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## STATUTORY INSTRUMENTS

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# 1976 No. 1042

## Sex Discrimination (Northern Ireland) Order 1976

### PART II

#### DISCRIMINATION TO WHICH ORDER APPLIES

##### [<sup>F1</sup>Direct and indirect discrimination against women

3.—(1) In any circumstances relevant for the purposes of any provision of this Order, other than a provision to which paragraph (2) applies, a person discriminates against a woman if—

- (a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or
- (b) he applies to her a requirement or condition which he applies or would apply equally to a man but—
  - (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it,
  - (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and
  - (iii) which is to her detriment because she cannot comply with it.

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

- (a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or
  - [ he applies to her a provision criterion or practice which he applies or would apply equally
  - <sup>F2</sup>(b) to a man, but—
    - (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.]

(3) Paragraph (2) applies to—

- (a) any provision of Part III, and
- (b) any provision of Part IV, so far as it applies to vocational training.

*Para. (4) rep. by 2004 c. 33]*

**F1** SR 2001/282

**F2** SR 2005/426

*Status: Point in time view as at 01/12/2006. This version of this part contains provisions that are not valid for this point in time.*

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## **Sex discrimination against men**

4.—(1) Article 3 and the provisions of Parts III and IV relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

(2) In the application of paragraph (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

### **[<sup>F3</sup>Discrimination on the grounds of gender reassignment**

4A.—(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of—

- (a) any provision of Part III; or
- (b) any provision of Part IV, so far as it applies to vocational training, 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.

(2) Paragraph (3) applies to arrangements made by any person in relation to another's absence from work or from vocational training.

(3) For the purposes of paragraph (1), B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment—

- (a) he is treated less favourably than he would be if the absence was due to sickness or injury; or
- (b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.

(4) In paragraphs (2) and (3) "arrangements" includes terms, conditions or arrangements on which employment or vocational training is offered.

(5) For the purposes of paragraph (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 with such modifications as are requisite.]

**F3** SR 1999/311

### **[<sup>F4</sup>Discrimination against married persons and civil partners in employment field**

5.—(1) In any circumstances relevant for the purposes of any provision of Part 3, a person discriminates against a person ("A") who fulfils the condition in paragraph (2) if—

- (a) on the ground of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition, or
- (b) he applies to A a provision, criterion or practice which he applies or would apply equally to a person who does not fulfil the condition, but—
  - (i) which puts or would put persons fulfilling the condition at a particular disadvantage when compared with persons not fulfilling the condition, and
  - (ii) which puts A at that disadvantage, and
  - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.

(2) The condition is that the person is—

- (a) married, or
- (b) a civil partner.

(3) For the purposes of paragraph (1), a provision of Part 3 framed with reference to discrimination against women is to be treated as applying equally to the treatment of men, and for that purpose has effect with such modifications as are requisite.]

F4 2004 c.33

#### [<sup>F5</sup>Discrimination on the ground of pregnancy or maternity leave

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

- (a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably than he would treat her had she not become pregnant; or
- (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 than he would treat her if she were neither exercising nor seeking to exercise, and had neither exercised nor sought to exercise, such a right.

(2) In any circumstances relevant for the purposes of a provision to which this paragraph 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 than he would treat her if that provision did not have to be complied with in respect of her.

(3) For the purposes of paragraph (1)—

- (a) in relation to a woman a protected period begins each time she becomes pregnant, and the protected period associated with any particular pregnancy of hers ends in accordance with the following rules—
  - (i) if she is entitled to ordinary but not additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of ordinary maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;
  - (ii) if she is entitled to ordinary and additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of additional maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;
  - (iii) if she is not entitled to ordinary maternity leave in respect of the pregnancy, the protected period ends at the end of the 2 weeks beginning with the end of the pregnancy;
- (b) where a person's treatment of a woman is on grounds of illness suffered by the woman as a consequence of a pregnancy of hers, that treatment is to be taken to be on the ground of the pregnancy;
- (c) a “statutory right to maternity leave” means a right conferred by Article 103(1) or 105(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary and additional maternity leave).

(4) In paragraph 3 “ordinary maternity leave” and “additional maternity leave” shall be construed in accordance with Articles 103 and 105 of the Employment Rights (Northern Ireland) Order 1996.

(5) Paragraphs (1) and (2) apply to—

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- (a) any provision of Part III, and
- (b) any provision of Part IV, so far as it applies to vocational training.]

F5 SR 2005/426

VALID FROM 06/04/2008

**[<sup>F6</sup>Discrimination on the ground of pregnancy or maternity: goods, facilities, services or premises**

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

- (a) on the ground of her pregnancy, or
  - (b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.
- (2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—
- (a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or
  - (b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.
- (3) Paragraph (2) does not apply if—
- (a) it is reasonable for P to think as mentioned in paragraph (2)(a) or (b), and
  - (b) P applies an equivalent policy.
- (4) An equivalent policy is—
- (a) for the purposes of paragraph (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;
  - (b) for the purposes of paragraph (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.
- (5) Paragraph (1) applies to Articles 30 to 32, except in so far as they relate to an excluded matter.]

F6 Art. 5B inserted (6.4.2008) by [Sex Discrimination \(Amendment of Legislation\) Regulations 2008 \(S.I. 2008/963\)](#), regs. 1(1), 2(2), [Sch. 2 para. 3\(1\)](#)

**Discrimination by way of victimisation**

**6.—**(1) A person ( “the discriminator”) discriminates against another person ( “the person victimised”) in any circumstances relevant for the purposes of any provision of this Order 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—

- (a) brought proceedings against the discriminator or any other person under this Order or the Equal Pay Act<sup>[F7]</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995], or
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Order or the Equal Pay Act<sup>[F7]</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995], or
- (c) otherwise done anything under or by reference to this Order or the Equal Pay Act<sup>[F7]</sup> or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995] in relation to the discriminator or any other person, or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Order or give rise to a claim under the Equal Pay Act<sup>[F7]</sup> or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995],

or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done, or intends to do, any of them.

(2) Paragraph (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

(3) For the purposes of paragraph (1), a provision of Part III or IV framed with reference to discrimination against women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are requisite.

**F7** 1995 NI 22

## **[F8] Harassment, including sexual harassment**

**6A.**—(1) For the purposes of this Order, a person subjects a woman to harassment if—

- (a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect—
  - (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,
- (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect—
  - (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
- (c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

(2) Conduct shall be regarded as having the effect mentioned in paragraph (1) (a) or (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.

(3) For the purposes of this Order, a person (“A”) subjects another person (“B”) to harassment if—

- (a) 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

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(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for B;

(b) A, on the ground of B's rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a), treats B less favourably than A would treat B had B not rejected, or submitted to, the conduct.

(4) Conduct shall be regarded as having the effect mentioned in paragraph (3)(a) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

(5) Paragraph (1) is to be read as applying equally to the harassment of men, and for that purpose shall have effect with such modifications as are requisite.

(6) For the purposes of paragraphs (1) and (3), a provision of Part III or IV framed with reference to harassment of women shall be treated as applying equally to the harassment of men and for that purpose will have effect with such modifications as are requisite.]

**F8** SR 2005/426

#### [<sup>F9</sup>**Basis of comparison**

7. Each of the following comparisons, that is—

- (a) a comparison of the cases of persons of different sex under Article 3(1) or (2),
- (b) a comparison of the cases of persons required for the purposes of Article 4A, and
- (c) a comparison of the cases of persons who do and who do not fulfil the condition in Article 5(2),

must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.]

**F9** 2004 c.33

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