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STATUTORY INSTRUMENTS

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**1976 No. 1042**

**Sex Discrimination (Northern Ireland) Order 1976**

PART IX

SUPPLEMENTAL

**[<sup>F1</sup>Collective agreements and rules of undertakings**

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

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation, authority or body to which paragraph (2) applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

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

(2) This paragraph applies to—

- (a) any organisation of workers;
- (b) any organisation of employers;
- (c) any organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;
- (d) any authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade.

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

- (a) it provides for the inclusion in any contract of employment of any term which by virtue of an equality clause would fall either to be modified or to be supplemented by an additional term; and
- (b) that clause would not be prevented from operating in relation to that contract by section 1(3) of the Equal Pay Act (Northern Ireland) 1970 (material factors justifying discrimination).

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

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*Status: Point in time view as at 01/12/2006.*

*Changes to legislation: Sex Discrimination (Northern Ireland) Order 1976, Section 77A is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

<sup>F2</sup>(4A) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph (1) of Article 77 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of sub-paragraph (c) of that paragraph, that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him; and
  - (ii) the act would be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer;
  - (ii) an organisation of employers of which an employer is a member; or
  - (iii) an association of such organisations of one of which an employer is a member; or
- (b) a rule made by an employer,

paragraph (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(4C) In the case of a complaint about a rule made by an organisation, authority or body to which paragraph (2) applies, paragraph (4A) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body;
- (b) on whom the organisation, authority or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

(4D) When an industrial tribunal finds that a complaint presented to it under paragraph (4A) is well-founded the tribunal shall make an order declaring that the term or rule is void.]

(5) The avoidance by virtue of Article 77 of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights except in so far as they enable any person to require another person to be treated less favourably than himself, namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

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

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

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

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**F2** 1993 NI 11

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