
Status: Point in time view as at 01/12/2006.

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STATUTORY INSTRUMENTS

1976 No. 1042

Sex Discrimination (Northern Ireland) Order 1976

PART III

[^{F1}EMPLOYMENT FIELD]

Discrimination by employers

[^{F1}Applicants and employees]

8 ^{F2}.—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against a woman—

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment, or
- (b) in the terms on which he offers her that employment, or
- (c) by refusing or deliberately omitting to offer her that employment.

(2) It is 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 subjecting her to any other detriment.

[^{F1}(2A) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment—

- (a) a woman whom he employs, or
- (b) a woman who has applied to him for employment.]

Para. (3) rep. by 1988 NI 13

[^{F3}(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.]

^{F4}(5) Subject to Article 11(3), paragraph (1)(b) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly^{F5} . . . or otherwise) in the contract under which she was employed.

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(6) Paragraph (2) 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.

(7) Paragraph (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or
- (b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or
- (c) the benefits, facilities or services relate to training.

[^{F6}(8) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (4) to (6).]

F1	SR 2005/426
F2	mod. SR 1991/127
F3	1995 NI 22
F4	prosp. insertion by 1989 NI 13
F5	1988 NI 13
F6	SR 1999/311

[^{F7}Exception relating to terms and conditions during maternity leave

8A.—(1) Subject to paragraphs (2) and (5), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on ordinary maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.

(2) Paragraph (1) does not apply to benefit by way of maternity#related remuneration.

(3) Subject to paragraphs (4) and (5), Article 8(1)(b) and (2) does not make it unlawful to deprive a woman who is on additional maternity leave of any benefit from the terms of her employment.

(4) Paragraph (3) does not apply to—

- (a) benefit by way of maternity#related remuneration,
- (b) the benefit of her employer's implied obligation to her of trust and confidence, or
- (c) any benefit of terms and conditions in respect of—
 - (i) notice of the termination by her employer of her contract of employment,
 - (ii) compensation in the event of redundancy,
 - (iii) disciplinary or grievance procedures, or
 - (iv) membership of a pension scheme.

(5) Neither of paragraphs (1) and (3) applies to—

- (a) benefit by way of remuneration in respect of times when the woman is neither on ordinary maternity leave nor on additional maternity leave, including increase#related remuneration in respect of such times; or
- (b) benefit by way of maternity#related remuneration that is increase#related.

(6) For the purposes of paragraph (5), remuneration is increase#related so far as it falls to be calculated by reference to increases in remuneration that the woman would have received had she not been on ordinary or additional maternity leave.

(7) In this Article—

“maternity#related remuneration”, in relation to a woman, means remuneration to which she is entitled as a result of being pregnant or being on ordinary or additional maternity leave;

“on additional maternity leave” means absent from work in exercise of the right conferred by Article 105(1) of the Employment Rights (Northern Ireland) Order 1996;

“on ordinary maternity leave” means absent from work in exercise of the right conferred by Article 103(1) of that Order (ordinary maternity leave), or in consequence of the prohibition in Article 104(1) of that Order (compulsory maternity leave);

“remuneration” means benefits—

- (a) that consist of the payment of money to an employee by way of wages or salary, and
- (b) that are not benefits whose provision is regulated by the employee's contract of employment.]

F7 SR 2005/426

[^{F8}Persons with statutory power to select employees for others

9.—(1) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person—

- (a) by refusing or deliberately omitting to select or nominate him for employment, or
- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment.]

F8 SR 2005/426

Exception where sex is a genuine occupational qualification

10 ^{F9}.—(1) In relation to sex discrimination—

- (a) Article 8(1)(*a*) or (*c*) does not apply to any employment where being a man is a genuine occupational qualification for the job, and
- (b) Article 8(2)(*a*) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being a man is a genuine occupational qualification for a job only where—

- (a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or
- (b) the job needs to be held by a man to preserve decency or privacy because—
 - (i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or
 - (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities; or

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- [^{F10}(bb) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman—
- (i) the degree of physical or social contact with a person living in the home, or
 - (ii) the knowledge of intimate details of such a person's life,
- which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job; or]
- (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
- (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and
 - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women; or
- (d) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because—
- (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special supervision, attention or care, and
 - (ii) those persons are all men (disregarding any woman whose presence is exceptional), and
 - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman; or
- (e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man, or

Sub#para. (f) rep. by 1990 NI 2

- (g) the job needs to be held by a man because it is likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or
- (h) the job is one of two to be held
 - [^{F11}(i) by a married couple,
 - (ii) by a couple who are civil partners of each other, or
 - (iii) by a married couple or a couple who are civil partners of each other]

(3) Paragraph (2) applies where some only of the duties of the job fall within sub-paragraphs (a) to (g) as well as where all of them do.

(4) Sub-paragraph (a), (b), (c), (d), (e)^{F12} . . . or (g) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees—

- (a) who are capable of carrying out the duties falling within that paragraph, and
- (b) whom it would be reasonable to employ on those duties, and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

F10 1988 NI 13
F11 2004 c.33
F12 1990 NI 2

[^{F13}Corresponding exception relating to gender reassignment

10A.—(1) In their application to discrimination falling within Article 4A, paragraphs (1) and (2) of Article 8 do not make unlawful an employer's treatment of another person if—

- (a) in relation to the employment in question—
 - (i) being a man is a genuine occupational qualification for the job; or
 - (ii) being a woman is a genuine occupational qualification for the job; and
- (b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant sub-paragraph of Article 10(2) and any other relevant circumstances.

(2) In paragraph (1) the reference to the employment in question is a reference—

- (a) in relation to any sub-paragraph of Article 8(1), to the employment mentioned in that sub-paragraph;
- (b) in relation to Article 8(2)—
 - (i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;
 - (ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.

(3) In determining for the purposes of paragraph (1) whether being a man or being a woman is a genuine occupational qualification for a job, Article 10(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

[
^{F14}(4) Paragraph (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

F13 SR 1999/311
F14 2004 c.7

Supplementary exceptions relating to gender reassignment

10B.—(1) In relation to discrimination falling within Article 4A—

- (a) Article 8(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job;
- (b) Article 8(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment; and
- (c) Article 8(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.

(2) Subject to paragraph (3), there is a supplementary genuine occupational qualification for a job only if—

- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;

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- (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—
 - (i) the degree of physical or social contact with a person living in the home, or
 - (ii) the knowledge of intimate details of such a person's life, which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;
- (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
 - (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and
 - (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or
- (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

[
^{F15}(3) Paragraph (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

[
^{F16}(4) Sub-paragraph (a) of paragraph (2) does not apply in relation to the filling of a vacancy at a time when the employer already has employees falling within paragraph 5—

- (a) who are capable of carrying out the duties falling within that paragraph, and
- (b) whom it would be reasonable to employ on those duties, and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

(5) An employee falls within this paragraph if the employee does not intend to undergo and is not undergoing gender reassignment and either—

- (a) the employee has not undergone gender reassignment; or
- (b) the employee's gender has become the acquired gender under the Gender Recognition Act 2004]]

F13 SR 1999/311

F15 [2004 c.7](#)

F16 SR 2005/426

Equal Pay Act (Northern Ireland) 1970

Para.(1) substitutes s. 1(1)#(3) of 1970 c.32 (NI)

(2) Section 1(1) of the Equal Pay Act (as set out in paragraph (1)) does not apply in determining for the purposes of Article 8(1)(b) the terms on which employment is offered.

(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).

(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 (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).

(5) An act does not contravene Article 8(2) if—

- (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.

Para.(6), with Schedule 1, effects amendments

[^{F17}(7) In its application to any discrimination falling within Article 4A, this Article shall have effect with the omission of paragraphs (3), (4) and (5)(b).]

F17 SR 1999/311

[^{F18}Contract workers]

12 ^{F19}.—(1) This Article applies to any work[^{F18} at an establishment in Northern Ireland,] for a person (“the principal”) which is available for doing by individuals (“contract workers”) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this Article applies, to discriminate against a woman who is a contract worker—

- (a) in the terms on which he allows her to do that work, or
- (b) by not allowing her to do it or continue to do it, or
- (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or
- (d) by subjecting her to any other detriment.

[^{F18}(2A) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to subject a contract worker to harassment.]

(3) [^{F20}Subject to paragraph (3A),] the principal does not contravene paragraph (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

[^{F20}(3A) Paragraph (3) does not apply in relation to discrimination falling within Article 4A.

(3B) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—

- (a) he does it at a time when, if the work were to be done by a person taken into his employment—
 - (i) being a man would be a genuine occupational qualification for the job; or
 - (ii) being a woman would be a genuine occupational qualification for the job; and
- (b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of sub-paragraph (a) and any other relevant circumstances.

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(3C) In relation to discrimination falling within Article 4A, the principal does not contravene paragraph (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.]

[^{F21}(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.]

(4) Paragraph (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

F18 SR 2005/426
F19 mod. SR 1991/127
F20 SR 1999/311
F21 2004 c.7

Meaning of employment at establishment in Northern Ireland

13.—[^{F22}(1) For the purposes of this Part and section 1 of the Equal Pay Act (Northern Ireland) 1970 (“the relevant purposes”), employment is to be regarded as being at an establishment in Northern Ireland if—

- (a) the employee does his work wholly or partly in Northern Ireland, or
- (b) the employee does his work wholly outside Northern Ireland and paragraph (1A) applies.

(1A) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Northern Ireland,
- (b) the work is for the purposes of the business carried on at that establishment, and
- (c) the employee is ordinarily resident in Northern Ireland—
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.]

[^{F23}(2) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship[^{F22}, only if the ship is] registered at a port of registry in Northern Ireland; and
- (b) employment on aircraft or hovercraft[^{F22}, only if the aircraft or hovercraft is] registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.]

Para. (3) rep. by SR 2000/8

(4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

[^{F22}(5) In relation to employment concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources, the Office of the First Minister and deputy First Minister may by order provide that paragraph (1) shall have effect as if—

- (a) the reference to Northern Ireland in each of sub-paragraphs (a) and (b) of paragraph (1), and
- (b) each of the references to Northern Ireland in paragraphs (1A) and (2),

included any area for the time being designated under section 1(7) of the Continental Shelf Act 1964, in which the law of Northern Ireland applies.

(6) An order under paragraph (5) may provide that, in relation to employment to which the order applies, this Part and section 1 of the Equal Pay Act are to have effect with such modifications as are specified in the order.

(7) The Office of the First Minister and deputy First Minister shall not make an order under paragraph (5) unless a draft of the order has been approved by resolution of the Assembly.

(8) Paragraphs (1) to (4) or, where an order under paragraph (5) is in operation, those paragraphs as modified by the order, apply for the purposes of determining whether contract work, within the meaning given by Article 12, is at an establishment in Northern Ireland, but so apply with the following modifications—

- (a) a reference to employment is to be read as a reference to work to which Article 12 applies, and
- (b) “employee” and “employer” shall be read (respectively) as “contract worker” and “principal” with “contract worker” and “principal” having the meaning given by Article 12.]

F22 SR 2005/426

F23 SR 2000/8

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