
EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement Article 3(1)(g) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (O.J. No. L018, 21.1.97, p. 1-6).

Article 3(1)(g) of that Directive requires every Member State to ensure that employment legislation concerning equality of treatment between men and women and other provisions on non-discrimination are extended to “posted workers”, that is to say workers who, for a limited period, carry out their work in the territory of that State, having been posted there in certain circumstances by an undertaking established in another Member State.

The relevant equality of treatment and non-discrimination legislation applicable in Northern Ireland is contained in the provisions of section 1 of the Equal Pay Act (Northern Ireland) 1970, Part III of the Sex Discrimination (Northern Ireland) Order 1976, Part II of the Disability Discrimination Act 1995 (as applied by Schedule 8 to that Act), Part II of the Race Relations (Northern Ireland) Order 1997 and Part III of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the relevant provisions”). Those provisions currently apply only in relation to the employment of a person at an establishment in Northern Ireland; and employment is regarded as being at such an establishment unless the employee concerned does his work “wholly or mainly outside Northern Ireland”. This is by virtue of the territorial limitations contained in Article 13(1) of the Sex Discrimination (Northern Ireland) Order 1976, section 68(2) of the Disability Discrimination Act 1995 (as applied to Northern Ireland by paragraph 47(2) of Schedule 8 to that Act), Article 10(1) of the Race Relations (Northern Ireland) Order 1997 and Article 6(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the territorial limits”).

These Regulations extend the application of the relevant provisions to workers posted to Northern Ireland by removing the words “or mainly” from those territorial limits so that employment will henceforth be regarded for the purposes of the legislation concerned as being at an establishment in Northern Ireland provided that the employee does at least part of his work within that country. This will apply even where the work is done mainly elsewhere.

The territorial limit contained in Article 13(1) of the Sex Discrimination (Northern Ireland) Order 1976 has effect for the purposes of both Part III of that Order and section 1 of the Equal Pay Act (Northern Ireland) 1970. Accordingly these Regulations do not provide for any separate amendment to the latter Act.

The Regulations also provide for some minor and consequential amendments to Article 13 of the Sex Discrimination (Northern Ireland) Order 1976, Article 10 of the Race Relations (Northern Ireland) Order 1997 and Article 6 of the Fair Employment and Treatment (Northern Ireland) Order 1998.