
DRAFT STATUTORY INSTRUMENTS

2000 No.

Equality (Disability, etc.) (Northern Ireland) Order 2000

PART II

DISABILITY DISCRIMINATION

Interpretation of this Part

3.—(1) In this Part—

- “the Commission” means the Equality Commission for Northern Ireland;
- “final”, in relation to a non-discrimination notice, has the meaning given by paragraph 11 of Schedule 1;
- “formal investigation” means an investigation under Article 5;
- “non-discrimination notice” means a notice under Article 6;
- “notice” means notice in writing;
- “the Office” means the Office of the First Minister and deputy First Minister;
- “prescribed” means prescribed by regulations made by the Office; and
- “the 1995 Act” means the Disability Discrimination Act 1995.

(2) Expressions used in this Part which are defined for the purposes of the 1995 Act have the same meaning in this Part as in that Act.

General functions of Commission

4.—(1) The Commission shall have the following duties—

- (a) to work towards the elimination of discrimination against disabled persons;
- (b) to promote the equalisation of opportunities for disabled persons;
- (c) to take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled persons; and
- (d) to keep under review the working of the 1995 Act and this Part.

(2) The Commission may, for any purpose connected with the performance of its functions under this Part—

- (a) make proposals or give other advice to any government department as to any aspect of the law or a proposed change to the law;
- (b) make proposals or give other advice to any public authority as to the practical application of any law;
- (c) undertake, or arrange for or support (whether financially or otherwise), the carrying out of research or the provision of advice or information.

Nothing in this paragraph is to be regarded as limiting the Commission’s powers.

(3) The Commission shall make proposals or give other advice under paragraph (2)(a) on any matter specified in a request from a government department.

(4) The Commission may make charges for facilities or services made available by it for the purposes of its functions under this Part.

(5) In this Article—

“disabled persons” includes persons who have had a disability;

“discrimination” means anything which is discrimination for the purposes of any provision of Part II or Part III of the 1995 Act;

“the law” includes Community law and the international obligations of the United Kingdom; and

“public authority” has the same meaning as in section 75 of the Northern Ireland Act 1998.

Formal investigations

5.—(1) The Commission may decide to conduct a formal investigation for any purpose connected with the performance of its duties under Article 4(1).

(2) The Commission shall conduct a formal investigation if directed to do so by the Office for any such purpose.

(3) The Commission may at any time decide to stop or to suspend the conduct of a formal investigation; but any such decision requires the approval of the Office if the investigation is being conducted in pursuance of a direction under paragraph (2).

(4) The Commission may, with the approval of the Office, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.

(5) The Commission may, as respects any formal investigation which it has decided or been directed to conduct—

(a) nominate one or more Commissioners, with or without one or more additional Commissioners appointed for the purposes of the investigation, to conduct the investigation on its behalf; and

(b) authorise those persons to exercise such of its functions in relation to the investigation (which may include drawing up or revising terms of reference) as it may determine.

(6) Schedule 1 (so far as relating to the conduct of formal investigations) has effect.

Non-discrimination notices

6.—(1) If in the course of a formal investigation the Commission is satisfied that a person has committed or is committing an unlawful act, it may serve on him a notice (referred to in this Part as a non-discrimination notice) which—

(a) gives details of the unlawful act which the Commission has found that he has committed or is committing; and

(b) requires him not to commit any further unlawful acts of the same kind (and, if the finding is that he is committing an unlawful act, to cease doing so).

(2) The notice may include recommendations to the person concerned as to action which the Commission considers he could reasonably be expected to take with a view to complying with the requirement mentioned in paragraph (1)(b).

(3) The notice may require the person concerned—

- (a) to propose an adequate action plan (subject to and in accordance with Part III of Schedule 1) with a view to securing compliance with the requirement mentioned in paragraph (1)(b); and
 - (b) once an action plan proposed by him has become final, to take any action which—
 - (i) is specified in the plan; and
 - (ii) he has not already taken,at the time or times specified in the plan.
- (4) For the purposes of paragraph (3)—
- (a) an action plan is a document drawn up by the person concerned specifying action (including action he has already taken) intended to change anything in his practices, policies, procedures or other arrangements which—
 - (i) caused or contributed to the commission of the unlawful act concerned; or
 - (ii) is liable to cause or contribute to a failure to comply with the requirement mentioned in paragraph (1)(b); and
 - (b) an action plan is adequate if the action specified in it would be sufficient to ensure, within a reasonable time, that he is not prevented from complying with that requirement by anything in his practices, policies, procedures or other arrangements;
- and the action specified in an action plan may include ceasing an activity or taking continuing action over a period.
- (5) In this Article “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.
- (6) Schedule 1 (so far as relating to non-discrimination notices and action plans) has effect.

Agreements in lieu of enforcement action

- 7.—(1) If the Commission has reason to believe that a person has committed or is committing an unlawful act, it may (subject to Article 5(3)) enter into an agreement in writing under this Article with that person on the assumption that that belief is well founded (whether or not that person admits that he committed or is committing the act in question).
- (2) An agreement under this Article is one by which—
- (a) the Commission undertakes not to take any relevant enforcement action in relation to the unlawful act in question; and
 - (b) the person concerned undertakes—
 - (i) not to commit any further unlawful acts of the same kind (and, where appropriate, to cease committing the unlawful act in question); and
 - (ii) to take such action (which may include ceasing an activity or taking continuing action over any period) as may be specified in the agreement.
- (3) Those undertakings are binding on the parties to the agreement; but undertakings under paragraph (2)(b) are enforceable by the Commission only as provided by paragraph (8).
- (4) For the purposes of paragraph (2)(a), “relevant enforcement action” means—
- (a) beginning a formal investigation into the commission by the person concerned of the unlawful act in question;
 - (b) if such an investigation has begun (whether or not the investigation is confined to that matter), taking any further steps in the investigation of that matter; and

- (c) taking any steps, or further steps, with a view to the issue of a non-discrimination notice based on the commission of the unlawful act in question.
- (5) The action specified in an undertaking under paragraph (2)(b)(ii) must be action intended to change anything in the practices, policies, procedures or other arrangements of the person concerned which—
 - (a) caused or contributed to the commission of the unlawful act in question; or
 - (b) is liable to cause or contribute to a failure to comply with his undertaking under paragraph (2)(b)(i).
- (6) An agreement under this Article—
 - (a) may include terms providing for incidental or supplementary matters (including the termination of the agreement, or the right of either party to terminate it, in certain circumstances); and
 - (b) may be varied or revoked by agreement of the parties.
- (7) An agreement under this Article may not include any provisions other than terms mentioned in paragraphs (2) and (6)(a) unless their inclusion is authorised by regulations made by the Office for the purposes of this Article; but any provisions so authorised are not enforceable by the Commission under paragraph (8).
- (8) The Commission may apply to a county court for an order under this paragraph if—
 - (a) the other party to an agreement under this Article has failed to comply with any undertaking under paragraph (2)(b); or
 - (b) the Commission has reasonable cause to believe that he intends not to comply with any such undertaking.
- (9) An order under paragraph (8) is an order requiring the other party to comply with the undertaking or with such directions for the same purpose as are contained in the order.
- (10) Nothing in this Article affects the Commission’s powers to settle or compromise legal proceedings of any description.
- (11) In this Article “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.
- (12) Schedule 1 (so far as relating to agreements under this Article) has effect.

Persistent discrimination

- 8.—**(1) This Article applies during the period of five years beginning on the date on which—
- (a) a non-discrimination notice served on a person,
 - (b) a finding by a court or tribunal in proceedings under section 8 or 25 of the 1995 Act that a person has committed an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of that Act, or
 - (c) a finding by a court or tribunal in any other proceedings that a person has committed an act of a description prescribed under paragraph (4),

has become final.

(2) If during that period it appears to the Commission that unless restrained the person concerned is likely to do one or more unlawful acts, the Commission may apply to a county court for an injunction restraining him from doing so.

(3) The court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(4) In this Article “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this Article.

(5) A finding of a court or tribunal becomes final for the purposes of this Article when an appeal against it is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought.

Assistance in relation to proceedings

9.—(1) This Article applies to—

- (a) proceedings which an individual has brought or proposes to bring under section 8 or 25 of the 1995 Act (complaints and claims about unlawful discrimination under Parts II and III); and
- (b) proceedings of a description prescribed for the purposes of this paragraph, being proceedings in which an individual who has or has had a disability relies or proposes to rely on a matter relating to that disability.

(2) Where the individual concerned applies to the Commission for assistance in relation to any proceedings to which this Article applies, the Commission may grant the application on any of the following grounds—

- (a) that the case raises a question of principle;
- (b) that it is unreasonable to expect the applicant to deal with the case unaided (because of its complexity, because of the applicant’s position in relation to another party or for some other reason);
- (c) that there is some other special consideration which makes it appropriate for the Commission to provide assistance.

(3) If the Commission grants an application, it may—

- (a) provide or arrange for the provision of legal advice;
- (b) arrange for legal or other representation (which may include any assistance usually given by a solicitor or counsel);
- (c) seek to procure the settlement of any dispute;
- (d) provide or arrange for the provision of any other assistance which it thinks appropriate.

(4) Paragraph (3)(b) does not affect the law and practice as to who may represent a person in relation to any proceedings.

(5) The Commission may authorise any employee of the Commission to exercise such of its functions under this Article as it may determine.

Recovery of expenses of providing assistance

10.—(1) This Article applies where—

- (a) the Commission has given an individual assistance under Article 9 in relation to any proceedings; and
- (b) any costs or expenses (however described) have become payable to him by another person in respect of the matter in connection with which the assistance is given.

(2) A sum equal to any expenses incurred by the Commission in providing the assistance shall be a first charge for the benefit of the Commission on the costs or expenses concerned.

(3) It is immaterial for the purposes of this Article whether the costs or expenses concerned are payable by virtue of a decision of a court or tribunal, an agreement arrived at to avoid proceedings or to bring them to an end, or otherwise.

(4) The charge created by this Article is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(5) Provision may be made by regulations made by the Office for the determination of the expenses of the Commission in cases where this Article applies.

Codes of practice

11.—(1) The following section shall be inserted at the beginning of Part VII of the 1995 Act (supplemental)—

“Codes of practice.

54A.—(1) The Commission may prepare and issue codes of practice giving practical guidance—

- (a) to employers, service providers or other persons to whom provisions of Part II or Part III apply on how to avoid discrimination or on any other matter relating to the operation of those provisions in relation to them; or
- (b) to any persons on any other matter, with a view to—
 - (i) promoting the equalisation of opportunities for disabled persons and persons who have had a disability, or
 - (ii) encouraging good practice regarding the treatment of such persons, in any field of activity regulated by any provision of Part II or Part III.

(2) The Commission shall, when requested to do so by the Office, prepare a code of practice dealing with the matters specified in the request.

(3) In preparing a code of practice the Commission shall carry out such consultations as it considers appropriate (which shall include the publication for public consultation of proposals relating to the code).

(4) The Commission may not issue a code of practice unless—

- (a) a draft of it has been submitted to and approved by the Office and laid by the Office before the Assembly; and
- (b) the statutory period has elapsed without the Assembly resolving not to approve the draft.

(5) If the Office does not approve a draft code of practice submitted to it the Office shall give the Commission a written statement of its reasons.

(6) A code of practice issued by the Commission—

- (a) shall come into effect on such day as the Office may by order appoint;
- (b) may be revised in whole or part, and re-issued, by the Commission; and
- (c) may be revoked by an order made by the Office at the request of the Commission.

(7) Where the Commission proposes to revise a code of practice—

- (a) it shall comply with subsection (3) in relation to the revisions; and
- (b) the other provisions of this section apply to the revised code of practice as they apply to a new code of practice.

(8) Failure to observe any provision of a code of practice does not of itself make a person liable to any proceedings, but any provision of a code which appears to a court or tribunal to be relevant to any question arising in any proceedings under Part II or Part III shall be taken into account in determining that question.

(9) In this section—

“code of practice” means a code of practice under this section;

“the Commission” means the Equality Commission for Northern Ireland;

“discrimination” means anything which is unlawful discrimination for the purposes of any provision of Part II or Part III;

“the Office” means the Office of the First Minister and deputy First Minister; and

“statutory period” has the meaning assigned to it by section 41(2) of the Interpretation Act (Northern Ireland) 1954.”

(2) The Commission may treat any consultation undertaken under section 52(2) of the 1995 Act before the coming into operation of this Article as being effective for the purposes of section 54A(3) of that Act.

(3) Nothing in this Article affects the Commission’s powers apart from this Article to give practical guidance on matters connected with its functions under this Part.

Conciliation of disputes under Part III of the 1995 Act

12. For section 28 of the 1995 Act (arrangements with a view to the settlement of disputes under Part III) there shall be substituted the following section—

“28 Conciliation of disputes.

(1) The Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to disputes arising under this Part.

(2) In deciding what arrangements (if any) to make, the Commission shall have regard to the desirability of securing, so far as reasonably practicable, that conciliation services are available for all disputes arising under this Part which the parties may wish to refer to conciliation.

(3) No member or employee of the Commission may provide conciliation services in relation to disputes arising under this Part.

(4) The Commission shall ensure that any arrangements under this section include appropriate safeguards to prevent the disclosure to members or employees of the Commission of information obtained by a person in connection with the provision of conciliation services in pursuance of the arrangements.

(5) Subsection (4) does not apply to information relating to a dispute which is disclosed with the consent of the parties to that dispute.

(6) Subsection (4) does not apply to information which—

(a) is not identifiable with a particular dispute or a particular person; and

(b) is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.

(7) Anything communicated to a person while providing conciliation services in pursuance of any arrangements under this section is not admissible in evidence in any proceedings except with the consent of the person who communicated it to that person.

(8) In this section—

“the Commission” means the Equality Commission for Northern Ireland; and

“conciliation services” means advice and assistance provided by a conciliator to the parties to a dispute with a view to promoting its settlement otherwise than through the courts.”.

Procedure for amending section 7(1) of the 1995 Act

13. For subsections (3) to (10) of section 7 of the 1995 Act (exemption for small businesses) there shall be substituted the following subsections—

“(3) Before making an order under subsection (2) the Office of the First Minister and deputy First Minister shall consult—

- (a) the Equality Commission for Northern Ireland;
- (b) such organisations representing the interests of employers as that Office considers appropriate; and
- (c) such organisations representing the interests of disabled persons in employment or seeking employment as that Office considers appropriate.

(4) The Office of the First Minister and deputy First Minister shall, before laying an order under this section before the Assembly, publish a summary of the views expressed to it in its consultations.”.

Regulations

14.—(1) Regulations under this Part may make—

- (a) provision enabling a person to exercise a discretion in dealing with any matter; and
- (b) incidental, supplemental, consequential or transitional provision.

(2) Regulations under this Part shall be subject to negative resolution.

Consequential amendments to the 1995 Act

15.—(1) The 1995 Act shall be amended as follows.

(2) In section 67(5) (orders not subject to negative resolution) for “52(8), 54(6)” substitute “54A(6)(a)”.

(3) In Schedule 3 (enforcement and procedure under Parts II and III), in paragraph 6(2), for the words from “a person” to “approached” there shall be substituted “the dispute concerned is referred for conciliation in pursuance of arrangements under section 28”.

Repeals

16. The statutory provisions mentioned in Schedule 2 are repealed to the extent specified.

Crown application

17. This Part binds the Crown.