EXPLANATORY MEMORANDUM TO

The Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2015

SR No. 144

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Regulations amend Article 70(3) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (the "1998 Order") to comply with an EU Pilot investigation concerning the transposition of Council Directive 2000/78/EC in Northern Ireland ("the Directive"). The Directive establishes a general framework for equal treatment in employment and occupation on grounds of disability, sexual orientation, religion and belief and age.

2.2. The Regulations substitute paragraph (3) of Article 70 of the 1998 Order to ensure that the exception requiring a job to be done by a person holding, or not holding, a particular religious belief fully complies with Article 4 of the Directive. Article 4 of the Directive allows Member States to include a provision in implementing legislation stating that it is lawful to set a discriminatory criterion that is a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2.3. The new substituted paragraph (3) disapplies Part III (discrimination in the employment field) and Part V (other unlawful acts) of the 1998 Order, so far as they relate to discrimination on the ground of religious belief, in cases where a person’s religious belief constitutes an occupational requirement, the application of which is a proportionate means of achieving a legitimate aim.

3. Background

3.1. In 2013, the EU Commission launched and EU Pilot investigation seeking clarification on the conformity of various UK laws with Article 4 of the Directive. In relation to Northern Ireland, the Commission said it considered that Article 70(3) of the 1998 Order did not appear to provide for the safeguards laid down in Article 4 of the Directive.

3.2. The EU Commission's main concern was that Article 70(3) of the 1998 Order takes its authority to include exceptions relating to religious belief from the Directive without setting out the limitations of these exceptions in the same way as the Directive does.

3.3. Article 4 of the Directive contains a strict test which must be satisfied if a difference of treatment is to be considered non-discriminatory: there must be a genuine and determining occupational requirement, the objective must be legitimate and the requirement proportionate. No elements of this test appear in Article 70(3) of the 1998 Order.

3.4. In order to remove the risk of the EU Commission initiating infraction proceedings, the Office of the First Minister and deputy First Minister advised the EU Commission that it would amend the 1998 Order.

4. Consultation

4.1. As the amendment to Article 70(3) of the 1998 Order is purely technical and does not alter the current policy position, the Statutory Rule was not subject to public consultation. The Equality Commission and the Committee for the Office of the First Minister and deputy First Minister were advised of the Department's intention to make these Regulations.

5. Equality Impact

5.1. The amendment to Article 70(3) of the 1998 Order does not alter existing policy which permits employers to discriminate in cases where there is a genuine occupational requirement and where the nature of the job requires it to be done by a person holding, or not holding, a particular religious belief. The amendment to Article 70(3) of the 1998 Order sets out the limitations to this exception in the same way as the Directive does. As such, the amendment does not raise any new equality issues.

6. Regulatory Impact

6.1. The amendment to Article 70(3) of the 1998 Order does not, of itself, impose any additional burdens on business. A Regulatory Impact Assessment accompanied the making of the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 (SR No. 520) which amended the 1998 Order to reflect the provisions in the Directive.

7. Financial Implications

7.1. There are no financial implications associated with these Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The amendment to Article 70(3) of the 1998 Order is in response to an EU Pilot investigation initiated by the EU Commission. The amendment is necessary in order to fully comply with Article 4 of the Directive.

10. Parity or Replicatory Measure

10.1. There is no corresponding amending legislation needed in relation to Great Britain.

11. Additional Information

11.1. Not applicable.