

STATUTORY INSTRUMENTS

1976 No. 1042

Sex Discrimination (Northern Ireland) Order 1976

PART II

DISCRIMINATION TO WHICH ORDER APPLIES

Modifications etc. (not altering text)

C1 Pt. 2 applied (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), Sch. 4 para. 4(1)(2)(a); S.I. 2013/1682, art. 3(k)

[^{F1}Direct discrimination on the ground of sex

3. In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another (“B”) if, on the ground of sex, A treats B less favourably than A treats or would treat another person.]

F1 Art. 3 substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **4(1)**

[^{F2}Indirect discrimination on the ground of sex

3A.—(1) In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another person (“B”) if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s sex.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s sex, if—

- (a) A applies, or would apply, it to persons of a different sex,
- (b) it puts, or would put, persons of the same sex as B at a particular disadvantage when compared with persons of a different sex,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.]

F2 Art. 3A inserted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **4(2)**

Status: Point in time view as at 02/05/2016.

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Sex discrimination against men

4.—(1) ^{F3}...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) [^{F4}and Articles 3 and 3A,] no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

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| F3 | Words in art. 4(1) omitted (2.5.2016) by virtue of The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191) , regs. 1(1), 5(a) |
| F4 | Words in art. 4(2) inserted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191) , regs. 1(1), 5(b) |

[^{F5}[^{F6}Direct 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; ^{F7} . . .
 - [Article 30, 31 or 32, except in so far as it relates to an excluded matter, or]
- ^{F8}(aa)
- (b) any provision of Part IV, so far as it applies to vocational training, if [^{F9}A] treats B less favourably than [^{F9}A] 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) [^{F10}B] is treated less favourably than [^{F10}B] would be if the absence was due to sickness or injury; or
- (b) [^{F10}B] is treated less favourably than [^{F10}B] would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for [^{F11}B] 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.]

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| F5 | SR 1999/311 |
| F6 | Words in art. 4A heading substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191) , regs. 1(1), 6(2) |
| F7 | Word in art. 4A(1)(a) omitted (6.4.2008) by virtue of Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963) , regs. 1(1), 2(2), Sch. 2 para. 2(a) |
| F8 | Art. 4A(1)(aa) inserted (6.4.2008) by Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963) , regs. 1(1), 2(2), Sch. 2 para. 2(b) |
| F9 | Word in art. 4A(1)(b) substituted (2.5.2016) by The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/191) , regs. 1(1), 6(3) |

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- F10** Word in art. 4A(3) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **6(4)(a)**
- F11** Word in art. 4A(3)(b) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **6(4)(b)**

[^{F12}Indirect discrimination on the ground of gender reassignment

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

- (a) any provision of Part 3; or
- (b) any provision of Part 4, so far as it applies to vocational training,

if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s gender reassignment.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s gender reassignment if—

- (a) A applies, or would apply, it to persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (b) it puts, or would put, persons who intend to undergo, are undergoing or have undergone gender reassignment at a particular disadvantage when compared with persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (c) it puts, or would put, B at that disadvantage; and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.]

- F12** [Art. 4B](#) inserted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), 7

[^{F13}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 [^{F14}, or would put,] 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.]

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F13 2004 c.33

F14 Words in art. 5(1)(b)(ii) inserted (31.3.2011) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/156\)](#), [reg. 4](#)

[^{F15}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 ^{F16} . . . ; 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 ^{F17}

(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 ^{F18}

(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—

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

F15 SR 2005/426

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- F16** Words in art. 5A(1)(a) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(2\)](#)
- F17** Words in art. 5A(1)(b) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(3\)](#)
- F18** Words in art. 5A(2) omitted (6.4.2008) by virtue of [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), [reg. 2\(4\)](#)

[^{F19}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.]

- F19** 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^{F20} 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^{F20} or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995], or

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- (c) otherwise done anything under or by reference to this Order or the Equal Pay Act^{F20} 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^{F20} 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.

F20 1995 NI 22

^{F21}Harassment, including sexual harassment

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

- (a) [^{F22}he engages in unwanted conduct that is related to her sex or that of another person and] 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
 - (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.]

F21 SR 2005/426

F22 Words in art. 6A(1)(a) substituted (6.4.2008) by [Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/159\)](#), **reg. 3**

[^{F23}**Basis of comparison**

7. Each of the following comparisons, that is—

[a comparison of the cases of persons required for the purposes of Article 3,]
^{F24}(aa)

- (a) a comparison of the cases of persons of different sex under [^{F25}Article 3A] ,
- (b) a comparison of the cases of persons required for the purposes of [^{F26}Article 4A or 4B] , 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.]

F23 2004 c.33

F24 Art. 7(aa) inserted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **8(a)**

F25 Words in art. 7(a) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **8(b)**

F26 Words in art. 7(b) substituted (2.5.2016) by [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/191\)](#), regs. 1(1), **8(c)**

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