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Draft Regulations laid before Parliament under section 81(4)(b) of the Equality Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.000

SEXUAL ORIENTATION DISCRIMINATION

The Equality Act (Sexual Orientation) Regulations 2007

Made - - - - 2007
Coming into force - - 30th April 2007

The Secretary of State for Communities and Local Government makes the following Regulations in exercise of the powers conferred by section 81(1) of the Equality Act 2006(1).

In accordance with section 81(4)(b) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Equality Act (Sexual Orientation) Regulations 2007 and shall come into force on 30th April 2007.

(2) These Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) References in these Regulations to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of sexual orientation) and related expressions shall be construed accordingly.

(2) In these Regulations—

“the Commission” means the Commission for Equality and Human Rights,

“criminal investigation” means an investigation into the commission of an alleged offence, and a decision whether to institute criminal proceedings,

“enactment” includes an enactment in or under an Act of the Scottish Parliament,

“fostering agency” means a fostering agency within the meaning of section 4(4) of the Care Standards Act 2000⁽²⁾ and a person providing a fostering service within the meaning of section 2(14)(b) of the Regulation of Care (Scotland) Act 2001⁽³⁾,

“the 2006 Act” means the Equality Act 2006,

“voluntary adoption agency” means an adoption society within the meaning of the Adoption and Children Act 2002⁽⁴⁾ which is a voluntary organisation within the meaning of that Act, and a person, providing an adoption service within the meaning of section 2(11)(b) of the Regulation of Care (Scotland) Act 2001⁽⁵⁾.

(3) In these Regulations—

- (a) a reference to act or action includes a reference to deliberate omission,
- (b) a reference to refusal includes a reference to deliberate omission, and
- (c) a reference to providing a service, facility or benefit of any kind includes a reference to facilitating access to the service, facility or benefit.

Discrimination on grounds of sexual orientation

3.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another (“B”) if, on grounds of the sexual orientation of B or any other person except A, A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).

(2) In paragraph (1) a reference to a person’s sexual orientation includes a reference to a sexual orientation which he is thought to have.

(3) For the purposes of these Regulations, a person (“A”) discriminates against another (“B”) if A applies to B a provision, criterion or practice—

- (a) which he applies or would apply equally to persons not of B’s sexual orientation,
- (b) which puts persons of B’s sexual orientation at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances),
- (c) which puts B at a disadvantage compared to some or all persons who are not of his sexual orientation (where there is no material difference in the relevant circumstances), and
- (d) which A cannot reasonably justify by reference to matters other than B’s sexual orientation.

(4) For the purposes of paragraphs (1) and (3), the fact that one of the persons (whether or not B) is a civil partner while the other is married shall not be treated as a material difference in the relevant circumstances.

(5) A person (“A”) discriminates against another (“B”) if A treats B less favourably than he treats or would treat another and does so by reason of the fact that, or by reason of A’s knowledge or suspicion that, B—

- (a) has brought or intended to bring, or intends to bring, proceedings under these Regulations,
- (b) has given or intended to give, or intends to give, evidence in proceedings under these Regulations,
- (c) has provided or intended to provide, or intends to provide, information in connection with proceedings under these Regulations,
- (d) has done or intended to do, or intends to do, any other thing under or in connection with these Regulations, or

(2) 2000 c. 14.

(3) 2001 asp 8.

(4) 2002 c. 38.

(5) To be substituted by section 7 of the Adoption and Children Act (Scotland) 2007 (asp 4) from a date to be appointed.

- (e) has alleged or intended to allege, or intends to allege, that a person has contravened these Regulations.
- (6) Paragraph (5) does not apply where A's treatment of B relates to B's—
 - (a) making or intending to make, not in good faith, a false allegation; or
 - (b) giving or intending to give, not in good faith, false information or evidence.

Goods, facilities and services

4.—(1) It is unlawful for a person (“A”) concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person (“B”) who seeks to obtain or to use those goods, facilities or services—

- (a) by refusing to provide B with goods, facilities or services,
 - (b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides to—
 - (i) a section of the public to which B belongs,
 - (c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services to—
 - (i) the public, or
 - (ii) a section of the public to which B belongs, or
 - (d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services to—
 - (i) the public, or
 - (ii) a section of the public to which B belongs.
- (2) Paragraph (1) applies, in particular, to—
- (a) access to and use of a place which the public are permitted to enter,
 - (b) accommodation in a hotel, boarding house or similar establishment,
 - (c) facilities by way of banking or insurance or for grants, loans, credit or finance,
 - (d) facilities for entertainment, recreation or refreshment,
 - (e) facilities for transport or travel, and
 - (f) the services of a profession or trade.
- (3) Paragraph (1) does not apply —
- (a) in relation to the provision of goods, facilities or services by a person exercising a public function, or
 - (b) to discrimination in relation to the provision of goods, facilities or services, where such discrimination—
 - (i) is unlawful by virtue of another provision of these regulations or by virtue of a provision of the Employment Equality (Sexual Orientation) Regulations 2003(6) (“the 2003 Regulations”), or
 - (ii) would be unlawful by virtue of another provision of these Regulations or of the 2003 Regulations but for an express exception.
- (4) For the purposes of paragraph (1) it is immaterial whether or not a person charges for the provision of goods, facilities or services.

Premises

- 5.—(1) It is unlawful for a person to discriminate against another—
- (a) in the terms on which he offers to dispose of premises to him,
 - (b) by refusing to dispose of premises to him, or
 - (c) in connection with a list of persons requiring premises.
- (2) It is unlawful for a person managing premises to discriminate against an occupier—
- (a) in the manner in which he provides access to a benefit or facility,
 - (b) by refusing access to a benefit or facility,
 - (c) by evicting him, or
 - (d) by subjecting him to any other detriment.
- (3) It is unlawful for a person to discriminate against another by refusing permission for the disposal of premises to him.
- (4) This regulation only applies to premises in Great Britain.

Exceptions to regulations 4 and 5

6.—(1) Regulation 4 does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or persons requiring a special degree of care and attention.

(2) Regulation 5 does not apply to anything done in relation to the disposal or management of a part of any premises by a person (“the landlord”) if—

- (a) the landlord or a near relative of his resides, and intends to continue to reside, in another part of the premises,
 - (b) the premises include parts (other than storage areas and means of access) shared by residents of the premises, and
 - (c) the premises are not normally sufficient to accommodate—
 - (i) in the case of premises to be occupied by households, more than two households in addition to that of the landlord or his near relative, or
 - (ii) in the case of premises to be occupied by individuals, more than six individuals in addition to the landlord or his near relative.
- (3) In paragraph (1) “near relative” means—
- (a) spouse or civil partner,
 - (b) parent or grandparent,
 - (c) child or grandchild (whether or not legitimate)
 - (d) spouse or civil partner of a child or grandchild,
 - (e) brother or sister (whether of full blood or half blood), and
 - (f) any of the relationships listed in sub-paragraphs (b) to (e) that arises through marriage, civil partnership or adoption.
- (4) Regulation 5(1) and (3) shall not apply to the disposal of premises by a person who—
- (a) owns an estate or interest in the premises,
 - (b) occupies the whole of the premises,
 - (c) does not use the services of an estate agent for the purposes of the disposal, and
 - (d) does not arrange for the publication of an advertisement for the purposes of the disposal.

Educational establishments, local education authorities, and education authorities

7.—(1) It is unlawful for the responsible body of an educational establishment listed in Schedule 3 to discriminate against a person—

- (a) in the terms on which it offers to admit him as a pupil,
- (b) by refusing to accept an application to admit him as a pupil, or
- (c) where he is a pupil of the establishment—
 - (i) in the way in which it affords him access to any benefit, facility or service,
 - (ii) by refusing him access to a benefit, facility or service,
 - (iii) by excluding him from the establishment, or
 - (iv) by subjecting him to any other detriment.

(2) In the application of this regulation and Schedule 3 to England and Wales—

- (a) an expression also used in any of the Education Acts (within the meaning of section 578 of the Education Act 1996(7)) has the same meaning as in that Act, and
- (b) “pupil” in relation to an establishment includes any person who receives education at that establishment.

(3) In the application of this regulation and Schedule 3 to Scotland, an expression also used in the Education (Scotland) Act 1980(8) has the same meaning as in that Act.

(4) It is unlawful for a local education authority (in England and Wales) or an education authority (in Scotland) in the exercise of their functions to discriminate against a person.

Public authorities

8.—(1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.

(2) In paragraph (1)—

- (a) “public authority” includes any person who has functions of a public nature (subject to paragraph (3)), and
- (b) “function” means function of a public nature.

(3) Paragraph (1) does not apply to—

- (a) a body listed in Part 1 of Schedule 1, or
- (b) the functions or actions listed in Part 2 of that Schedule.

Discriminatory practices

9.—(1) It is unlawful for a person to operate a practice which would be likely to result in unlawful discrimination if applied to persons of any sexual orientation.

(2) It is unlawful for a person to adopt or maintain a practice or arrangement in accordance with which in certain circumstances a practice would be operated in contravention of paragraph (1).

(3) In this regulation “unlawful discrimination” includes discrimination which is unlawful by virtue of any of regulations 4 to 8.

(4) Proceedings in respect of a contravention of this regulation may be brought only—

- (a) by the Commission, and

(7) 1996 c. 56.

(8) 1980 c. 44.

- (b) in accordance with sections 20 to 24 of the 2006 Act.

Discriminatory advertisements

10.—(1) It is unlawful to publish, or to cause to be published, an advertisement which indicates (expressly or impliedly) an intention by any person to discriminate unlawfully.

(2) In this regulation the reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of regulations 4 to 8.

(3) Proceedings in respect of a contravention of this regulation may be brought only—

- (a) by the Commission, and
- (b) in accordance with section 25 of the 2006 Act.

(4) A person who publishes an advertisement shall not be liable in proceedings under that section in respect of the publication of the advertisement if he proves that—

- (a) he published in reliance on a statement, made by a person causing the advertisement to be published, that paragraph (1) would not apply, and
- (b) it was reasonable to rely on that statement.

(5) A person who knowingly or recklessly makes a false statement of the kind mentioned in paragraph (4)(a) commits an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Instructing or causing discrimination

11.—(1) It is unlawful for a person—

- (a) to instruct another to discriminate unlawfully,
- (b) to cause or attempt to cause another to discriminate unlawfully, or
- (c) to induce or attempt to induce another to discriminate unlawfully.

(2) For the purposes of paragraph (1)(c) inducement may be direct or indirect.

(3) In this regulation a reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of regulations 4 to 8.

(4) Proceedings in respect of a contravention of this regulation may be brought only—

- (a) by the Commission, and
- (b) in accordance with section 25 of the 2006 Act.

Statutory requirements

12. Nothing in these Regulations shall make it unlawful to do anything which is necessary, or in so far as it is necessary, for the purpose of complying with—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) legislation made or to be made—
 - (i) by a Minister of the Crown,
 - (ii) by Order in Council,
 - (iii) by the Scottish Ministers or a member of the Scottish Executive,
 - (iv) by the National Assembly for Wales, or
 - (v) by or by virtue of a Measure of the General Synod of the Church of England, or

- (d) a condition or requirement imposed by a Minister of the Crown by virtue of anything listed in paragraphs (a) to (c).

Education, training and welfare

13. Nothing in these Regulations shall make it unlawful for any person to do anything by way of—

- (a) meeting special needs for education, training or welfare of persons on grounds of their sexual orientation, or
- (b) providing ancillary benefits in connection with meeting the needs mentioned in paragraph (a).

Organisations relating to religion or belief

14.—(1) Subject to paragraphs (2) and (8) this regulation applies to an organisation the purpose of which is—

- (a) to practise a religion or belief,
- (b) to advance a religion or belief,
- (c) to teach the practice or principles of a religion or belief,
- (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief.

(2) This regulation does not apply —

- (a) to an organisation whose sole or main purpose is commercial,
- (b) in relation to regulation 7 (Educational establishments, local educational authorities, and education authorities).

(3) Nothing in these Regulations shall make it unlawful for an organisation to which this regulation applies, or for anyone acting on behalf of or under the auspices of an organisation to which this regulation applies—

- (a) to restrict membership of the organisation,
- (b) to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices,
- (c) to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
- (d) to restrict the use or disposal of premises owned or controlled by the organisation,

in respect of a person on the ground of his sexual orientation.

(4) Nothing in these Regulations shall make it unlawful for a minister—

- (a) to restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this regulation relates, or
- (b) to restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this regulation relates,

in respect of a person on the ground of his sexual orientation.

(5) Paragraphs (3) and (4) permit a restriction only if imposed —

- (a) if it is necessary to comply with the doctrine of the organisation; or
- (b) so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

(6) In paragraph (4) the reference to a minister is a reference to a minister of religion, or other person, who —

- (a) performs functions in connection with a religion or belief to which an organisation, to which this regulation applies, relates; and
- (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this regulation applies.

(7) For the purposes of paragraph (3)(d), “disposal” shall not include disposal of an interest in premises by way of sale where the interest being disposed of is the entirety of the organisation’s interest in the premises, or the entirety of the interest in respect of which the organisation has power of disposal.

(8) This regulation does not apply where an organisation of the kind referred to in paragraph (1) or any person acting on its behalf or under its auspices—

- (a) makes provision of a kind referred to in regulation 4, or
- (b) exercises a function of a kind referred to in regulation 8,

on behalf of a public authority under the terms of a contract for provision of that kind between that authority and an organisation referred to in paragraph (1) or, if different, the person making that provision.

Adoption and fostering agencies

15.—(1) Paragraph (2) applies to a voluntary adoption agency or fostering agency that —

- (a) is an organisation of the kind referred to in regulation 14(1), or
- (b) acts on behalf of or under the auspices of such an organisation.

(2) Subject to paragraph (3), during the period from the commencement of these Regulations until 31st December 2008, nothing in these Regulations shall make it unlawful for such a voluntary adoption agency or fostering agency to restrict the provision of its services or facilities to a person on the grounds of his sexual orientation.

(3) If such a voluntary adoption agency or fostering agency restricts the provision of those services or facilities as mentioned in paragraph (2), it must at the same time refer the person seeking them to another person who the agency believes provides similar services or facilities to persons of his sexual orientation.

(4) Paragraph (2) permits a restriction only if imposed —

- (a) if it is necessary to comply with the doctrine of the organisation, or
- (b) so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers.

Associations

16.—(1) This regulation applies to any association of persons (however described, whether corporate or unincorporated, and whether or not its activities are carried on for profit) if—

- (a) it has 25 or more members, and
- (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of regulation 4(1); and
- (c) it is not a trade organisation.

(2) In this regulation—

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists,

“profession” includes any vocation or occupation, and

“trade” includes any business.

(3) It is unlawful for an association to which this regulation applies, in the case of a person who is not a member of the association, to discriminate against him—

- (a) in the terms on which it is prepared to admit him to membership, or
- (b) by refusing or deliberately omitting to accept his application for membership.

(4) It is unlawful for an association to which this regulation applies, in the case of a person who is a member or associate of the association, to discriminate against him—

- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them, or
- (b) in the case of a member, by depriving him of membership, or varying the terms on which he is a member, or
- (c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights, or
- (d) in either case, by subjecting him to any other detriment.

(5) For the purposes of this regulation—

- (a) a person is a member of an association if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly,
- (b) a person is an associate of an association to which this regulation applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).

Exceptions from regulation 16 for certain associations

17.—(1) Regulation 16 does not apply to any association if the main object of the association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular sexual orientation.

(2) In determining whether that is the main object of an association regard shall be had to the essential character of the association and to all relevant circumstances including, in particular, the extent to which the affairs of the association are so conducted that the persons primarily enjoying the benefits of membership are of the sexual orientation in question.

Charities

18.—(1) Nothing in these Regulations shall make it unlawful for a person to provide benefits only to persons of a particular sexual orientation, if—

- (a) he acts in pursuance of a charitable instrument, and
- (b) the restriction of benefits to persons of that sexual orientation is imposed by reason of or on the grounds of the provisions of the charitable instrument.

(2) Nothing in these Regulations shall make it unlawful for the Charity Commission for England and Wales or the holder of the office of the Scottish Charity Regulator to exercise a function in

relation to a charity in a manner which appears to the Commission or to the holder to be expedient in the interests of the charity, having regard to the provisions of the charitable instrument.

(3) In this regulation—

“charitable instrument”—

- (a) means an instrument establishing or governing a charity, and
- (b) includes a charitable instrument made before these Regulations come into force; and

“charity”—

- (a) in relation to England and Wales, has the meaning given by the Charities Act 2006⁽⁹⁾,
- (b) in relation to Scotland, means a body entered in the Scottish Charity Register⁽¹⁰⁾.

Restriction of proceedings

19.—(1) Except as provided by these Regulations, no proceedings, whether criminal or civil, may be brought against a person on the grounds that an act is unlawful by virtue of these Regulations.

(2) But paragraph (1) does not preclude—

- (a) proceedings by the Commission under Part 1 of the 2006 Act,
- (b) an application for judicial review,
- (c) proceedings under the Immigration Acts⁽¹¹⁾,
- (d) proceedings under the Special Immigration Appeals Commission Act 1997⁽¹²⁾, or
- (e) in Scotland, the exercise of the jurisdiction of the Court of Session to entertain an application for reduction or suspension of an order or determination or otherwise to consider the validity of an order or determination, or to require reasons for an order or determination to be stated.

Claims of unlawful action

20.—(1) A claim that a person has done anything that is unlawful by virtue of these Regulations may be brought—

- (a) in England and Wales, in a county court, by way of proceedings in tort, or
- (b) in Scotland, in the sheriff court, by way of proceedings in reparation,

for breach of statutory duty.

(2) Proceedings in England and Wales alleging that a local education authority or the responsible body of an educational establishment listed in Schedule 3 has acted unlawfully by virtue of regulation 7 or 8 may not be brought unless the claimant has given written notice to the Secretary of State.

(3) Proceedings in Scotland alleging that an education authority or the responsible body of an educational establishment listed in Schedule 3 has acted unlawfully by virtue of regulation 7 or 8 may not be brought unless the pursuer has given written notice to the Scottish Ministers.

(4) In paragraph (1) the reference to a claim that a person has done an unlawful act includes a reference to a claim that a person is to be treated by virtue of these Regulations as having done an unlawful act.

⁽⁹⁾ 2006 c 50.

⁽¹⁰⁾ See The Charities and Trustee Investment (Scotland) Act 2005 asp10.

⁽¹¹⁾ See The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).

⁽¹²⁾ 1997 c. 68.

(5) In proceedings under this regulation, if the claimant (or pursuer) proves facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act which is unlawful by virtue of these Regulations has been committed, the court shall assume that the act was unlawful unless the respondent (or defender) proves that it was not.

Claims of unlawful action: immigration cases

21.—(1) Proceedings may not be brought under regulation 20 alleging that a person has acted unlawfully by virtue of regulation 8 if the question of the lawfulness of the act could be raised (and has not been raised) in immigration proceedings (disregarding the possibility of proceedings brought out of time with permission).

(2) If in immigration proceedings a court or tribunal has found that an act was unlawful by virtue of regulation 8, a court hearing proceedings under regulation 20 shall accept that finding.

(3) In this regulation “immigration proceedings” means proceedings under or by virtue of—

- (a) the Immigration Acts, or
- (b) the Special Immigration Appeals Commission Act 1997.

Remedies for unlawful action

22.—(1) In proceedings under regulation 20, the court (subject to paragraph (2))—

- (a) (in addition to granting any remedy available to it in proceedings for tort) may grant any remedy that the High Court could grant in proceedings for judicial review,
- (b) may award damages by way of compensation for injury to feelings (whether or not other damages are also awarded),
- (c) may not award damages in proceedings in respect of an act that is unlawful by virtue of regulation 3(5) if the respondent proves that there was no intention to treat the claimant unfavourably on grounds of sexual orientation,

(2) In respect of a contravention of regulation 8, the court—

- (a) shall not grant an injunction unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and
- (b) shall grant any application to stay the proceedings under regulation 20 on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.

(3) In the application of this regulation to Scotland—

- (a) a reference to the court shall be taken as a reference to the sheriff,
- (b) a reference to the High Court shall be taken as a reference to the Court of Session,
- (c) a reference to tort shall be taken as a reference to reparation,
- (d) a reference to the claimant shall be taken as a reference to the pursuer,
- (e) a reference to the respondent shall be taken as a reference to the defender,
- (f) a reference to an injunction shall be taken as a reference to an interdict, and
- (g) a reference to staying proceedings shall be taken as a reference to sisting proceedings.

Claims of unlawful action: timing

23.—(1) Proceedings under regulation 20 may be brought only—

- (a) within the period of six months beginning with the date of the act (or the last act) to which the proceedings relate, or

(b) with the permission of the court in which the proceedings are brought.

(2) In relation to immigration proceedings (as defined in regulation 21) the period specified in paragraph (1)(a) shall begin with the first date on which proceedings under regulation 20 may be brought.

Claims of unlawful action: information

24.—(1) A claimant or a potential claimant may question a respondent or a potential respondent about the reasons for an action or about any matter that is or may be relevant and may do so—

- (a) in the form set out in Part 1 of Schedule 2, or
- (b) in a form to the like effect with such variation as the circumstances require.

(2) A respondent or potential respondent may reply (if he so wishes) to questions served under paragraph (1)—

- (a) in the form set out in Part 2 of Schedule 2, or
- (b) in a form to the like effect with such variation as the circumstances require.

(3) A claimant's or potential claimant's questions (whether or not put in a form mentioned in paragraph (1)), and a respondent or potential respondent's replies shall be admissible as evidence in proceedings in respect of the action or about any matter that is or may be relevant, to which the questions relate if (and only if) the questions are served—

- (a) within the period of six months beginning with the date of the action (or last action) to which they relate, and
- (b) in accordance with paragraph (4).

(4) A question may be served on a respondent or potential respondent and a reply may be served on a claimant or potential claimant—

- (a) by delivering it to him,
- (b) by sending it by post to him at his usual or last known residence or place of business,
- (c) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service,
- (d) where the person to be served is a claimant or potential claimant, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions, or if no address is so stated, at his usual or last known residence, or
- (e) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(13), by delivering it to the secretary or clerk of the body, union or association at its registered or principal office, or by sending it by post to the secretary or clerk at that office.

(5) A court may draw an inference from—

- (a) a failure to reply to a claimant's or potential claimant's questions within the period of eight weeks beginning with the date the questions were served, or
- (b) an evasive or equivocal reply to such questions (whether or not put in a form mentioned in paragraph (1)).

(6) In this regulation—

- (a) "claimant" means a person who has brought proceedings under these Regulations,

(13) 1992 c. 52.

- (b) “potential claimant” means a person who—
 - (i) thinks he may have been the subject of an act that is unlawful by virtue of these Regulations, and
 - (ii) wishes to consider whether to bring proceedings under these Regulations,
- (c) “potential respondent” means a person questioned by a potential claimant for the purpose of considering whether to bring proceedings under these Regulations
- (7) In the application of this regulation to Scotland—
 - (a) a reference to a claimant or potential claimant shall be taken as a reference to a pursuer or potential pursuer, and
 - (b) a reference to a respondent or potential respondent shall be taken as a reference to a defender or potential defender.
- (8) Paragraph (5) does not apply in relation to a reply, or a failure to reply, to a question—
 - (a) if the respondent or potential respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,
 - (b) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings, or
 - (c) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have frustrated the purpose of national security.

National security

25.—(1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under regulation 20, where the court considers it expedient in the interests of national security—

- (a) to exclude from all or part of the proceedings—
 - (i) the claimant,
 - (ii) the claimant’s representatives, or
 - (iii) any assessors,
 - (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;
 - (c) to take steps to keep secret all or part of the reasons for the court’s decision in the proceedings.
- (2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of paragraph (1).
- (3) A person may be appointed under paragraph (2) only—
- (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990(14)), or
 - (b) in relation to proceedings in Scotland, if he is—
 - (i) an advocate, or
 - (ii) qualified to practise as a solicitor in Scotland.

(14) 1990 c. 41.

(4) A person appointed under paragraph (2) shall not be responsible to the person whose interests he is appointed to represent.

Validity and revision of contracts

26.—(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of these Regulations,
- (b) it is included in furtherance of an act which would be unlawful by virtue of these Regulations, or
- (c) it provides for the doing of an act which would be unlawful by virtue of these Regulations.

(2) Paragraph (1) does not apply to a term whose inclusion constitutes, furthers or provides for unlawful discrimination against a party to the contract; but that term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit a provision of these Regulations is unenforceable by a person in whose favour the term would operate apart from this paragraph.

(4) Paragraph (3) does not apply to a contract settling a claim under regulation 20.

(5) On the application of a person interested in a contract to which paragraph (1) applies, a county court or sheriff court may make an order removing or modifying a term made unenforceable by that paragraph, but an order shall not be made unless all persons affected—

- (a) have been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
- (b) have been afforded an opportunity to make representations to the court.

(6) An order under paragraph (5) may include provision in respect of a period before the making of the order.

Insurance

27. Nothing in these Regulations shall make it unlawful for a person (“A”) to treat a person less favourably than A treats or would treat others on grounds of sexual orientation in relation to an annuity, or life insurance policy, or similar matter involving the assessment of risk, where the treatment—

- (a) is effected by reference to actuarial or other data from a source on which it is reasonable to rely, and
- (b) is reasonable having regard to that data, and any other relevant factors.

Blood donation

28.—(1) This regulation applies to any person operating a service for the collection and distribution of human blood for the purposes of medical services (“a blood service”).

(2) Subject to paragraph (3), it is unlawful for a person operating a blood service to discriminate against a person on grounds of sexual orientation in the way it affords him access to any facility for the donation of his blood.

(3) Nothing in this regulation shall make it unlawful for a person operating a blood service to refuse to accept a donation of a person’s blood where that refusal is determined by an assessment of risk to the public based on—

- (a) clinical, epidemiological and other data which was obtained from a source on which it was reasonable to rely, and
- (b) the refusal is reasonable having regard to that data, and any other relevant factors.

Aiding unlawful acts

29.—(1) It is unlawful knowingly to help another person (whether or not as his employee or agent) to do anything which is unlawful under these Regulations.

(2) A person commits an offence if he knowingly or recklessly makes a false statement, in connection with assistance sought from another, that a proposed act is not unlawful under these Regulations.

(3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Employers' and principals' liability

30.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by the employer as well as by the person.

(2) Anything done by a person as agent for another shall be treated for the purposes of these Regulations as done by the principal as well as by the agent.

(3) It is immaterial for the purposes of this regulation whether an employer or principal knows about or approves of an act.

(4) In proceedings under these Regulations against an employer in respect of an act alleged to have been done by his employee it shall be a defence for the employer to prove that he took such steps as were reasonably practicable to prevent the employee—

(a) from doing the act, or

(b) from doing acts of that kind in the course of his employment.

(5) Paragraphs (1) and (2) shall not apply in relation to an offence committed under regulation 10(5).

Police etc.

31.—(1) This regulation applies to—

(a) a constable who is a member of a police force maintained under the Police Act 1996⁽¹⁵⁾ or the Police (Scotland) Act 1967⁽¹⁶⁾,

(b) a special constable appointed for a police area in accordance with either of those Acts, and

(c) a person appointed as a police cadet in accordance with either of those Acts.

(2) A person to whom this regulation applies shall be treated for the purposes of these Regulations as the employee of his chief officer of police, and anything done by the person in the performance or purported performance of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of the police fund—

(a) compensation, costs or expenses awarded against a chief officer of police in proceedings brought against him under these Regulations,

(b) costs or expenses incurred by a chief officer of police in such proceedings so far as not recovered by him in the proceedings, and

(c) sums required by a chief officer of police for the settlement of a claim made against him under these Regulations if the settlement is approved by the police authority.

(4) A police authority may pay out of the police fund—

(15) 1996 c. 16.

(16) 1967 c. 77.

- (a) damages or costs awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police,
 - (b) costs incurred and not recovered by such a person in such proceedings, and
 - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) In section 56(4) of the Serious Organised Crime and Police Act 2005⁽¹⁷⁾ (application of discrimination legislation to seconded staff), there is inserted after paragraph (g)—
“; and
- (h) regulation 30 of the Equality Act (Sexual Orientation) Regulations 2007”.

Amendment to the Equality Act 2006

- 32.** In section 25(1) of the 2006 Act, there is inserted after paragraph (d)—
“; and
- (e) regulations 10 and 11 of the Equality Act (Sexual Orientation) Regulations 2007.”

Crown application

- 33.**—(1) Regulation 8 binds the Crown.
- (2) The remainder of these Regulations apply to an act done on behalf of the Crown as they apply to an act done by a private person.
- (3) For the purposes of paragraph (2) an act is done on behalf of the Crown if (and only if) done—
- (a) by or on behalf of a Minister of the Crown,
 - (b) by or on behalf of the Scottish Ministers,
 - (c) by a government department,
 - (d) by a body established under an enactment acting on behalf of the Crown,
 - (e) by or on behalf of the holder of an office established by an enactment acting on behalf of the Crown, or
 - (f) by or on behalf of an office-holder in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998⁽¹⁸⁾).
- (4) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947⁽¹⁹⁾ shall apply to proceedings against the Crown under these Regulations as they apply to proceedings against the Crown in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown; but section 20 of that Act (removal of proceedings from county court to High Court) shall not apply to proceedings under these Regulations.
- (5) The provisions of Part 5 of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Scotland which by virtue of that Part are treated as civil proceedings by or against the Crown; but the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply to proceedings under this Part of these Regulations.

⁽¹⁷⁾ 2005 c. 15.

⁽¹⁸⁾ 1998 c. 46.

⁽¹⁹⁾ 1947 c. 44.

Territorial application

34.—(1) These Regulations apply—

- (a) to anything done in Great Britain, and
- (b) to the provision of—
 - (i) facilities for travel on a British vessel or an aircraft registered in Great Britain, and
 - (ii) benefits, facilities or services provided on a British vessel or an aircraft registered in Great Britain.

(2) Regulation 8, in so far as it relates to granting entry clearance (within the meaning of the Immigration Acts), applies to anything done whether inside or outside the United Kingdom.

(3) This regulation shall not make it unlawful to do anything in or over a foreign country, or in or over the territorial waters of a foreign country, for the purpose of complying with a law of that country.

(4) In this regulation—

“British vessel” means—

- (a) a hovercraft registered in Great Britain; or
- (b) a ship which is—
 - (i) registered in Great Britain, or
 - (ii) used for the purposes of the Crown, and

“foreign country” means a country other than the United Kingdom.

Signed by the Secretary of State

name
Secretary of State for Communities and Local
Government
Department for Communities and Local
Government

date

SCHEDULE 1

Regulation 8

Discrimination by public authorities: exceptions

Regulation 8(3)(a)

PART 1

Bodies to which regulation 8 does not apply

1. The House of Commons.
 2. The House of Lords.
 3. The authorities of either House of Parliament.
 4. The Security Service.
 5. The Secret Intelligence Service.
 6. The Government Communications Headquarters.
 7. A part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- Regulation 8(3)(b)

PART 2

Functions and actions to which regulation 8 does not apply

1. The exercise of a judicial function (whether in connection with a court or a tribunal).
2. Anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or tribunal).
3. Preparing, passing (or making), confirming, approving or considering an enactment (including legislation made by or by virtue of a Measure of the General Synod of the Church of England).
4. The making of an instrument by a Minister of the Crown under an enactment.
5. The making of an instrument by the Scottish Ministers or a member of the Scottish Executive under an enactment.
6. A decision not to institute or continue criminal proceedings (and anything done for the purpose of reaching, or in pursuance of, such a decision).
7. Action which—
 - (a) is unlawful by virtue of another provision of these Regulations, or
 - (b) would be unlawful by virtue of another provision of these Regulations other than regulation 4, but for an express exception.
8. Action which—
 - (a) is unlawful by virtue of a provision of the Employment Equality (Sexual Orientation) Regulations 2003(20), or
 - (b) would be unlawful by virtue of a provision of those Regulations but for an express exception.

(20) S.I. 2003/1661.

SCHEDULE 2

Regulation 24

Information: Forms

Regulation 24(1)(a)

PART 1

Form of Questions by Claimant or Potential Claimant

To.....(name of person to be questioned) of(address)

1.-(1) I(name of questioner) of(address) consider that you may have discriminated against me contrary to the Equality Act (Sexual Orientation) Regulations 2007.

(2) (Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.)

(3) I consider that this treatment may have been unlawful (because (complete if you wish to give reasons, otherwise delete)).

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination?

If not—

(a) why not,

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

(c) how far did considerations of sexual orientation affect your treatment of me?

4. (Any other questions you wish to ask?)

5. My address for any reply you may wish to give to the questions raised above is (that set out in paragraph 1(1) above)(the following address).

.....(signature of questioner)

.....(date)

N.B. By virtue of regulation 24 of the Equality Act (Sexual Orientation) Regulations 2007 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw an inference from a failure to reply within eight weeks of service of this questionnaire or from an evasive or equivocal reply.

Regulation 24(2)(a)

PART 2

Form of Reply by Respondent or Potential Respondent

To(name of questioner) of(address)

1.-(1) I(name of person questioned) of(address) hereby acknowledge receipt of the questionnaire signed by you and dated which was served on me on(date).

2. (I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of what happened.)

(I disagree with the statement in paragraph 1(2) of the questionnaire in that)

3. I accept/dispute that my treatment of you was unlawful discrimination by me against you.

(My reasons for so disputing areThe reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of your questionnaire are.....)

4. (Replies to questions in paragraph 4 of the questionnaire.)

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

.....(signature of person questioned)

.....(date)

SCHEDULE 3

Regulation 7

Responsible bodies of Educational Establishments

<i>Establishment</i>	<i>Responsible body</i>
ENGLAND AND WALES	
School maintained by a local education authority	Local education authority or governing body
Independent school (other than a special school)	Proprietor
Special school (not maintained by a local education authority)	Proprietor
SCOTLAND	
Public School	Education authority
Grant-aided school	Manager
Independent school	Proprietor

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations, which are made under section 81 of the Equality Act 2006, make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, education, disposal and management of premises and exercise of public functions. Sexual orientation is defined in section 35 of the Equality Act 2006 as meaning an individual's sexual orientation towards persons of the same sex as him or her, persons of the opposite sex, or both.

Discrimination on grounds of sexual orientation is defined in regulation 3. Direct discrimination occurs where a person is treated less favourably than another on grounds of sexual orientation (regulation 3(1)). Indirect discrimination occurs where a provision, criterion or practice, which is applied generally, puts a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim (regulation 3(3)). Regulation 3(4) provides that for the purpose of the provisions defining whether discrimination has taken place, when comparing the treatment of two people, the fact that one is a civil partner and the other is married is not a material difference in the circumstances. Victimisation, defined in regulation 3(5), occurs where a person receives less favourable treatment than another by reason of the fact that he has brought (or given evidence in or provided information in connection with) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations, or because he intends to do so.

Regulations 4 to 18 prohibit discrimination in the provision of goods, facilities, services, disposal and management of premises, education and the exercise of public functions.

Regulation 4 provides that it is unlawful to discriminate on grounds of sexual orientation against a person who seeks to obtain or use goods, facilities or services. It sets out examples (although not exclusively) of the sorts of facilities and services that might be covered by the Regulations.

Regulation 5 deals with the disposal and management of premises, and regulation 6 provides for the various exceptions that apply to regulations 4 and 5 .

The Regulations also extend the protections to those accessing education and educational facilities (regulation 7) and to those wishing to benefit from functions performed by public authorities (regulation 8) subject to certain exceptions in Schedule 1.

Regulation 9 makes discriminatory practices unlawful, and regulation 10 makes discriminatory advertisements unlawful. It is unlawful to instruct or cause another person to discriminate (regulation 11).

Regulation 12 lists the statutory requirements which these Regulations shall not render unlawful.

It will not be unlawful for a person to do anything by way of meeting the needs for education, training or welfare of persons on the grounds of their sexual orientation, or providing ancillary benefits related to these aims (regulation 13).

Regulation 14 provides an exception for organisations relating to religion and belief, that is those whose sole purpose is to practise a religion or belief, to advance a religion or belief, to teach the principles of a religion or belief, or to enable persons of a religion or belief to engage in any activity or receive a benefit within the framework of that religion or belief. It extends to those who act on behalf or under the auspices of such an organisation. It does not however extend the exception to organisations whose sole or main purpose is commercial, or those who act under a contract with and on behalf of a public authority.

Regulation 15 provides a transitional period for religious adoption and fostering agencies to comply with the Regulations, provided they refer a person who has been refused their service on grounds of their sexual orientation, to another provider.

Regulation 16 extends the Regulations to membership rights of private clubs and associations. Regulation 17 provides for exceptions to regulation 16 for associations whose main object is to allow benefits to be enjoyed by persons of a particular sexual orientation.

Charities are also exempt from the Regulations as provided in regulation 18 in so far as they are established to confer a benefit on a particular group by virtue of sexual orientation, and act in accordance with this charitable instrument.

Regulations 19 to 26 deal with the enforcement of the Regulations. Any legal recourse for individuals will be for a claim in tort for breach of a statutory duty (regulation 20(1)). But the Regulations do not prevent proceedings by the Commission for Equality and Human Rights under parts of the Equality Act 2006, judicial review or immigration proceedings (regulation 19).

In England and Wales, where a local education authority or responsible body of an educational establishment has allegedly acted unlawfully, a claim may not be brought unless the claimant has given written notice to the Secretary of State. Similar arrangements apply to Scotland (regulation 20(2) and 20(3)).

Regulation 21 provides that proceedings may not be brought under regulation 20 if the issue of lawfulness could be raised in immigration proceedings. Regulation 22 deals with remedies for unlawful action, and regulation 23 with time limits. Regulation 24 sets out how a claimant or potential claimant or respondent may obtain or provide information in forms set out in Schedule 2. It also states how questions may be given to the other party and how the court will interpret the answers or lack of response to the questions.

Regulation 25 allows for rules of court to be made excluding claimants and others from all or part of proceedings under the Regulations if national security issues arise.

Regulation 26 deals with the validity and revision of contracts and provides that a term of the contract is void where its inclusion makes the contract unlawful by virtue of the Regulations. Regulation 26(5) sets out the powers of the county court to remove or modify a term made unenforceable by this regulation.

Regulation 27 provides an exception to these Regulations where a person is treated less favourably on grounds of his sexual orientation in relation to an annuity, or life insurance policy, or similar matter.

Regulation 28 applies to any person who operates a service for the collection and distribution of human blood in order to provide a medical service. It is unlawful to discriminate on grounds of sexual orientation against a person who offers to donate blood, unless it is reasonably based on clinical and epidemiological data to do so.

Regulation 29 makes it unlawful knowingly to help another to do anything which is unlawful under these Regulations.

Regulation 30 deals with liability of employers and principals and in particular makes acts committed by an employee treated as if they had been done by his employer as well as him.

Regulation 31 applies to the police. It states that police officers shall all be treated as employees of their chief officer of police. Any compensation for an unlawful act must be paid out of police funds.

Regulation 32 amends the Equality Act 2006 to add regulations 10 and 11 of these Regulations to section 25 of that Act, which deals with the power of the Commission for Equality and Human Rights to make applications to court to restrain unlawful advertising, pressure, &c.

Regulation 33 deals with Crown application.

Regulation 34 deals with territorial application.

A Regulatory Impact Assessment and an Equality Impact Assessment in relation to these Regulations have been placed in the Libraries of the House of Commons and the House of Lords. Copies may be obtained from: www.Communities.gov.uk/index.asp?id=1503693.