

2011 No. 168

EQUALITY

The Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011

Made - - - - *24th March 2011*

Coming into operation - *6th April 2011*

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), in exercise of the powers conferred by section 2(2) of the that Act hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 and shall come into operation on 6th April 2011.

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

Amendments to the Employment Equality (Age) Regulations (Northern Ireland) 2006

2.—(1) The Employment Equality (Age) Regulations (Northern Ireland) 2006(d) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 7 (applicants and employees), omit paragraphs (4), (5) and (8).

(3) Regulation 32 (exception for retirement) is revoked.

(4) For regulation 36 (exception for provision of life assurance cover to retired workers), substitute—

“Insurance etc.

36.—(1) Nothing in Part 2 or 3 shall render it unlawful for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of an employee for a period ending when the employee attains whichever is the greater of—

(a) the age of 65, and

(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.R. 2006 No. 261; to which there are amendments not relevant to these Regulations.

(b) the state pensionable age.

(2) Nothing in Part 2 or 3 shall render it unlawful for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of only such employees as have not attained whichever is the greater of—

(a) the age of 65, and

(b) the state pensionable age.

(3) Paragraphs (1) and (2) apply only where the insurance or related financial service is, or is to be, provided to the employer's employees or a class of those employees—

(a) in pursuance of an arrangement between the employer and another person, or

(b) where the employer's business includes the provision of insurance or financial services of the description in question, by the employer.

(4) The state pensionable age is the pensionable age determined in accordance with the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(a).”.

(5) Regulation 51 (duty to consider working beyond retirement) is revoked.

(6) Schedule 5 (duty to consider working beyond retirement) is revoked.

(7) In Schedule 7, omit sub-paragraphs (3) to (5), (7) and (9) of paragraph 3.

Amendments to the Employment Rights (Northern Ireland) Order 1996

3.—(1) The Employment Rights (Northern Ireland) Order 1996(b) is amended in accordance with paragraphs (2) to (7).

(2) In Article 130(c) (fairness of dismissals: general)—

(a) omit paragraphs (2)(ba), (2A) and (3A), and

(b) in paragraph (4), for “In any other case where” substitute “Where”.

(3) Omit Articles 130ZA to 130ZH (retirement dismissals)(d).

(4) In Article 137 (redundancy), omit paragraph (7I)(e).

(5) In Article 140(3) (qualifying period of employment), omit sub-paragraph (q) as inserted by the Employment Equality (Age) Regulations (Northern Ireland) 2006(f).

(6) In Article 146(5)(a) (remedies for unfair dismissal: orders for compensation), omit “130ZG or”(g).

(7) In Article 154(1A)(a) (basic award in certain cases), omit “130ZG or”(h).

Transitional provisions

4.—(1) The provisions mentioned in paragraph (2) continue to have effect in relation to the employment of a person as if regulations 2 and 3 had not been made where—

(a) notification in respect of that employment has been given under paragraph 2 or 4 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 before the date on which these Regulations came into operation, and

(a) S.I. 1995/3213 (N.I. 22); paragraph 1 of Schedule 2 was amended by paragraph 28 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c.14 (N.I.)); paragraph 8 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c.2 (N.I.)); and paragraph 4 of Schedule 3 to the Pensions Act (Northern Ireland) 2008 (c.1 (N.I.)).

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

(c) Relevant amendments to Article 130 have been made by paragraph 3(3) of Part 1 of Schedule 7 to S.R. 2006 No. 261.

(d) Articles 130ZA to 130ZH inserted by paragraph 3(4) of Part 1 to Schedule 7 to S.R. 2006 No. 261.

(e) Paragraph (7I) inserted by paragraph 3(2)(a) of S.R. 2007 No. 225.

(f) Sub-paragraph (q) inserted by paragraph 3(5)(b) of Part 1 of Schedule 7 to S.R. 2006 No. 261.

(g) Paragraph (5) inserted by Article 23(3) of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)), and amended by paragraph 3(7) of Part 1 of Schedule 7 to S.R. 2006 No. 261.

(h) Paragraph (1A) inserted by Article 23(5) of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)) and amended by paragraph 3(9) of Part 1 of Schedule 7 to S.R. 2006 No. 261.

(b) that person has attained the age limit or will attain it before 1st October 2011.

(2) The provisions are—

- (a) Articles 130(2)(ba), (2A) and (3A), 130ZA to 130ZD, 130ZF to 130ZH, 137(7I), 146(5)(a) and 154(1A)(a) of the Employment Rights (Northern Ireland) Order 1996,
- (b) Article 140(3)(q) (as inserted by the Employment Equality (Age) Regulations (Northern Ireland) 2006) of the Employment Rights (Northern Ireland) Order 1996,
- (c) Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006, and
- (d) regulation 32 of those Regulations.

(3) The age limit is whichever is the greater of—

- (a) the age of 65, and
- (b) the normal retirement age in the case of the employment concerned.

(4) Despite this regulation—

- (a) an employer may not issue a notification under paragraph 2 or 4 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 on or after 6th April 2011 in respect of the employment of a person to which this regulation applies, and
- (b) an employee may not make a request under paragraph 5 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 on or after 5th January 2012 in respect of the employment to which this regulation applies.

(5) In this regulation, “normal retirement age” has the meaning given in Article 130ZH of the Employment Rights (Northern Ireland) Order 1996.

(6) This regulation does not apply to the employment of a person if Article 130ZE of the Employment Rights (Northern Ireland) Order 1996 would (but for regulation 3(3)) apply to a dismissal from that employment.

5.—(1) The provisions mentioned in paragraph (2) continue to have effect in relation to the employment of a person as if regulations 2(5) to (7) and 3 had not been made where—

- (a) notification in respect of that employment has been given under paragraph 2 or 4 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 before the date on which these Regulations came into operation, and
- (b) Article 130ZE of the Employment Rights (Northern Ireland) Order 1996 would (but for regulation 3(3)) apply to a dismissal from that employment.

(2) The provisions are—

- (a) Articles 130(2)(ba), (2A) and (3A), 130ZE to 130ZH, 137(7I), 146(5)(a) and 154(1A)(a) of the Employment Rights (Northern Ireland) Order 1996,
- (b) Article 140(3)(q) (as inserted by the Employment Equality (Age) Regulations (Northern Ireland) 2006) of the Employment Rights (Northern Ireland) Order 1996, and
- (c) Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006.

6. Despite regulation 2(5), (6) and (7), paragraphs 9, 12 and 13 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 (right of employee to be accompanied at meeting with employer) continue to have effect in a case where paragraph 9 of that Schedule applies immediately before the commencement of these Regulations.

7. Regulations 4 to 6 do not affect the general operation of section 28 of the Interpretation Act (Northern Ireland) 1954(a).

(a) 1954 c.33

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 24 March 2011

Tim Losty

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and amend provisions in the Employment Equality (Age) Regulations (Northern Ireland) 2006 (and repeal and amend related provisions in the Employment Rights (Northern Ireland) Order 1996) which except certain dismissals made on the basis of retirement from constituting direct age discrimination and unfair dismissal. New provision relating to insurance arranged by an employer for the employer's employees in connection with that employment is also made. These Regulations come into operation on 6th April 2011.

Regulation 2 amends regulation 7 of the Employment Equality (Age) Regulations (Northern Ireland) 2006; revokes regulation 32 of those Regulations and substitutes a new regulation 36. It also revokes regulation 51 and Schedule 5 to those Regulations which set out a duty for employers to consider requests from employees who wish to work beyond retirement. It also revokes certain provisions of Schedule 7 to those Regulations.

Regulation 3 amends articles 130, 137, 140, 146 and 154 of the Employment Rights (Northern Ireland) Order 1996 and repeals articles 130ZA to 130ZH.

Regulations 4 to 6 contain transitional provisions.

A Regulatory Impact Assessment of the effect that these Regulations will have on business costs has been placed in the Library of the Northern Ireland Assembly. Copies may be obtained from Equality, Good Relations and Strategy Directorate, Office of the First Minister and deputy First Minister, Room E.318. Castle Buildings, Stormont, Belfast, BT4 3SR or may be viewed online at <http://www.legislation.gov.uk/nisr>

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