

2008 No. 159

SEX DISCRIMINATION

**The Sex Discrimination Order 1976 (Amendment) Regulations
(Northern Ireland) 2008**

Made - - - - *4th April 2008*

Coming into operation - *6th April 2008*

The Office of the First Minister and deputy First Minister, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to discrimination(b), makes the following Regulations in exercise of the powers conferred by that section:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 6th April 2008.

(2) The amendments made by regulation 5 apply only in relation to a case where a woman's expected week of childbirth as defined in regulation 2(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(c) (interpretation) begins on or after 5th October 2008.

(3) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Assembly.

(4) In these Regulations "the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976(e).

Discrimination on the ground of pregnancy or maternity leave

2.—(1) Article 5A of the 1976 Order(f) (discrimination on the ground of pregnancy or maternity leave) is amended as follows.

(2) In paragraph (1)(a) (definition of discrimination on the ground of pregnancy), omit the words "than he would treat her had she not become pregnant".

(3) In paragraph (1)(b) (definition of discrimination on the ground of maternity leave), omit the words "than he would treat her if she were neither exercising nor seeking to exercise, and had neither exercised nor sought to exercise, such a right".

(4) In paragraph (2) (definition of discrimination on the ground of compulsory maternity leave), omit the words "than he would treat her if that provision did not have to be complied with in respect of her".

(a) 1972 c.68

(b) See the European Communities (Designation) (No. 3) Order 2002 (S.I.2002/1819)

(c) S.R. 1999 No. 471

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

(e) S.I. 1976/1042 (N.I.15)

(f) Article 5A was inserted by regulation 5 of S.R. 2005 No. 426

Harassment

3. In Article 6A(1)(a) of the 1976 Order(a) (definition of harassment), for “on the ground of her sex, he engages in unwanted conduct that” substitute “he engages in unwanted conduct that is related to her sex or that of another person and”.

Liability of employers for failing to protect employees from third party harassment

4. After Article 8(2A) of the 1976 Order(b) (unlawful harassment) insert—

“(2B) For the purposes of paragraph (2A), the circumstances in which an employer is to be treated as subjecting a woman to harassment shall include those where—

- (a) a third party subjects the woman to harassment in the course of her employment, and
- (b) the employer has failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

(2C) Paragraph (2B) does not apply unless the employer knows that the woman has been subject to harassment in the course of her employment on at least two other occasions by a third party.

(2D) In paragraphs (2B) and (2C), “third party” means a person other than—

- (a) the employer, or
- (b) a person whom the employer employs,

and for the purposes of those paragraphs it is immaterial whether the third party is the same or a different person on each occasion.”.

Exception relating to terms and conditions during maternity leave

5.—(1) For Article 8A of the 1976 Order(c) (exception relating to terms and conditions during maternity leave) substitute—

“Exception relating to terms and conditions during maternity leave

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

(2) The reference in paragraph (1) to benefit from the terms and conditions of a woman’s employment relating to remuneration does not include a reference to—

- (a) maternity-related remuneration (including maternity-related remuneration that is increase-related),
- (b) remuneration (including increase-related remuneration) in respect of times when the woman is not on maternity leave, or
- (c) remuneration by way of bonus in respect of times when a woman is on compulsory maternity leave.

(3) For the purposes of paragraph (2), 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 maternity leave.

(4) 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 maternity leave;

(a) Article 6A was inserted by regulation 6 of S.R. 2005 No. 426

(b) Subsection (2A) was inserted by regulation 7(4) of S.R. 2005 No. 426

(c) Article 8A was inserted by regulation 8 of S.R. 2005 No. 426

“on compulsory maternity leave” means absent from work in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996^(a);

“on maternity leave” means—

- (a) on compulsory maternity leave,
- (b) absent from work in exercise of the right conferred by Article 103(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary maternity leave), or
- (c) absent from work in exercise of the right conferred by Article 105(1) of that Order (additional maternity leave); and

“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.”.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 4th April 2008.



Gerard Mulligan
A senior officer of the
Office of the First Minister and deputy First Minister

(a) S.I. 1996/1919 (N.I. 16)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in Northern Ireland Council Directive 2002/73/EC of 23rd September 2002 (“the Directive”), in part, and come into operation on 6th April 2008. The Directive concerns the principle of equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions.

The Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) was previously amended by the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 to meet the Directive’s requirements. These Regulations amend the 1976 Order to give full effect to the Directive in relation to the definitions of harassment and discrimination on grounds of pregnancy or maternity leave and so far as it relates to terms and conditions during maternity leave.

Regulation 2 amends the definition of discrimination on grounds of pregnancy or maternity leave to eliminate the requirement for a comparator who is not pregnant or not on maternity leave, as the case may be.

Regulation 3 amends the definition of harassment to remove the causal link between harassment and the sex of the person being harassed. The change enables claims to be made by someone who is not subjected to the unwanted conduct himself or herself but the effect of which nonetheless violates his or her dignity or creates an intimidating, etc. environment for him or her.

Regulation 4 makes it unlawful for an employer to fail to take reasonably practicable steps to protect employees from harassment by third parties where such harassment is known to have occurred on at least two other occasions.

Regulation 5 narrows the extent to which it is not discriminatory to deprive a woman of the benefit of her terms and conditions of employment during maternity leave. The amendment facilitates claims for discrimination in relation to eligibility for remuneration by way of bonus while on compulsory maternity leave. In addition, it enables claims for discrimination in relation to terms and conditions of employment in relation to periods of additional maternity leave to the same extent to which they are available in relation to periods of ordinary maternity leave. The amendments made by this regulation apply where a woman’s expected week of childbirth (as defined in the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999) begins on or after 5th October 2008.

A Regulatory Impact Assessment of the effect that these Regulations will have on business costs and a Transposition Note setting out how these Regulations transpose the Directive in Northern Ireland, have been placed in the Library of the Northern Ireland Assembly. Copies of each may be obtained from Equality, Rights and Social Need Division, Office of the First Minister and deputy First Minister, Room E.3.18, Castle Buildings, Stormont, Belfast, BT4 3SR.

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