
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 2 and Article 4(1) of Council Directive [97/80/EC](#) of 15th December 1997 (“the Directive”) concerning the burden of proof in cases of discrimination based on sex (O.J. No. L14, 20.1.1998, p. 6). The Directive has effect in relation to the United Kingdom by virtue of Council Directive [98/52/EC](#) of 13th July 1998 (O.J. No. L205, 22.7.1998, p. 66).

Article 2(1) of the Directive defines “the principle of equal treatment for men and women” for the purposes of Article 141 (formerly Article 119) of the EC Treaty and other Community legislation relating to sex discrimination, including in particular Directive [76/207/EEC](#) of 9th February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions (O.J. No. L39, 14.3.1976, p. 40).

Article 2(2) of the Directive sets out the definition of indirect discrimination for the purposes of the principle of equal treatment referred to in Article 2(1).

Article 4 of the Directive requires every Member State to take such measures as are necessary, in accordance with their national judicial systems, to ensure that in complaints of sex discrimination, before a court or other competent authority, the burden is on the complainant initially to establish facts from which the court or competent authority may presume there has been direct or indirect discrimination. Thereafter, the burden shifts to the person who has allegedly discriminated against the complainant, the respondent, to prove that there has been no such discrimination.

The Directive is only applicable to situations concerning equal treatment of men and women as regards employment and vocational training.

The Regulations amend the Sex Discrimination (Northern Ireland) Order 1976 (“the Order”) and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 in order to reflect the provisions of the Directive. The amendments come into operation on 20th August 2001, subject to transitional provisions (regulation 1).

Regulation 2 provides for the substitution of Article 3 of the Order. The sole change made to paragraph (1) of Article 3 is that it will now apply only in respect of the provisions of the Order other than—

- Part III (discrimination in the employment field), or
- any provision of Part IV, so far as it relates to vocational training.

The new paragraph (2) of Article 3 sets out what constitutes direct and indirect discrimination for the purposes of the following provisions of the Order—

- Part III, and
- any provision of Part IV, so far as it relates to vocational training.

Under new paragraph (2)(a) of Article 3, direct discrimination will occur when a person treats a woman less favourably than he treats or would treat a man on the ground of her sex. This is identical to the new paragraph (1)(a) (and to the old paragraph (1)(a) which regulation 2 replaces). Paragraph (2)(b) provides that in circumstances relevant for the purposes of a provision to which the new paragraph (2) of Article 3 applies indirect discrimination will occur where a person applies an apparently neutral provision, criterion or practice to the detriment of a woman and to a substantially

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higher proportion of women than men, unless that criterion, provision or practice can be justified by objective factors unrelated to sex.

Regulation 3 substitutes a new Article 5 in the Order (discrimination against married persons in the employment field). The only change of substance is in sub-paragraph (1)(b) (which relates to indirect discrimination). This reflects the provisions of new Article 3(2)(b) (as substituted by regulation 2).

Regulations 4 and 5 insert two new Articles into the Order. These Articles provide that the burden of proof will shift from the complainant to the respondent if the complainant can prove facts from which an industrial tribunal or county court respectively could, apart from the Article in question, conclude in the absence of an adequate explanation that discrimination has occurred. In those circumstances the burden of proof shifts to the respondent to prove that no such discrimination occurred. This only applies to proceedings by virtue of—

- Part III,
- any provision of Part IV, so far as it relates to vocational training.

Regulation 6 inserts a new paragraph (3A) into Article 66 of the Order. The amendment enables a county court to award damages in respect of an unlawful act of discrimination in respect of vocational training, falling within the new Article 3(2)(b) (as substituted by regulation 2) whether or not the discrimination is intentional or unintentional.

Regulation 7 makes consequential amendments to other provisions of the Order.

Regulation 8 makes consequential amendments to Article 3 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990.