



Office of the
**First Minister and
Deputy First Minister**

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Consultation on draft amendments to the Sex Discrimination (Northern Ireland) Order 1976

1 December 2015

The consultation period ends on 29 January 2016

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Introduction

1. This consultation document sets out the Executive's response to an EU Pilot investigation (EU Pilot file 4853/13/JUST) regarding transposition of Council Directive 2006/54/EC in Northern Ireland. This EU Directive, commonly referred to as the "Recast Directive", implements the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
2. The EU Commission sought clarification from the UK Government about the conformity of domestic legislation with EU law (i.e. the Recast Directive). The Commission used the EU Pilot process to gather this information. A number of the queries related to transposition of the Directive in Northern Ireland.
3. In order to address some of the concerns raised by the EU Commission in relation to transposition of the Recast Directive here, a number of amendments need to be made to the Sex Discrimination (Northern Ireland) Order 1976. The proposed amendments are contained in the draft Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (see Annex A). This consultation document seeks views on the proposed amendments contained in the draft Regulations.

EU Pilot

4. The EU Pilot process is used when clarification is needed from Member States regarding the application/conformity of domestic law with EU law. EU Pilot is designed to allow Member States to resolve compliance problems voluntarily without the EU having to resort to infringement proceedings.
5. Wherever there might be recourse to infringement proceedings, EU Pilot is used as a general rule before the first step of infringement proceedings is taken by the EU Commission under Article 258 of the Treaty on the Functioning of the European Union. Member States must clarify or explain any issues raised and may be required to take action to correct any actual infringement where this can be shown. If a Member States response is unsatisfactory, the Commission may start infringement proceedings.

Background to EU Pilot 4853/13/JUST

6. Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment between men and women (recast) consolidated a number of existing EU Directives on gender equality. The objective of the Recast Directive was to combine in a single text the main EU provisions existing on gender equality in order to make gender equality law more accessible for a broader public.
7. The EU Directives that formed part of the recasting exercise were:
 - Directive 76/207/EEC, as amended by Directive 2002/73/EC, on equal treatment for men and women in the access to employment, vocational training and promotion and working conditions;
 - Directive 86/378/EEC, as amended by Directive 96/97/EC, on equal treatment for men and women in occupational social security schemes;
 - Directive 75/117/EEC on equal pay between men and women; and
 - Directive 97/80/EC on the burden of proof.

Member States were obliged to implement the Recast Directive by 15 August 2008.

8. The Recast Directive introduced a number of prohibitions on sex discrimination in employment and vocational training, many of which were already in force in Great Britain and Northern Ireland. As a consequence, only a limited number of changes to domestic legislation were required to transpose the Directive.
9. In April 2013, the EU Commission launched an EU Pilot investigation (EU Pilot file 4853/13/JUST) regarding the UK's transposition of the Recast Directive. The Commission wrote to the UK Government with a number of questions and queries regarding transposition of the Directive in Great Britain, Northern Ireland and Gibraltar. The UK Government responded to the Commission's queries in June 2013.
10. While the EU Commission was satisfied with the clarification provided by the Member State in relation to many of its queries, the response failed to satisfy the Commission with regard to a number of its queries about

transposition in Northern Ireland and Gibraltar. The Commission wrote again to the UK Government in February 2014 requesting further clarification and information on these issues. The UK Government responded to this request for further information in April 2014. As regards Northern Ireland, the response indicated that OFMDFM would bring forward amendments to the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) to address the remaining issues of concern.

Draft Regulations

11. The draft Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2016 will amend the 1976 Order to address concerns raised by the EU Commission in EU Pilot file 4853/13/JUST regarding conformity of domestic legislation with the Recast Directive.
12. The draft Regulations will be made using the powers under section 2(2) of the European Communities Act 1972. OFMDFM is designated as an authority which may exercise the powers conferred by section 2(2) of the 1972 Act to make regulations in relation to the discrimination matters. A draft of the proposed amending Regulations is attached at Annex A.

Direct discrimination

13. Article 2(1)(a) of the Recast Directive defines direct discrimination as occurring where “*one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.*”
14. The EU Commission took the view that Article 3(2) of the 1976 Order, which contains a definition of direct discrimination, could have the effect of restricting the definition in the Recast Directive, in that it uses the words “*on grounds of her sex*”. This, according to the Commission, seemed to exclude discrimination on the basis of perception and discrimination by association.
15. In response to the EU Commission, OFMDFM acknowledged that the definition of direct discrimination in the Equality Act 2010 (which applies to Great Britain) extends to discrimination based on association and perception and conceded that the definition in the 1976 Order may not fully comply with the provisions of the Recast Directive. OFMDFM agreed to amend the definition of direct discrimination in Article 3 of the 1976 Order.

16. The proposed legislative response is to divide the current Article 3 of the 1976 Order (direct and indirect discrimination against women) into two separate provisions, i.e. a new Article 3, dealing only with direct discrimination and a new Article 3A, dealing with indirect discrimination.
17. The current text of Article 3 was inserted by regulation 2 of the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (NI) 2001 (SR No. 282). Those Regulations previously transposed Directive 97/30/EC (the Burden of Proof Directive). The Regulations introduced two definitions of direct discrimination into the 1976 Order albeit with substantially the same text: one definition (Article 3(1)(a)) was the domestic definition and the other definition (Article 3(2)(a)) applied to provisions of the 1976 Order governed by EU law.
18. The text of new Article 3 is based on the current text of Article 3(1)(a) and Article 3(2)(a) the 1976 Order but takes account of drafting developments taken from the definition of direct discrimination in section 13(1) of the Equality Act 2010.
19. Regulation 4(1) of the draft Regulations will substitute Article 3 of the 1976 Order to provide a revised (single) definition of direct discrimination.

Indirect definition

20. Article 2(1)(b) of the Recast Directive defines indirect discrimination as:

“where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

The EU Commission pointed out that the 1976 Order contains two different definitions of indirect discrimination (Articles 3(1)(b) and 3(2)(b)) and queried the rationale for this.

21. In response to the Commission, OFMDFM explained the historic developments which lead to the creation of the two definitions of indirect discrimination in Article 3 of the 1976 Order. Essentially, a second definition of indirect discrimination on grounds of sex was created for the purposes of applying to those areas of the 1976 Order governed by EU Directives.

22. Following transposition of various EU Directives relating to gender, the definition of indirect discrimination in Article 3(1)(b) of the 1976 Order (the original domestic law definition) now applies only to those provisions of the 1976 Order other than—
- Part III (discrimination in the employment field),
 - Articles 30 to 32, (goods, facilities and services, disposals or management of premises); and
 - any provision of Part IV, so far as it relates to vocational training.

This means that the definition of indirect discrimination in Article 3(2)(b) of the 1976 Order (inserted to comply with EU law) applies for the purposes of those provisions of the 1976 Order excluded from the definition in Article 3(1)(b).

23. In recognition of the potential for confusion and inconsistency, OFMDFM agreed to amend Article 3 of the 1976 Order to provide a single definition of indirect discrimination. The proposed legislative response is to create a single definition of indirect discrimination (a new Article 3A) which will apply to the entire 1976 Order. The text of new Article 3A is based on the current text of Articles 3(1)(b) and 3(2)(b) of the 1976 Order and on section 19 of the Equality Act 2010 (definition of indirect discrimination).
24. Regulation 4(2) of the draft Regulations will insert a new Article 3A in the 1976 Order to provide a single definition of indirect discrimination.

Indirect discrimination on the grounds of gender reassignment

25. The EU Commission asked whether the 1976 Order covers indirect discrimination on the grounds of gender reassignment, as is the case in Great Britain under the Equality Act 2010.
26. Article 4A of the 1976 Order was inserted by the Sex Discrimination (Gender Reassignment) Regulations (NI) 1999 (SR No. 311) to cover direct discrimination on grounds of gender reassignment in the fields of employment and vocational training following the ECJ decision in *P v S & Cornwall CC*.
27. Article 4A was subsequently amended by the Sex Discrimination (Amendment of Legislation) Regulations 2008 (SI No. 963) to comply with Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in access to, and supply of, goods and services. The amendment extended the protection from direct

discrimination on the grounds of gender reassignment to Articles 30 to 32 of the 1976 Order (i.e. goods, facilities and services).

28. The Recast Directive prohibits discrimination – both direct and indirect – on the ground of sex and also on the ground of gender reassignment. The relevant extract from the Recast Directive is:

Paragraph 3 to the Preamble: “*The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person.*”

29. OFMDFM advised the EU Commission that the 1976 Order does not cover indirect discrimination on grounds of gender reassignment and that it would give full consideration to extending protection against indirect discrimination so that it covers gender reassignment in the field of employment and vocational training. The proposed legislative response is to insert a new Article 4B in the 1976 Order (indirect discrimination on the ground of gender reassignment) which will apply to Part 3 (employment) and Part 4 of the 1976 Order, so far as it applies to vocational training.
30. Regulation 7 of the draft Regulations will insert a new Article 4A in the 1976 Order to provide protection from indirect discrimination on the ground of gender reassignment in the field of employment and vocational training.

Consequential amendments

31. As a result of the proposed amendments to:
- the definition of direct discrimination (new Article 3);
 - the definition of indirect discrimination (new Article 3B); and
 - the extension of indirect discrimination to gender reassignment in relation to employment and vocational training (new Article 4B),

a series of consequential amendments need to be made to the 1976 Order. A consequential amendment also needs to be made to

Article 3(3) of the Employment (Miscellaneous Provisions) (NI) Order 1990 (S.I. 1990/246 (N.I. 2)).

32. Regulations 5, 6, and 8 to 21 of the draft Regulations carry the necessary consequential amendments to the 1976 and 1990 Orders.

Transitional provision

33. Regulation 22 of the draft Regulations contains a transitional provision to deal with discrimination cases before the county court at the time of commencement of the Regulations.

Impact on equality of opportunity

34. The equality impact assessment at Annex B considers the impact of the draft Regulations on the section 75 categories. Compliance with the EU Recast Directive is intended to have a positive impact on equality of opportunity for men and women.

About this consultation

35. We would welcome your views on the draft Regulations which are necessary to ensure that domestic legislation fully transposes the Recast Directive.
36. Responses to the consultation can be sent to:

E-mail to: geso@ofmdfmi.gov.uk

Post to:

OFMDFM
Gender Equality
Equality, Human Rights and Social Change Division
Room E.3.18
Castle Buildings
Stormont
BELFAST
BT4 3SR

All responses must be received by 29 January 2016.

37. When responding to this consultation please state whether you are responding as an individual or representing the views of an organisation.

If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members have been sought.

Freedom of information, data protection and confidentiality

38. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, in this case the Office of the First Minister and deputy First Minister ('the Department'). This includes access to information provided in response to a consultation exercise.
39. The Department will publish responses following the completion of the consultation process. If you would prefer your response to be treated as confidential, please let us know, stating your reasons clearly. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested.
40. If we are asked to disclose responses under the Freedom of Information Act 2000, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.
41. We will handle any personal data provided during the consultation in accordance with the Data Protection Act 1998.
42. For further information about confidentiality of responses, please contact the Information Commissioner's Office or visit their website at: http://ico.org.uk/about_us/our_organisation/northern_ireland

 STATUTORY RULES OF NORTHERN IRELAND

2016 No.

SEX DISCRIMINATION
**The Sex Discrimination Order 1976 (Amendment) Regulations
(Northern Ireland) 2016**

Made - - - - 2016
Coming into operation - 2016

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 and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on [] 2016.

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

Amendment of the Sex Discrimination (Northern Ireland) Order 1976

2. The Sex Discrimination (Northern Ireland) Order 1976(d) (“the 1976 Order”) is amended in accordance with regulations 3 to 20.

Amendment of Article 2 of the 1976 Order

3. In Article 2 (interpretation) –

- (a) in paragraph (2)(e), omit the definition of “provision, criterion or practice”;
- (b) in paragraph (7)(b)(f), after “3,” insert “3A”.

Amendment of Article 3 of the 1976 Order

4.- (1) For Article 3(g) (direct and indirect discrimination against women), substitute the following –

-
- (a) 1972 c.68
 - (b) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
 - (c) 1954 c.33 (N.I.)
 - (d) S.I. 1976/1042 (N.I. 15)
 - (e) The definition of “provision, criterion or practice” was inserted by regulation 7(2) of S.R. 2001 No. 282
 - (f) Paragraph (7)(b) was amended by regulation 3(5) of S.R. 2005 No. 426 and by paragraph 3 of Schedule 2 to S.I. 2008/963
 - (g) Regulation 3 was substituted by regulation 2 of S.R. 2001 No. 282 and amended by regulation 4(1) of S.R. 2005 No. 426, paragraph 1 of Schedule 2 to S.I. 2008/963 and regulation 3 of S.R. 2011 No. 156

“Direct discrimination on the ground of sex

3. In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another (“B”) if, on the ground of sex, A treats B less favourably than A treats or would treat another person.”.

(2) After Article 3, insert the following -

“Indirect discrimination on the ground of sex

3A.-(1) In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another person (“B”) if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s sex.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s sex, if –

- (a) A applies, or would apply, it to persons of a different sex,
- (b) it puts, or would put, persons of the same sex as B at a particular disadvantage when compared with persons of a different sex,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”.

Amendment of Article 4 of the 1976 Order

5. In Article 4 (sex discrimination against men) –

- (a) in paragraph (1), omit “Article 3 and”;
- (b) in paragraph (2), after “paragraph (1)” insert “and Articles 3 and 3A,”.

Amendment of Article 4A of the 1976 Order

6.-(1) Article 4A(a) (discrimination on the grounds of gender reassignment) is amended as follows.

- (2) In the heading, for “Discrimination” substitute “Direct discrimination”.
- (3) In paragraph (1)(b), for the word “he” in each place, substitute “A”.
- (4) In paragraph (3) –
 - (a) for the word “he” in each place, substitute “B”;
 - (b) in sub-paragraph (b), for “him” substitute “B”.

Insertion of Article 4B into the 1976 Order

7. After Article 4A (discrimination on the ground of gender reassignment), insert the following –

(a) Article 4A was inserted by regulation 4(2) of S.R. 1999 No. 311 and amended by paragraph 2 of Schedule 2 to S.I. 2008/963

“Indirect discrimination on the ground of gender reassignment

4B.-(1) A person (“A”) discriminates against another person (“B”) in any circumstances relevant for the purposes of –

- (a) any provision of Part 3; or
- (b) any provision of Part 4, so far as it applies to vocational training,

if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s gender reassignment.

(2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s gender reassignment if -

- (a) A applies, or would apply, it to persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (b) it puts, or would put, persons who intend to undergo, are undergoing or have undergone gender reassignment at a particular disadvantage when compared with persons who do not intend to undergo, are not undergoing or have not undergone gender reassignment;
- (c) it puts, or would put, B at that disadvantage; and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”.

Amendment of Article 7 of the 1976 Order

8. In Article 7(a) (basis of comparison) –

(a) before paragraph (a), insert -

“(aa) a comparison of the cases of persons required for the purposes of Article 3,”.

(b) in paragraph (a), for “Article 3(1) or (2)” substitute “Article 3A”;

(c) in paragraph (b), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 8 of the 1976 Order

9. In Article 8(8)(b) (applicants and employees), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 10A of the 1976 Order

10. In Article 10A(1)(c) (corresponding exception relating to gender reassignment), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 10B of the 1976 Order

11. In Article 10B(1)(d) (supplementary exceptions relating to gender reassignment), for “Article 4A” substitute “Article 4A or 4B”.

(a) Article 7 was substituted by the section 252(3) of the Civil Partnership Act 2004 (c. 33)

(b) Article 8(8) was inserted by regulation 3(1) of S.R. 1999 No. 311

(c) Article 10A was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 7 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)

(d) Article 10B was inserted by regulation 4(1) of S.R. 1999 No. 311 and amended by paragraph 8 of Schedule 6 to the Gender Recognition Act 2004 (c. 7)

Amendment of Article 11 of the 1976 Order

12. In Article 11(7)(a) (Equal Pay Act (Northern Ireland) 1970), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 12 of the 1976 Order

13. In Article 12(b)(contract workers) –

- (a) in paragraph (3A), for “Article 4A” substitute “Article 4A or 4B”;
- (b) in paragraph (3B), for “Article 4A” substitute “Article 4A or 4B”;
- (c) in paragraph (3C), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 14 of the 1976 Order

14. In Article 14(c) (partnerships) –

- (a) in paragraph (3A), for “Article 4A” substitute “Article 4A or 4B”;
- (b) in paragraph (3B), for “Article 4A” substitute “Article 4A or 4B”;
- (c) in paragraph (3C), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 35 of the 1976 Order

15. In Article 35(5)(d) (exception for voluntary bodies), for “Article 3 or 4A” substitute “Article 3, 3A or 4A”.

Amendment of Article 38 of the 1976 Order

16. In Article 38(1)(e) (discriminatory practices) –

- (a) in sub-paragraph (a) –
 - (i) omit the word “(a)”;
 - (ii) for “3(2)(b)” substitute “3A”;
 - (iii) omit the word “,or” (at the end of sub-paragraph (a));
- (b) omit sub-paragraph (b).

Amendment of Article 44 of the 1976 Order

17. In Article 44(2A)(f) (charities), for “Article 3 or 4A” substitute “Article 3, 3A or 4A”.

Amendment of Article 47 of the 1976 Order

18. In Article 47(4)(c)(g) (communal accommodation), for “Article 4A” substitute “Article 4A or 4B”.

Amendment of Article 65 of the 1976 Order

19. In Article 65(1B)(h) (remedies on complaint under Article 63), for “Article 3(2)(b)” substitute “Article 3A”.

(a) Article 11(7) was inserted by regulation 3(2) of S.R. 1999 No. 311

(b) Paragraphs (3A), (3B) and (3C) were inserted in Article 12 by regulation 4(3) of S.R. 1999 No. 311

(c) Paragraphs (3A), (3B) and (3C) were inserted in Article 14 by regulation 4(5) of S.R. 1999 No. 311

(d) Paragraph (5) was inserted by paragraph 7 of Schedule 2 to S.I. 2008/963

(e) Article 38(1) was substituted by regulation 7(4) of S.R. 2001 No. 282

(f) Paragraph (2A) was inserted by paragraph 11 of Schedule 2 to S.I. 2008/963

(g) Article 47(4)(c) was inserted by paragraph 14(a) of Schedule 2 to S.I. 2008/963

(h) Article 65(1B) was inserted by regulation 2(2) of S.R. 1996 No. 418 and amended by regulation 7(5) of S.R. 2001 No. 282 and by section 252(5) of the Civil Partnership Act 2004 (c. 33)

Amendment of Article 66 of the 1976 Order

20. In Article 66 (claims under Part IV) –

- (a) omit paragraph (3)(a);
- (b) omit paragraph (3A)(b).

Amendment of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990

21. In Article 3(3) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990(c)–

- (a) for “Article 3(2)(b)(i)”, substitute “Article 3A(2)(b)”;
- (b) in sub-paragraph (a), for “justifiable as mentioned in Article 3(2)(b)(ii) or 5(1)(b)(ii)” substitute “proportionate as mentioned in Article 3A(2)(d) or 5(1)(b)(iii)”;
- (c) in sub-paragraph (b), for “Article 3(2)(b)(ii) or 5(1)(b)(ii)” substitute “Article 3A(2)(d) or 5(1)(b)(iii)”.

Transitional provision

22. The amendments to Article 66(3) and (3A) of the 1976 Order made by regulation 20 do not apply to any proceedings which were commenced but not disposed of before (commencement date) 2016.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on [] 2016.



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

(a) Article 66(3) was amended by regulation 2(4) of S.R. 1996 No. 418
(b) Article 66(3A) was inserted by regulation 6 of S.R. 2001 No. 282
(c) S.I. 1990/246 (N.I. 2); Article 3(3) was amended by regulation 8 of S.R. 2001 No. 282

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) to give full effect in Northern Ireland to Council Directive 2006/54/EC of 5th July 2006 (“the Directive”) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Regulation 3 provides for the omission of the definition of “provision, criterion or practice” in Article 2(2) of the 1976 Order.

Regulation 4 inserts a new Article 3A into the 1976 Order to create a single definition of indirect discrimination which applies to all provisions of the 1976 Order. The regulation also substitutes Article 3 of the 1976 Order so that Article 3 only contains a definition of direct discrimination.

Regulation 7 inserts a new Article 4B into the 1976 Order. This Article extends the 1976 Order to cover indirect discrimination on the ground of gender reassignment in employment and vocational training.

Regulations 5, 6 and 8 to 20 make minor amendments to the 1976 Order consequential on the substitution of Article 3 of the 1976 Order with new Articles 3 and 3A (regulation 4) and the insertion of new Article 4B (regulation 7).

Regulation 21 amends Article 3(3) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 consequential on the substitution of Article 3 of the 1976 Order with new Articles 3 and 3A (regulation 4).

Regulation 22 contains a transitional provision to deal with cases before the court at the time of commencement of the Regulations.

DRAFT EQUALITY IMPACT ASSESSMENT

Introduction

1. Section 75(1) of the Northern Ireland Act 1998 requires all public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between:
 - Persons of different religious belief, political opinion, racial group, age, marital status and sexual orientation;
 - Men and women generally;
 - Persons with a disability and persons without; and
 - Persons with dependents and persons without.
2. In addition, section 75(2) of the 1998 Act requires public authorities, without prejudice to their obligations under subsection (1), to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.
3. The purpose of this draft Equality Impact Assessment is to consider the impact of the amendments contained in the draft Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016 (“the draft Regulations”) on the nine Section 75 groups to identify any adverse impacts (i.e. whether the policy negatively affects people within one or more of the nine categories).
4. The draft Regulations, which are the subject of this consultation exercise, are necessary to ensure conformity of Northern Ireland anti-discrimination legislation with EU law (in this case Council Directive 2006/54/EC). The EU Directive implements the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
5. In April 2013, the EU Commission launched an EU Pilot application (4853/13/JUST) regarding transposition of Council Directive 2006/54/EC in Northern Ireland. The Commission sought clarification on a number of issues regarding the conformity of domestic legislation with the Directive. Following a series of communications with the EU Commission, OFMDFM informed the Commission that it would bring forward amendments to the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) to address some of the queries raised in the EU Pilot application.
6. Failure to make the necessary changes to domestic law will leave Northern Ireland vulnerable to the EU Commission opening up infringement proceedings

under Article 258 of the Treaty on the Functioning of the European Union (TFEU) against the United Kingdom (the Member State). Therefore, to avoid infraction proceedings, it is necessary to make a number of amendments to the 1976 Order to ensure compliance with EU law.

Direct discrimination – association and perception

7. Regulation 4(1) of the draft Regulations substitutes Article 3 of the 1976 Order so that Article 3 will, in future, only define direct discrimination. The text of new Article 3 is based on the current text of Article 3(1)(a) and 3(2)(a) of the 1976 Order. However, the new definition of direct discrimination is constructed in such a way as to allow it to apply in the case of discrimination based on perception and by way of association in compliance with Council Directive 2006/54/EC.
8. Men and women will in future be able to seek redress if they are directly discriminated against because they (i) associate with someone of a particular sex; or (ii) are wrongly perceived as being of a particular sex.
9. For example, a man who is denied promotion because his reference is written by a woman line manager who is assumed to be less creditable than male managers would be able to claim discrimination because of association with a woman. A young man who applies for a job, but is not considered because the employer mistakes his name for that of a woman and the employer does not want young woman working for him in case they become pregnant, would be protected.
10. The proposed new definition of direct discrimination will not have a differential or adverse impact between men and woman. Similarly, it will have no differential or adverse impact on the other section 75 categories.

Indirect discrimination

11. Regulation 4(2) of the draft Regulations inserts a new Article 3A into the 1976 Order to create a single definition of indirect discrimination which applies to all provisions in the 1976 Order.
12. Within the 1976 Order there are two different definitions of indirect discrimination depending on whether or not provisions are governed by EU Directives. The creation of a single definition of indirect discrimination will remove this inconsistency, making it much easier for people to know their rights and responsibilities in this area.

13. The proposed single definition of indirect discrimination will not have a differential or adverse impact between men and woman. Similarly, it will have no differential or adverse impact on the other section 75 categories.

Indirect discrimination on the grounds of gender reassignment

14. Regulation 7 of the draft Regulations inserts a new Article 4B into the 1976 to extend protection to cover indirect discrimination on the ground of gender reassignment in employment and vocational training. The extension of the law will increase protection for transsexual people.
15. The proposed new Article 4B dealing with indirect discrimination on the ground of gender reassignment will not have a differential or adverse impact between men and woman. Similarly, it will have no differential or adverse impact on the other section 75 categories.