

STATUTORY INSTRUMENTS

1976 No. 1042

Sex Discrimination (Northern Ireland) Order 1976

PART VII **N.I.**

EQUAL OPPORTUNITIES COMMISSION FOR NORTHERN IRELAND

General

Establishment and duties of Commission **N.I.**

54.—(1) [^{F1}The Commission shall have the following duties]

(a) to work towards the elimination of discrimination,

[^{F2}(aa) to work towards the elimination of harassment that is contrary to any of the provisions of this Order,]

(b) to promote equality of opportunity between men and women generally,^{F3} . . .

[^{F3}(bb) to promote equality of opportunity, in the field of employment and of vocational training, for persons who intend to undergo, are undergoing or have undergone gender reassignment, and]

(c) to keep under review the working of this Order and the Equal Pay Act and, when the Commission is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending them.

Paras. (2)#(4) rep. by 1998 c. 47

F1 1998 c. 47

F2 SR 2005/426

F3 SR 1999/311

Research and education **N.I.**

55.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of Article 54(1).

(2) The Commission may make charges for educational or other facilities or services made available by it.

Review of discriminatory provisions in health and safety legislation **N.I.**

56.—(1) Without prejudice to the generality of Article 54(1), the Commission, in pursuance of the duties imposed by sub-paragraphs (a) and (b) of that paragraph—

(a) shall keep under review the relevant statutory provisions in so far as they require men and women to be treated differently, and

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(b) if so required by the relevant department, make to it a report on any matter specified by it which is connected with those duties and concerns the relevant statutory provisions. Any such report shall be made within the time specified by the relevant department, and the relevant department shall cause the report to be published.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the relevant department proposals for amending the relevant statutory provisions.

(3) The Commission shall carry out its duties in relation to the relevant statutory provisions in consultation with the relevant department.

(4) In this Article “the relevant statutory provisions” means the provisions mentioned in Schedule 4 or, in relation to the relevant department, means such of those provisions as relates to matters falling within the scope of the functions of that department; and “the relevant department” means any government department on or for purposes of which functions are conferred by any of those provisions.

[^{F4}Codes of practice

F4 1988 NI 13

Codes of practice **N.I.**

56A.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for^{F5} one or more] of the following purposes, namely—

- (a) the elimination of discrimination in the field of employment;
 - [the elimination in that field of harassment that is contrary to the provisions of this Order;]
- ^{F6}(aa)
- (b) the promotion of equality of opportunity in that field between men and women.
 - [the promotion of equality of opportunity in that field for persons who intend to undergo, ^{F5}(c) are undergoing or have undergone gender reassignment.]

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this Article may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Order.

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; and
 - (b) such other organisations or bodies,
- as appear to the Commission to be appropriate.

(5) If the Commission determines to proceed with the draft, it shall transmit the draft to the Department of Economic Development which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Department of Economic Development may by order appoint.

(8) The Commission may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code, and paragraphs (3) to (7) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(9) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings, but in any proceedings under this Order^[F7] or the Equal Pay Act] before an industrial tribunal—

- (a) any code of practice issued under this Article shall be admissible in evidence; and
- (b) any provision of the code which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.]

F5	SR 1999/311
F6	SR 2005/426
F7	1993 NI 11

Investigations

Power to conduct formal investigations **N.I.**

57.—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under Article 54(1), the Commission may if it thinks fit, and shall if required by the Department of Manpower Services, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the head of the Department of Manpower Services, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

Terms of reference **N.I.**

58.—(1) The Commission shall not embark on a formal investigation unless the requirements of this Article have been complied with.

(2) Terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

^[F8](3A) Where the terms of reference of the investigation confine it to the activities of persons named in them and the Commission in the course of the investigation proposes to investigate any

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act made unlawful by this Order which they believe that a person so named may have done, the Commission shall—

- (a) inform that person of the Commission's belief and of the Commission's proposal to investigate the act in question; and
- (b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit);

and a person so named who avails himself of an opportunity under this paragraph of making oral representations may be represented—

- (i) by counsel or a solicitor; or
- (ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.]

(4) The Commission or, if the Commission was required by the Department of Manpower Services to conduct the investigation, the Department after consulting the Commission, may from time to time revise the terms of reference; and paragraphs (1)^{F8}, (3) and (3A)] shall apply to the revised investigation and terms of reference as they applied to the original.

F8 1988 NI 13

Power to obtain information **N.I.**

59.—(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner,—

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;
 - (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.
- (2) Except as provided by Article 69, a notice shall be served under paragraph (1) only where—
- (a) service of the notice was authorised by an order made by the Department of Manpower Services, or
 - (b) the terms of reference of the investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—
 - (i) unlawful^{F9} acts of discrimination or harassment],
 - (ii) contraventions of Article 38,
 - (iii) contraventions of Article 39, 40 or 41, and
 - (iv) acts in breach of a term modified or included by virtue of an equality clause, and confine the investigation to those acts.
- (3) A notice under paragraph (1) shall not require a person—
- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court, or
 - (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and if he fails without reasonable excuse to comply with any such order he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.

(5) A person commits an offence if he—

- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this Article to produce, or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,

and shall be liable on summary conviction to a fine not exceeding^{F10} level 5 on the standard scale].

(6) Proceedings for an offence under paragraph (5) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted—

- (a) against any person at any place at which he has an office or other place of business;
- (b) against an individual at any place where he resides, or at which he is for the time being.

F9 SR 2005/426

F10 1984 NI 3

Recommendations and reports on formal investigations **N.I.**

60.—(1) If in the light of any of the Commission's findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion,—

- (a) to make to any persons, with a view to promoting equality of opportunity between men and women who are affected by any of their activities, recommendations for changes in their policies or procedures, or as to any other matters, or
- (b) to make to the Department of Manpower Services any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Department of Manpower Services—

- (a) the Commission shall deliver the report to the Department, and
- (b) the Department shall cause the report to be published,

and unless required by the Department the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Department of Manpower Services, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).

(5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission—

- (a) to inspect the report during ordinary office hours and take copies of all or any part of the report, or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

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(6) The Commission may if it thinks fit determine that the right conferred by paragraph (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

Restriction on disclosure of information **N.I.**

61.—(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except—

- (a) on the order of any court, or
- (b) with the informant's consent, or
- (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates, or
- (d) in a report of the investigation published by the Commission or made available for inspection under Article 60(5), or
- (e) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons, or
- (f) for the purpose of any civil proceedings under this Order to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) commits an offence and shall be liable on summary conviction to a fine not exceeding^{F11} level 5 on the standard scale].

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private affairs of any individual or business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

F11 1984 NI 3

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