

2004 No. 322

SEX DISCRIMINATION

**Equal Pay (Questions and Replies) Order
(Northern Ireland) 2004**

Made - - - - - *4th August 2004*

Coming into operation *25th August 2004*

The Office of the First Minister and deputy First Minister, in exercise of the powers conferred upon it by section 6B of the Equal Pay Act (Northern Ireland) 1970(a), and of every other power enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Equal Pay (Questions and Replies) Order (Northern Ireland) 2004 and shall come into operation on 25th August 2004.

(2) The Interpretation Act (Northern Ireland) 1954(b) shall apply to this Order as it applies to an Act of the Northern Ireland Assembly.

(3) In this Order –

“the Act” means the Equal Pay Act (Northern Ireland) 1970;

“tribunal” means an industrial tribunal.

Forms for questions and replies

2. The forms set out in Schedules 1 and 2 to this Order or forms to the like effect are, respectively, hereby prescribed as forms by which –

(a) a complainant may question a respondent as mentioned in subsection (2)(a) of section 6B of the Act; and

(b) a respondent may if he so wishes reply to any questions.

Period for service of questions

3. The period prescribed for the purposes of subsection (7)(a) of section 6B of the Act (period within which questions must be duly served in order to be admissible in proceedings before a tribunal under subsection (3) or (5) of section 6B) shall be –

(a) where a question was served before a complaint or reference had been presented or made to a tribunal, the period starting on 25th August 2004 and ending on the day before a complaint is presented to a tribunal; or

(b) where a question was served at or after the time when a complaint or reference had been presented or made to a tribunal –

(a) 1970 c. 32; section 6B was inserted by Article 30 of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))

(b) 1954 c. 33 (N.I.)

- (i) the period of twenty-one days beginning with the day on which the complaint or reference was presented or made; or
- (ii) any longer period that the tribunal may on application allow.

Period for service of reply

4. The period prescribed for the purpose of subsections (4)(a) and (6)(a) of section 6B (power of the tribunal to draw inferences from an employer's failure to reply to a question within such period) shall be –

- (a) except where sub-paragraph (b) applies, the period of eight weeks starting on the day that a question was duly served; or
- (b) where a question was asked before 25th August 2004, the period of eight weeks starting on 25th August 2004.

Manner of service of questions and replies

5. Questions or, as the case may be, replies may be duly served –

- (a) where the person to be served is the respondent, by delivering the question to him, or by sending it by post to him at his usual or last known residence or place of business; or
- (b) where the person to be served is the complainant, by delivering the reply to her, or sending it by post to her at her address for reply as stated by her in the document containing the questions or, if no address is so stated, at her usual or last known residence; or
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Industrial Relations (Northern Ireland) Order 1992(a), by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office; or
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 4th August 2004.

(L.S.)

C. M. Bunting

A Senior Officer of the Office of the First Minister and deputy First Minister

(a) S.I. 1992 No. 807 (N.I. 5)

SCHEDULE 1

Article 2

EQUAL PAY ACT (NORTHERN IRELAND) 1970 S. 6B(2)(a)

Question Form (for complainant)

To (name of the person to be questioned (the respondent)) of (address)

1. I (name of complainant) of (address) believe, for the following reasons, that I may not have received equal pay in accordance with the Equal Pay Act (Northern Ireland) 1970. (Give a short summary of the reason(s) that cause you to believe that you may not have received equal pay.)

2.—(a) I am claiming equal pay with the following comparator(s) (Give the names or, if not known, the job titles, of the person or persons with whom equal pay is being claimed.)

(b) Do you agree that I have received less pay than my comparator(s)?

(c) If you agree that I have received less pay, please explain the reasons for this difference.

(d) If you do not agree that I have received less pay, please explain why you disagree.

3. The Equal Pay Act (Northern Ireland) 1970 requires equal pay between men and women where they are employed on equal work, which comprises like work, work rated as equivalent, or work of equal value.

(a) Do you agree that my work is equal to that of my comparator(s)?

(b) If you do not think that I am doing equal work, please give your reasons.

4. (Any other relevant questions you may want to ask)

5. Please send your reply to the following address if different from my home address above.

..... (address)

..... (signature of complainant)

..... (date)

By virtue of section 6B of the Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within 8 weeks or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully.

SCHEDULE 2

Article 2

EQUAL PAY ACT (NORTHERN IRELAND) 1970 S. 6B(2)(b)

Reply Form (for respondent)

To (name of questioner (the complainant)) of..... (address)

1. I (name of respondent) of..... (address) acknowledge receipt of the questionnaire signed by you and dated (date) which was served on me on (date).

2. Set out below are the complainant's questions and my response to them.

(a) Do you agree that the complainant has not received equal pay in accordance with the Equal Pay Act (Northern Ireland) 1970? (yes/no*). (If you do not agree with the complainant's statement, you should explain why you disagree.)

- (b) Do you agree that the complainant has received less pay than his or her comparator(s)?
(yes/no*). *(If you agree, you should explain the reasons for any difference in pay. If you do not agree, you should explain why you disagree.)*
- (c) Do you agree that the complainant is doing work equal to that of his or her comparator(s)?
(yes/no*). *(If you do not agree, you should explain why you disagree.)*
- (d) *(Replies to the questions in paragraph 4 of the questionnaire)*

3. I have deleted (in whole or in part) the paragraphs numbered
above, since I am (unable/unwilling*) to reply to the corresponding questions of the questionnaire
(give question numbers from questionnaire) for the following reasons

.....
(give reasons)

.....
(signature of respondent)

.....
(date)

(*) delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Order.)

Article 2 of this Order prescribes the forms which may be used for the purposes mentioned in section 6B of the Equal Pay Act (Northern Ireland) 1970 (“the Act”). The form set out in Schedule 1 is for use (if she so wishes) by a person (“the complainant”) who wishes to question another (“the respondent”) whom she considers may have discriminated against her, in contravention of the Act, as regards her terms and conditions of employment, including pay. The form set out in Schedule 2 is for use by the respondent (if he so wishes) when replying.

Article 3 relates to the period within which questions must be served on the respondent if they are to be admissible as evidence in proceedings before an industrial tribunal (in pursuance of subsections (3) and (5) of section 6B of the Act) and Article 4 relates to the period within which the respondent needs to reply, failing which the tribunal may draw an inference from a deliberate or unreasonable failure to reply (in accordance with subsections (4)(a) and (6)(a) of that section).

Article 5 relates to the manner of service of questions and replies.

A Regulatory Impact Assessment in relation to the introduction of equal pay questionnaires and Article 30 of the Employment (Northern Ireland) Order 2003 was completed by the Department for Employment and Learning. Article 30 amended the Equal Pay Act (Northern Ireland) 1970 by inserting new section 6B, which gives the Office of the First Minister and deputy First Minister power to make an Order to prescribe forms for a questionnaire procedure. A copy of the Regulatory Impact Assessment has been placed in the Library of the Northern Ireland Assembly. It is also available on the Department for Employment and Learning’s website at www.delni.gov.uk

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Published by The Stationery Office Limited

ISBN 0-337-95622-7



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