is a variation between her contract and her comparator's contract. If the claimant establishes these facts, there is a presumption of discrimination. The burden of proof then falls upon the employer to show that a genuine material factor defence applies under section 1(3) of the Equal Pay Act (Northern Ireland) 1970. If the claimant provides evidence of disparate impact amounting to indirect discrimination, it is for the employer to show that any indirect discrimination is objectively justified.</p>

	before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.	<p><i>Non-contractual pay</i></p> <p>Article 63A of the Sex Discrimination Order: Where a complaint is presented to an industrial tribunal, and the complainant proves facts from which a tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination or harassment which is unlawful, then the tribunal must uphold the complaint unless the respondent proves that he did not commit, or is not be treated as having committed, that act.</p>
Article 19(2)	Paragraph (1) shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.	No implementation required.
Article 19(3)	Member States need not apply paragraph (1) to proceedings in which it is for the Court or competent body to investigate the facts of the case.	No implementation required.

Article 19(4)	<p>Paragraphs (1), (2) and (3) shall also apply to:</p> <p>(a) the situations covered by Article 141 of the Treaty ...;</p> <p>(b) any civil or administrative procedure concerning the public or private sector which provides for a means of redress under national law pursuant to the measures referred to in (a) with the exception of out-of-court procedures of a voluntary nature or provided for in national law.</p>	See commentary on Article 19(1), (2) and (3) of the Directive (above)
Article 20(1) <i>[Art.8a Dir.76/207]</i>	Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without	<p>Section 73 of, and Schedule 8 to, the Northern Ireland Act 1998: Establishment of the Equality Commission for Northern Ireland to advance equality, promote equality of opportunity, encourage good relations and challenge discrimination through promotion, advice and enforcement.</p> <p>Article 54 of the Sex Discrimination Order sets out the duties of the Equality Commission for Northern Ireland in relation to sex discrimination legislation.</p>

	discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.	
Article 20(2)	Member States shall ensure that the competencies of these bodies include:	
	(a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 17(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination:	Article 75 of the Sex Discrimination Order enables the Equality Commission for Northern Ireland to give advice to women and men who feel they have been discriminated against in the areas covered by the sex discrimination or equal pay legislation. Help can be given to enable someone to take a complaint through the legal system or to negotiate a settlement. In some cases this can include legal assistance and/or representation to bring a case to an industrial tribunal or a county court.
	(b) conducting independent surveys concerning	Article 54(1)(c) of the Sex Discrimination Order places a duty on the Equality Commission for Northern Ireland to keep the working of the Sex Discrimination Order and the Equal Pay Act (Northern Ireland) 1970 under review.

	discrimination;	Article 55 of the Sex Discrimination Order gives the Equality Commission for Northern Ireland the power to undertake or assist (financially) any research or educational activities which appear to the Commission to be necessary for the purposes of its duties under the Sex Discrimination Order.
	(c) publishing independent reports and making recommendations on any issue relating to such discrimination;	Article 54(1)(c) of the Sex Discrimination Order places a duty on the Equality Commission for Northern Ireland to keep the working of the Sex Discrimination Order and the Equal Pay Act (Northern Ireland) 1970 under review and to submit proposals for amending these enactments.
	(d) at the appropriate level exchanging available information with corresponding European bodies such as any future EIGE	Article 55 of the Sex Discrimination Order gives the Equality Commission for Northern Ireland the power to undertake or assist (financially) any research or educational activities which appear to the Commission to be necessary for the purposes of its duties under the Sex Discrimination Order.
Article 21(1) [Art.8b Dir.776/207]	Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of	<p>The Gender Equality Strategy for Northern Ireland 2006-20016 identifies nine strategic objectives to promote gender equality between women and men. One of its nine objectives is “<i>to achieve better gender disaggregated data collection, analysis and dissemination on all aspects of women’s and men’s lives</i>”.</p> <p>The Fair Employment and Treatment (Northern Ireland) Order 1998 requires registered employers to collate and submit information detailing the composition of their workforce by community background, sex, occupational grouping, and whether they were employed for more or less than 16 hours per week.</p> <p>The Equality Commission for Northern Ireland concluded a public consultation on a draft</p>

	<p>practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.</p>	<p>Code of Practice on Equal Pay on 7 March 2008. The aim of the draft Code of Practice is to provide guidance to employers, advisers and employees on the scope of the law relating to equal pay, and on good practice in tackling the gender pay gap. The draft Code of Practice has still to be approved by the Office of the First Minister and Deputy First Minister.</p>
<p>Article 21(2)</p>	<p>Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These</p>	<p>Tradition and practice does not include promotion by government of collective agreements as a model preferable to others for employer-employee dialogue on equality or any other grounds. It would be inconsistent with that tradition and practice to do so now. However, the Labour Relations Agency (for Northern Ireland) provides advice on good employment practices and assistance with the development and implementation of employment policies and procedures. The Agency is also active in resolving disputes through its conciliation, mediation and arbitration services.</p> <p>In 2003, the Department for Employment and Learning introduced legislation which gave employees who are parents of children aged under six or of disabled children aged under 18 the right to apply to work flexibly. Their employers must give proper consideration to such requests. The scope of the law was extended to carers of adults with effect from 6 April 2007. There will be a consultation exercise in Northern Ireland on whether the law should be further extended to parents of children aged 16 and under.</p> <p>The Department for Employment and Learning has produced an employment rights booklet entitled “<i>Flexible Working – a guide for employers and employees</i>” (revised July 2008). This booklet offers practical guidance to employers and employees regarding the right for parents of young children and carers of certain adults to request flexible working arrangements, and the related duty of employers to consider such requests.</p>

	agreements shall respect the provisions of this Directive and the relevant national implementing measures.	
Article 21(3)	Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion.	<p>The Equality Commission for Northern Ireland has a statutory duty to promote equality of opportunity between men and women. Part of its work towards achieving this includes advising employers on how best to achieve equal treatment in the workplace.</p> <p>Section 75 of the Northern Ireland Act 1998 imposes a statutory duty on public authorities to have due regard to the need to promote equality of opportunity between different categories of persons (including between men and women) in the way they exercise their functions. The Equality Commission for Northern Ireland has a duty to keep under review the effectiveness of the duties imposed by section 75 and to offer advice to public authorities and others in connection with those duties.</p>
Article 21(4)	To this end, employers shall be encouraged to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.	The Office of the First Minister and deputy First Minister is supportive of employers who provide appropriate information for employees (and their representatives) on equal treatment.

<p>Article 22 [Art.8c Dir.76/207]</p>	<p>Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of sex with a view to promoting the principle of equal treatment.</p>	<p>The Office of the First Minister and deputy First Minister consults the Equality Commission for Northern Ireland on issues related to combating sex discrimination.</p>
<p>Article 23</p>	<p>Member States shall take all necessary measures to ensure that:</p>	
<p>[Arts.3 and 6 Dir.75/117; Art.3(2)(a) Dir.76/207]</p>	<p>(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;</p>	<p>No laws or administrative provisions contrary to the Directive have been identified.</p>

<p>[Art.4 Dir.75/117; Art.3(2)(b) Dir.76/207; Art.7a Dir.86/378]</p>	<p>(b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations or any other arrangements shall be, or may be, declared null and void or are amended;</p>	<p>Article 77 of the Sex Discrimination Order renders void unlawfully discriminatory terms of contracts and renders unenforceable terms excluding the provisions of the Sex Discrimination Order or the Equal Pay Act (Northern Ireland) 1970.</p> <p>Article 77A of the Sex Discrimination Order applies section 77 of the Sex Discrimination Order to collective agreements and rules of undertakings.</p>
<p>[Art.7b Dir.86/378]</p>	<p>(c) occupational social security schemes containing such provisions may not be approved or extended by administrative measures.</p>	<p>See response to Article 5 of the Directive. The equal treatment rule contained in Article 62 of the Pensions (Northern Ireland) Order 1995 ensures that any term shall be treated as modified so as not to be less favourable and any discretion afforded to the trustees of an occupational pension scheme shall not be capable of being exercised in a discriminatory manner.</p>
<p>Article 24 [Art.5 Dir.75/117;</p>	<p>Member States shall introduce into their national legal systems</p>	<p>Article 6(1) of the Sex Discrimination Order (victimisation) provides that a person discriminates against another person if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that</p>

<p><i>Art. 7</i> <i>Dir. 76/207;</i> <i>Art. 11</i> <i>Dir. 86/378]</i></p>	<p>such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.</p>	<p>the person victimised has brought proceedings against the discriminator under the Sex Discrimination Order, the Equal Pay Act (Northern Ireland) 1970, Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989 or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995, or given evidence or information in connection with such proceedings, or otherwise done anything by reference to those enactments, or alleged that the discriminator has contravened those provisions.</p>
<p>Article 25 <i>[Art. 8d</i> <i>Dir. 76/207]</i></p>	<p>Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.</p>	<p>Article 65 of the Sex Discrimination Order provides for the remedies for complaints in industrial tribunal proceedings which include payment of compensation.</p> <p>Article 66 of the Sex Discrimination Order makes provision for remedies in county court proceedings. The usual remedies for claims in tort apply, including the payment of compensation.</p> <p>Section 2 of the Equal Pay Act (Northern Ireland) 1970 makes provision for remedies in industrial tribunal proceedings by way of arrears of remuneration or damages.</p>

<p>Article 26 [Art.2(5) Dir.76/207]</p>	<p>Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.</p>	<p>The Office of the First Minister and Deputy First Minister encourages employers and those responsible for vocational training to take measures to prevent discrimination by providing an explanation of the law in this area and best practice advice and guidance via the Equality Commission for Northern Ireland.</p>
<p>Article 27(1) [Art.8e(1) Dir.76/207; Art.4(2) Dir.97/80]</p>	<p>Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in the Directive.</p>	<p>No implementation required.</p>
<p>Article 27(2) [Art.8e(2) Dir.76/207; Art.6]</p>	<p>Implementation of this Directive shall under no circumstances be sufficient grounds for a</p>	<p>No implementation required.</p>

<i>Dir.97/80]</i>	reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.	
Article 29 <i>[Art.1(1)(a) Dir.76/207]</i>	Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.	<p>Section 75 of the Northern Ireland Act 1998 places a duty on public authorities (including all government departments) to have due regard to the need to promote equality of opportunity between different categories of persons (including between men and women generally) in the way they exercise their functions. Equality impact assessment forms part of the screening process for all new legislation and can equally be applied to policy, plans and programmes at the earliest stage of the decision-making process.</p> <p>Tackling gender inequality is one of priorities within the Northern Ireland Executive's first Programme for Government (covering the period 2008 – 2011). The Gender Equality Strategy for Northern Ireland 2006-2016 provides an overarching strategic policy framework within which departments, their agencies and other relevant statutory authorities channel their existing actions, and initiate new actions, aimed at tackling gender inequalities and promoting gender equality across government's major policy areas</p>

		for the benefit of women and men generally. The Strategy is supported by detailed action plans, one for women and one for men. Two tools are being used to implement the Gender Equality Strategy (1) gender mainstreaming, and (2) gender action measures (which include positive action as provided for within the Sex Discrimination (Northern Ireland) Order 1976).
<p>Article 30 <i>[Art.7 Dir.75/117; Art.8 Dir.76/207; Art.5 Dir.97/80]</i></p>	<p>Dissemination of information Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.</p>	<p>The Office of the First Minister and Deputy First Minister disseminates information about discrimination law through its website. The Equality Commission for Northern Ireland also routinely publishes information and guidance about discrimination law on its website.</p>