**SD74**

SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED)

**THE QUESTIONS PROCEDURE**

CONTENTS

Guidance on the questions procedure

 Part I - Introduction

 Part II - Guidance for the complainant

 Part III - Guidance for the respondent

Questionnaire of the complainant

Reply by respondent (2 copies)

Appendix - Notes on the scope of the Sex Discrimination (NI) Order 1976 (as amended)

A complainant should obtain TWO copies of this booklet, one to send to the respondent and the other to keep.

Before completing the questionnaire or the reply form (as appropriate), the complainant and the respondent should read Part I of the guidance and (again as appropriate) Part II or III.

**SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED)**

**GUIDANCE ON THE QUESTIONS PROCEDURE**

**PART I - INTRODUCTION**

1. The purpose of this guidance is to explain the questions procedure under Article 74 of the Sex Discrimination (NI) Order 1976 (as amended). The procedure is intended to help a person (referred to in this guide as the **complainant**) who thinks she (or he) has been discriminated against by another (the **respondent**) to obtain information from that person about the treatment in question in order to -

(a) decide whether or not to bring legal proceedings, and

(b) if proceedings are brought, to present her complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent (both are included in this booklet). The questionnaire and the reply form have been designed to assist the complainant and respondent to identify information which is relevant to the complaint. It is not, however, obligatory for the questionnaire or the reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.

2. This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part II; and guidance for the respondent on the use of the reply form is set out in Part III. The main provisions of the Sex Discrimination (NI) Order 1976 (as amended) are referred to in the Appendix to this guidance. Further information about the amended Order can be obtained, free of charge, from the Equality Commission for Northern Ireland at -

Equality Commission for Northern Ireland

Equality House

7-9 Shaftesbury Square

Belfast

BT2 7DP

Telephone (028) 90 500 600

**How the questions procedure can benefit both parties**

3. The procedure can benefit both the complainant and the respondent in the following ways:

(1) If the respondent’s answers satisfy the complainant that the treatment was not unlawful discrimination, there will be no need for legal proceedings.

(2) Even if the respondent’s answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts, whether they disagree on how the amended Order applies. In some cases, this may lead to a settlement of the grievance, again making legal proceedings unnecessary.

(3) If it turns out that the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

**What happens if the respondent does not reply or replies evasively**

4. The respondent cannot be compelled to reply to the complainant’s questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within a reasonable period, or replies in an evasive or **ambiguous** way, his position may be adversely affected should the complainant bring proceedings against him. The respondent’s attention is drawn to these possible consequences in the note at the end of the questionnaire.

**Period within which questionnaire must be served on the respondent**

5. There are different time limits within which a questionnaire must be served in order to be admissible under the questions procedure in any ensuing legal proceedings. Which time limit applies depends on whether the complaint would be under the employment, training and related provisions of the amended Order (in which case the proceedings would be before an Industrial Tribunal) or whether it would be under the education, goods, facilities and services or premises provisions (in which case proceedings would be before a County Court).

**Industrial Tribunal cases**

6. All complaints relating to discrimination in the employment field are dealt with by industrial tribunals. A complaint is made by submitting an originating application in writing, within three months of the date of the act complained of, to an industrial tribunal, giving details of the two parties and the grounds on which relief is sought. Form ET1 available from Jobcentres and the Office of the Industrial Tribunals and Fair Employment Tribunal and may be used for this purpose. A copy of the application is sent to the respondent. In addition, the tribunal will send a copy of the application form to a conciliation officer of the Labour Relations Agency and will send copies of the respondent’s reply to the complainant and the conciliation officer.

7. In order to be admissible under the questions procedure in any ensuing industrial tribunal proceedings, the complainant’s questionnaire must be served on the respondent either:

(a) before a complaint about the treatment concerned is made to an industrial tribunal, but not more than three months after the treatment in question (see section 6 above); or

(b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

 However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending to the Secretary of the Office of the Industrial Tribunals and Fair Employment Tribunal a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

**Court cases**

8. All complaints relating to discrimination in the fields of education, goods, facilities and services and premises are dealt with by way of civil proceedings in the county courts. In order to be admissible under the questions procedure in any ensuing county court proceedings, the complainant’s questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than six months after the treatment\*. However, where proceedings have been brought, a questionnaire may still be served provided the leave of the court has been obtained.

 \**where the respondent is a body in charge of a public sector educational establishment, the six month period begins when the complaint has been referred to the Department of Education and two months have elapsed or, if this is earlier, the Department has informed the complainant that it requires no more time to consider the matter.*

**PART II - GUIDANCE FOR THE COMPLAINANT**

NOTES ON PREPARING THE QUESTIONNAIRE

9. Before filling in the questionnaire, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

**Paragraph 2**

10. You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment you think may have been unlawful discrimination, and about the circumstances leading up to that treatment. You should also give the date, and if possible and if relevant, the place and approximate time of the treatment. You should bear in mind that in paragraph 4 of the questionnaire you will be asking the respondent whether he agrees with what you say in paragraph 2.

**Paragraph 3**

11. In paragraph 3 you are telling the respondent that you think the treatment you have described in paragraph 2 may have been unlawful discrimination by him against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided **why** you think the treatment may have been unlawful discrimination. However, you **do not have** to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word “because”. If you wish to complete the paragraph, but feel you need more information about the Sex Discrimination (NI) Order 1976 (as amended) before doing so, you should look to the Appendix to this guidance.

12. If you decide to complete paragraph 3, you may find it useful to indicate -

(a) what **kind** of discrimination you think the treatment may have been ie whether it was:

 direct sex discrimination,

 indirect sex discrimination,

 direct discrimination against a married person,

 indirect discrimination against a married person,

 victimisation,

 or harassment.

 (For further information about the different kinds of discrimination see paragraph 1 of the Appendix)

(b) which provision of the amended Order you think may make unlawful the kind of discrimination you think you may have suffered. (For an indication of the provision of the amended Order which make the various kinds of discrimination unlawful, see paragraph 2 of the Appendix).

**Paragraph 6**

13. You should insert here any other question which you think may help you to obtain relevant information. (For example, if you think you have been discriminated against by having been refused a job, you may want to know what were the qualifications of the person who did get the job and why that person got the job).

14. Paragraph 5 contains questions which are especially important if you think you may have suffered direct sex discrimination, or direct sex discrimination against a married person, because they ask the respondent whether your sex or marital status had anything to do with your treatment. Paragraph 5 does not, however, ask specific questions relating to indirect sex discrimination, indirect discrimination against a married person or victimisation. If you think you may have suffered indirect discrimination (or indirect discrimination against a married person) you may find it helpful to include the following question in the space provided in paragraph 6:

 “Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to men and women (married and unmarried persons)?

 If so -

(a) what was the condition or requirement?

(b) why was it applied?

15. If you think you have been victimised you may find it helpful to include the following question in the space provided in paragraph 6:

 “was the reason for my treatment the fact that I had done, or intended to do, or that you suspected I had done or intended to do, any of the following:

(a) brought proceedings under the Sex Discrimination (NI) Order (as amended) or the Equal Pay Act (NI) 1970 (as amended); or

(b) gave evidence or information in connection with proceedings under either the amended Order or the amended Act; or

(c) did something else under or by reference to either the amended Order or the amended Act; or

(d) made an allegation that someone acted unlawfully under either the amended Order or the amended Act.

**Signature**

16. The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should -

(a) describe himself (eg “solicitor acting for (*name of complainant*)”), and

(b) give his business (or home, if appropriate) address.

**WHAT PAPERS TO SERVE ON THE PERSON TO BE QUESTIONED**

17.You should send the person to be questioned the whole of this document (ie the guidance, the questionnaire and the reply forms), with the questionnaire completed by you. **You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire** (and you might also find it useful to retain a copy of the guidance and the uncompleted reply form).

**HOW TO SERVE THE PAPERS**

18. You can either deliver the papers in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that they were delivered.

**WHERE TO SEND THE PAPERS**

19.You can send the papers to the person to be questioned at his usual or last known residence or place or business. If you know he is acting through a solicitor you should send them to him at his solicitor’s address. If you wish to question a limited company or other corporate body or a trade union or employer’s association, you should send the papers to the secretary or clerk at the registered or principal office of the company, etc. You should be able to find out where its registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk (eg at, or c/o, the company’s local office). It is your responsibility, however, to see that the secretary or clerk receives the papers.

**USE OF THE QUESTIONS PROCEDURE AND REPLIES IN INDUSTRIAL TRIBUNAL PROCEEDINGS**

20.If you decide to make (or already have made) a complaint to an industrial tribunal about the treatment concerned and if you intend to use your questions and the reply (if any) as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Office of Industrial Tribunals and Fair Employment Tribunal before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Office of the Industrial Tribunals and Fair Employment Tribunal.

**PART III - GUIDANCE FOR THE RESPONDENT**

NOTES ON COMPLETING THE REPLY FORM

21.Before completing the reply form, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

**Paragraph 2**

22.Here you are answering the question in paragraph 4 of the questionnaire. If you **agree** that the complainant’s statement in paragraph 2 of the questionnaire is an accurate **description** of what happened, you should delete the second sentence.

23.If you **disagree** in any way that the statement is an accurate description of what happened, you should explain in the space provided in what respects you disagree, or your version of what happened, or both.

**Paragraph 3**

24.Here you are answering the question in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the complainant’s description of her treatment, you will be answering paragraph 5 on the basis of the facts in her description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of **your** version of the facts. To answer paragraph 5, you are advised to look at the Appendix to this guidance. You need to know:-

(a) how the amended Order defines discrimination - see paragraph 1 of the Appendix;

(b) in what situations the amended Order makes discrimination unlawful - see paragraph 2 of the Appendix; and

(c) what exceptions the amended Order provides - see paragraph 3 of the Appendix.

25.If you think that an exception (eg the exception for employment where a person’s sex is a genuine occupational qualification) applies to the treatment described in paragraph 2 of the complainant’s questionnaire, you should mention this in paragraph 3(a) of the reply form and explain why you think the exception applies.

**Signature**

26.The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should -

(a) describe himself (eg “solicitor acting for *(name of respondent)”* or “personnel manager of (*name of firm)”*), and

(b) give his business (or home, if appropriate) address.

**SERVING THE REPLY FORM ON THE COMPLAINANT**

27.If you wish to reply to the questionnaire you are strongly advised to do so without delay. **You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply**.

28.You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send it by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.

29.You should send the reply form to the address indicated in paragraph 7 of the complainant’s questionnaire.

THE SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED) ARTICLE 74(1)(a)

**QUESTIONNAIRE OF THE PERSON AGGRIEVED (THE COMPLAINANT)**

To...................................................................................................................................

*(Name of person to be questioned (the respondent))*

of...................................................................................................................................

.......................................................................................................................................

*(Address)*

1. I...........................................................................................................................

 *(Name of complainant)*

 of........................................................................................................................

 ............................................................................................................................

 *(Address)*

 consider that you may have discriminated against me contrary to the Sex Discrimination (Northern Ireland) Order 1976 (as amended).

2. *(Give date, approximate time, place and factual description of the treatment received and of the circumstances leading up to the treatment (see paragraph 10 of the guidance).)*

 On...

3. *(Complete if you wish to give reasons, otherwise delete the word “because” (see paragraphs 11 and 12 of the guidance).)*

 I consider that this treatment may have been unlawful because:

4. *(This is the first of your questions to the respondent. You are advised not to alter it.)*

 Do you agree that the statement in paragraph 2 is an accurate description of what happened? If not in what respect do you disagree or what is your version of what happened?

5. *(This is the second of your questions to the respondent. You are advised not to alter it.)*

 Do you accept that your treatment of me was unlawful discrimination by you against me?

 If not

 (a) why not?

 (b) for what reason did I receive the treatment accorded to me?

 (c) how far did my sex or marital status affect your treatment of me?

6. *(Enter here any other questions you wish to ask (see paragraphs 13-15 of the guidance).)*

7. *(\*Delete as appropriate. If you delete the first alternative, insert the address to which you want the reply to be sent.)*

 My address for any reply you may wish to give to the questions raised above is \*that set out in paragraph 1 above/the following address:

Signature of Complainant:...................................................................................

Date:....................................................................................................................

 *(See paragraph 16 of the guidance.)*

THE SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED) ARTICLE 74(1)(b)

**REPLY BY RESPONDENT**

To...................................................................................................................................

*(Name of complainant)*

of...................................................................................................................................

.......................................................................................................................................

*(Address)*

1. I...........................................................................................................................

 *(Name of respondent)*

 of........................................................................................................................

 ............................................................................................................................

 *(Address)*

 hereby acknowledge receipt of the questionnaire signed by you and dated ......................which was served on me on *(date)*..........................

 *(Complete as appropriate)*

2. I **\*agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened. *(\*Delete as appropriate)*

 *(If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete this sentence. If you disagree, complete this sentence (see paragraphs 22 and 23 of the guidance).)*

 I disagree with the statement in paragraph 2 of the questionnaire in that:

3. I **\*accept/dispute** that my treatment of you was unlawful discrimination by me against you. *(\*Delete as appropriate.)*

 *(If you accept the complainant’s assertion of unlawful discrimination in paragraph 3 of the questionnaire, delete the sentences at (a), (b), and (c). Unless completed, a sentence should be deleted (see paragraphs 24 and 25 of the guidance).)*

 (a) My reasons for so disputing are:

 (b) The reason why you received the treatment accorded to you is:

 (c) Your sex or marital status affected my treatment of you to the following

 extent:

4. *(Replies to questions in paragraph 6 of the questionnaire should be entered here.)*

5. *(Delete the following sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.)*

 I have deleted (in whole or in part) the paragraph(s) numbered ........................... above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:

 Signature of respondent......................................................................................

 Date.....................................................................................................................

 *(See paragraph 26 of the guidance)*

THE SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED) ARTICLE 74(1)(b)

**REPLY BY RESPONDENT**

To...................................................................................................................................

*(Name of complainant)*

of...................................................................................................................................

.......................................................................................................................................

*(Address)*

1. I...........................................................................................................................

 *(Name of respondent)*

 of........................................................................................................................

 ............................................................................................................................

 *(Address)*

 hereby acknowledge receipt of the questionnaire signed by you and dated ......................which was served on me on *(date)*..........................

 *(Complete as appropriate)*

2. I **\*agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened. *(\*Delete as appropriate)*

 *(If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete this sentence. If you disagree, complete this sentence (see paragraphs 22 and 23 of the guidance).)*

 I disagree with the statement in paragraph 2 of the questionnaire in that:

3. I **\*accept/dispute** that my treatment of you was unlawful discrimination by me against you. *(\*Delete as appropriate.)*

 *(If you accept the complainant’s assertion of unlawful discrimination in paragraph 3 of the questionnaire, delete the sentences at (a), (b), and (c). Unless completed, a sentence should be deleted (see paragraphs 24 and 25 of the guidance).)*

 (a) My reasons for so disputing are:

 (b) The reason why you received the treatment accorded to you is:

 (c) Your sex or marital status affected my treatment of you to the following

 extent:

4. *(Replies to questions in paragraph 6 of the questionnaire should be entered here.)*

5. *(Delete the following sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.)*

 I have deleted (in whole or in part) the paragraph(s) numbered ........................... above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:

 Signature of respondent......................................................................................

 Date.....................................................................................................................

 *(See paragraph 26 of the guidance)*

**APPENDIX**

NOTES ON THE SCOPE OF THE SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED)

The provisions of the Sex Discrimination (Northern Ireland) Order 1976 cover discrimination on the grounds of sex, pregnancy and maternity, gender reassignment and married/civil partnership status in certain circumstances.

**Definitions of discrimination**

1. The different kinds of discrimination covered by the Order are summarised in broad terms below. Some of the explanations have been written in terms of discrimination against a woman, but the amended Order applies equally to discrimination against men.

 **Direct sex discrimination** arises where a woman is treated less favourably than a man is (or would be) treated **because of her sex**.

 **Indirect sex discrimination** arises where a provision, criterion or practice is applied or would apply equally but:

(a) which puts or would put women at a particular disadvantage when compared with men; and

(b) which puts her at that disadvantage; and

(c) which cannot be shown to be a proportionate means of achieving a legitimate aim.

 **Direct discrimination against married persons in the employment field** arises where a married person is treated, in a situation covered by the employment provisions of the amended Order (ie those summarised under Group A in the table on the next page), less favourably than an unmarried person of the same sex is (or would be) treated **because she or he is married.**

  **Victimisation** arises where a person is treated less favourably than other persons (of either sex) are (or would be) treated because that person has done (or intends to do or is suspected of having done, or intending to do) any of the following:

 (a) brought proceedings under the amended Order or the Equal Pay Act (NI) 1970 (as amended); or

 (b) given evidence or information in connection with proceedings brought under either the amended Order or the amended Act; or

(c) done anything else by reference to either the amended Order or the amended Act (eg given information to the Equality Commission for Northern Ireland); or

 (d) made an allegation that someone acted unlawfully under either the amended Order or the amended Act.

 Victimisation does **not**, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.

 **Harassment** A person subjects a woman to harassment if

1. he engages in unwanted conduct that is related to her sex or that of another person; and/or
2. he engages in any form of unwanted verbal, non-verbal or physical contact of a sexual nature

that has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

It is also harassment to treat a woman less favourably on the grounds of her rejection of or submission to harassment or sexual harassment.

Third party harassment occurs when a third party subjects a woman to harassment in the course of her employment and the employer fails to take reasonable steps to prevent the harassment. The employer must know that she has been subject to harassment by a third party on at least two other occasions.

**Unlawful discrimination**

2. The provisions of the amended Order which make discrimination unlawful are indicated in the table on the next page. Those in Group A are the employment provisions, for the purposes of which discrimination means direct sex discrimination, indirect sex discrimination, direct sex discrimination against married persons, indirect discrimination against married persons, and victimisation. Complaints about discrimination which is unlawful under these provisions must be made to an Industrial Tribunal. For the purposes of the provisions of Group B, discrimination means direct sex discrimination, indirect sex discrimination and victimisation, but not direct or indirect discrimination against married persons. Complaints about discrimination which is unlawful under these provisions must be made to a county court.

**Exceptions**

3. Details of exceptions to the requirements not to discriminate can be found at parts III, IV and VI of the amended Order.

**USEFUL ADDRESSES**

**OFFICE OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL**

Killymeal House

5 Cromac Quay

Ormeau Road

Belfast

BT7 2JD

Tele: (028) 90 327 666

**LABOUR RELATIONS AGENCY**

2-8 Gordon Street

Belfast

BT1 2LG

Tele: 03300 552 220

**LABOUR RELATIONS AGENCY**

District Office

1-3 Guildhall Street

Londonderry

BT48 6BJ

Tele: (028) 71 264 681 or (028) 71 269 639

**EQUALITY COMMISSION FOR NORTHERN IRELAND**

Equality House

7-9 Shaftesbury Square

Belfast

BT2 7DP

Tele: (028) 90 500 600

**PROVISIONS OF THE SEX DISCRIMINATION (NI) ORDER 1976 (AS AMENDED) WHICH MAKE DISCRIMINATION UNLAWFUL**

|  |  |
| --- | --- |
| **Group A**Discrimination by employers in recruitment and treatment of employeesDiscrimination against contract workersDiscrimination against partnersDiscrimination by trade unions, employers’ associations etc Discrimination by bodies which confer qualifications or authorisations needed for particular kinds of jobs.Discrimination in the provision of training for employment, by any association of employers who afford their employees access to training facilities, or by any person providing facilities for training for employment and designated as such by the Department for Higher and Further Education, Training and Employment Discrimination by employment agencies**Group B**Discrimination by bodies in charge of educational establishmentsDiscrimination (other than that covered by Article 24) by local education authoritiesDiscrimination in the provision of goods, facilities and services to the public or a section of the publicDiscrimination in the disposal of premisesDiscrimination by landlords against prospective assignees or subleasees  | Article of Order81214151617EMPO 9182425303132 |