
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 439

SEXUAL ORIENTATION DISCRIMINATION

**The Equality Act (Sexual Orientation)
Regulations (Northern Ireland) 2006**

*Made - - - - 8th November 2006
To be laid before Parliament under paragraph 7(3) of
the Schedule to the Northern Ireland Act 2000*

Coming into operation 1st January 2007

The Office of the First Minister and deputy First Minister makes the following Regulations in exercise of the powers conferred by section 82(1), (3), (4) and (5) of the Equality Act 2006⁽¹⁾

Citation and commencement

1.—(1) These Regulations may be cited as the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

(2) These Regulations shall come into operation on the 1st of January 2007.

Interpretation

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

(2) In these Regulations “sexual orientation” means a sexual orientation towards —

- (a) persons of the same sex;
- (b) persons of the opposite sex;
- (c) persons of the same sex and of the opposite sex.

(3) In these Regulations —

- (a) references to discrimination are to any discrimination falling within regulation 3(1) (discrimination on the grounds of sexual orientation) or 4 (discrimination by way of victimisation); and
- (b) references to harassment are to any harassment falling within regulation 3(3) (harassment), and related expressions shall be construed accordingly.

(1) 2006 c.3
(2) 1954 c.33 (NI)

(4) In these Regulations —

- “access” shall be construed in accordance with regulation 48;
- “act” includes a deliberate omission;
- “benefits” includes facilities and services;
- “the Commission” means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998⁽³⁾;
- “Commissioner” means a member of the Commission;
- “the Department” means the Office of the First Minister and deputy First Minister;
- “education” means any form of training or instruction;
- “formal investigation” means an investigation under regulation 30;
- “general notice”, in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;
- “Minister of the Crown” includes the Treasury and Defence Council;
- “non-discrimination notice” means a notice under regulation 37;
- “Northern Ireland” includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;
- “Northern Ireland Minister” includes the First Minister and deputy First Minister acting jointly;
- “notice” means a notice in writing;
- “premises” includes land of any description;
- “school” has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986⁽⁴⁾.

Discrimination and harassment on grounds of sexual orientation

3.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if —

- (a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons; or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B; but —
 - (i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons;
 - (ii) which puts B at a disadvantage; and
 - (iii) which A cannot show to be a proportionate means of achieving a legitimate aim; or
- (c) A applies to B a requirement or condition which he applies or would apply equally to persons not of the same sexual orientation as B; but —
 - (i) which is such that the proportion of persons of the same sexual orientation as B who can comply with it is considerably smaller than the proportion of persons not of that sexual orientation who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the sexual orientation of the person to whom it is applied; and

(3) 1998 c.47

(4) SI 1986/594 (N.I. 3)

(iii) which is to the detriment of B because he cannot comply with it.

(2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(3) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in these Regulations where, on the ground of sexual orientation, A engages in unwanted conduct which has the purpose or effect of —

- (a) violating B's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) or paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.

Discrimination by way of victimisation

4.—(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has —

- (a) brought proceedings against A or any other person under these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person; or
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence, or information was false and not made (or, as the case may be, given) in good faith.

Goods, facilities or services

5.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services —

- (a) by refusing or deliberately omitting to provide him with any of them; or
- (b) by refusing or deliberately omitting to provide him with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person seeking belongs to a section of the public) to other members of that section.

(2) It is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in paragraph (1), in relation to such provision, to subject to harassment —

- (a) a person who seeks to obtain or use those goods, facilities or services; or
- (b) a person to whom he provides those goods, facilities and services.

(3) The following are examples of the facilities and services mentioned in paragraph (1) —

- (a) access to and use of any place which members of 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 education;
- (e) facilities for entertainment, recreation, or refreshment;
- (f) facilities for transport or travel;
- (g) the services of any profession or trader, or any local or other public authority.

(4) Nothing in these Regulations shall render unlawful any act done in affording persons of a particular sexual orientation access to goods, facilities or services to meet the specific and justified needs of persons of that group in regard to their education, welfare or any ancillary benefits.

Disposal or management of premises

6.—(1) It is unlawful for a person with power to dispose of any premises to discriminate against another —

- (a) in the terms on which he offers him those premises; or
- (b) by refusing his application for those premises; or
- (c) in his treatment of him in relation to any list of persons in need of premises of that description.

(2) Paragraph (1) does not apply to a person who owns an estate in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he —

- (a) uses the services of an estate agent; or
- (b) publishes an advertisement or causes an advertisement to be published.

(3) It is unlawful for a person managing any premises to discriminate against a person occupying those premises —

- (a) in the way that he affords him access to any benefits or facilities, or by refusing or deliberately omitting to afford him access to them; or
- (b) by evicting him, or subjecting him to any other detriment.

(4) It is unlawful for a person, in relation to such premises as are referred to in paragraph (1) or (3), to subject to harassment a person who applies for or, as the case may be, occupies such premises.

(5) It is unlawful for a person whose licence or consent is required for the disposal of any premises comprised in a tenancy —

- (a) to discriminate against a person by withholding the licence or consent for the disposal of premises to him; or
- (b) in relation to such a licence or consent, to subject to harassment a person who applies for such a licence or consent, or from whom the licence or consent is withheld.

(6) Paragraph (5) applies to tenancies created before as well as after the coming into operation of this regulation.

(7) In this regulation —

“dispose”, in relation to premises, includes granting the right to occupy the premises, and, in relation to premises comprised in a tenancy, includes —

- (a) assigning the tenancy; and
- (b) sub-letting or parting with possession of the premises or any part of the premises,

and “disposal” shall be construed accordingly;

“estate agent” means a person who by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises, and

“tenancy” means a tenancy created —

- (a) by a lease or sub-lease;
- (b) by an agreement for a lease or sub-lease;
- (c) by a tenancy agreement; or
- (d) in pursuance of any statutory provision.

(8) This regulation applies only in relation to premises in Northern Ireland.

Exception from regulations 5 (1) and 6: small dwellings

7.—(1) Where the conditions mentioned in paragraph (2) are satisfied —

- (a) regulation 5(1) does not apply to the provision by a person of accommodation in any premises;
- (b) regulation 6(1) does not apply to the disposal by a person of any premises;
- (c) regulation 6(4) does not apply to the withholding of any consent or licence.

(2) The conditions are that —

- (a) the relevant occupier resides, and intends to continue to reside, on the premises;
- (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;
- (c) the shared accommodation is not storage accommodation or a means of access; and
- (d) the premises are small premises.

(3) For the purpose of this regulation, premises are “small premises” if they fall within paragraph (4) or (5).

(4) Premises fall within this paragraph if —

- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him;
- (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one household;
- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
- (d) there are not normally more than two such households.

(5) Premises fall within this paragraph if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

(6) For the purpose of this regulation “the relevant occupier” means —

- (a) in a case falling within regulation 5(1), the person providing the accommodation or a near relative of his;
- (b) in a case falling within regulation 6(1), the person with the power to dispose of the premises, or a near relative of his;
- (c) in a case falling within regulation 6(4) the person whose licence or consent is required for the disposal of the premises, or a near relative of his.

(7) For the purposes of this regulation “near relative” means a person’s spouse, civil partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity).

Further exceptions from regulations 5 and 6

8.—(1) Regulations 5 and 6 do not apply to discrimination or harassment which is rendered unlawful by regulation 9 and 10.

(2) Regulation 5(1) 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.

Bodies in charge of education establishments

9.—(1) It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to discriminate against a person —

- (a) in the terms on which it offers to admit him to the establishment as a pupil; or
- (b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil; or
- (c) where he is a pupil of the establishment —
 - (i) in the way that it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by excluding him from the establishment or subjecting him to any other detriment.

Establishment	Responsible Body
1. Educational establishment which is grant aided.	Education and library board or managers or governing body according to which of them has the function in question.
2. Independent school.	Proprietor.
3. University.	Governing Body.
4. An establishment providing further education in respect of which grants are paid under Regulation 5(1)(b) of the Further Education (Northern Ireland) Order 1997.(5)	Governing Body.
5. A college of education — maintained in pursuance of arrangements made by the Department of Education under Regulation 66(1) of the Education and Libraries (Northern Ireland) Order 1986; in respect of which grants are paid by the Department of Education under Regulation 66(2) or (3) of that order.	(a) the Department of Education; (b) the Managers.

(2) It is unlawful for a responsible body, in relation to an establishment falling within column 1 of the table in paragraph (1), to subject to harassment —

- (a) a person who applies for admission to the establishment as a pupil; or
- (b) a pupil at the establishment.

(3) Subject to paragraph (4), words and expressions used in this regulation, regulation 10 or regulation 11 to which a meaning is assigned by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning as in the 1986 Order.

(4) In this regulation “pupil” includes any person who receives an education at an establishment to which this regulation applies.

Other discrimination or harassment by education and library boards

10. It is unlawful for —

- (a) an education and library board, in carrying out such of its functions under the Education Orders as do not fall within regulation 9; and
- (b) the Council for Catholic Maintained Schools, in carrying out its functions under the Education Orders,

to do any act which constitutes discrimination or harassment on the grounds of sexual orientation.

General duty in public sector of education

11.—(1) Without prejudice to its obligation to comply with any other provision of these Regulations, a body to which this paragraph applies shall be under a general duty to secure that facilities for education provided by it and any ancillary benefits and services, are provided without discrimination on the grounds of sexual orientation.

(2) Article 101 of the Education and Libraries (Northern Ireland) Order 1986 (power of Department of Education to give directions) shall apply to the performance of a body to which paragraph (1) applies to the duties imposed by regulations 9 and 10 and shall also apply to the performance of the general duty imposed by paragraph (1), as it applies to the performance by an education and library board of a duty imposed by the Education Orders.

(3) The sanctions in paragraph (2) shall be the only sanctions for breach of the general duty in paragraph (1), but without prejudice to the enforcement of regulations 9 and 10 and under regulation 36 or otherwise (where the breach is also a contravention of either of those regulations).

(4) Paragraph (1) applies to —

- (a) an education and library board; and
- (b) any other body which is a responsible body in relation to an establishment falling within paragraph 1, 4 or 5(b) of the table in regulation 9(1).

Public authorities

12.—(1) It is unlawful for a public authority —

- (a) to discriminate against a person on the grounds of his sexual orientation;
- (b) to subject a person to harassment,

in the course of carrying out any functions of the authority, which consist of the provision of:

- (a) any form of social security;
- (b) healthcare;
- (c) any other form of social protection; or

(d) any form of social advantage,
which does not fall within regulation 5.

(2) In this regulation “public authority” —

- (a) includes any person certain of whose functions are functions of a public nature; but
- (b) does not include any person mentioned in paragraph (3).

(3) The persons mentioned in this paragraph are —

- (a) either House of Parliament;
- (b) a person exercising functions in connection with proceedings in Parliament;
- (c) the Assembly;
- (d) a person exercising functions in connection with proceedings in the Assembly;
- (e) the Security Service;
- (f) the Secret Intelligence Service;
- (g) the Government Communications Headquarters; and
- (h) any unit or part of a unit of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(4) In relation to a particular act, a person is not a public authority by virtue of paragraph (2) if the nature of the act is private.

(5) This regulation is subject to regulations 13 to 15.

(6) Nothing in this regulation makes unlawful any act of discrimination on the ground of sexual orientation, or harassment, which —

- (a) is made unlawful by virtue of any other provision of these Regulations; or
- (b) would be so made but for any provision made by or under these Regulations.

Exceptions or further exceptions from regulation 12 for judicial and legislative acts etc.

13.—(1) Regulation 12 does not apply to —

- (a) any judicial act, whether done by a court, tribunal or other person; or
- (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Regulation 12 does not apply to any act of, or relating to, making, confirming or approving any statutory provision.

(3) Regulation 12 does not apply to any act of, or relating to, making or approving arrangements or imposing requirements or conditions, of a kind excepted by regulation 49.

Further actions to which regulation 12 does not apply

14. Regulation 12 does not apply to any action which —

- (a) is unlawful by virtue of a provision of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003⁽⁶⁾; or
- (b) would be unlawful by virtue of a provision of those Regulations but for an express exception.

Exceptions from regulation 12 for decisions not to prosecute etc

15. Regulation 12 does not apply to —

- (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;
- (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and where such a decision has been made —
 - (i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and
 - (ii) any act done for the purpose of securing that the proceedings are not continued.

Organisations relating to religion or belief

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

- (a) to practice 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; or
- (b) in relation to regulations 9, 10 and 11 (education).

(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 such 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 and 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 religions 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 estate in premise by way of sale where the estate being disposed of is —

- (a) the estate in fee simple absolute in possession; or
- (b) the entire estate in the premises in respect of which the organisation has power of disposal.

(8) This regulation shall not apply where an organisation —

- (a) makes provision of a kind referred to in regulation 5; or
- (b) makes provision of a kind referred to in regulation 12,

on behalf of a public authority under the terms of a contract for provision of that kind made between that authority and an organisation referred to in paragraph (1).

Discrimination: associations and private members clubs

17.—(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 5(1).

(2) 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.

(3) 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 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.

(4) 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).

(5) This regulation shall 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.

(6) 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.

Relationships which have come to an end

18.—(1) In this regulation a “relevant relationship” is a relationship during the course of which, by virtue of any provision of these Regulations, an act of discrimination or harassment by one party to the relationship (“the relevant party”) against another party to the relationship, on the ground of sexual orientation is unlawful.

(2) Where a relevant relationship has come to an end it is unlawful for the relevant party —

- (a) to discriminate against another party, on the ground of sexual orientation, by subjecting him to a detriment; or
- (b) to subject another party to harassment,

where discrimination or harassment arises out of and is closely connected to that relationship.

(3) In paragraph (1) reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which comes to an end before 1st January 2007, reference to such an act which would, after that date, be unlawful.

(4) For the purposes of any proceedings in respect of an unlawful act under paragraph (2) that act shall be treated as falling within the circumstances relevant for the purposes of these Regulations as determine most closely the nature of the relevant relationship.

Discriminatory practice

19.—(1) In this regulation “discriminatory practice” means —

- (a) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of these Regulations taken with regulation 3(1)(b) and regulation 3(2), or which would be likely to result in such an act of discrimination, if the person to whom it is applied included persons of any particular sexual orientation, as which there has been no occasion for applying it; or
- (b) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of these Regulations taken with regulation 3(1)(c) and regulation 3(2), or which would be likely to result in such an act of discrimination if the persons to whom it is applied included persons of any particular sexual orientation as regards which there has been no occasion for applying it.

(2) A person acts in contravention of this regulation if and so long as —

- (a) he applies a discriminatory practice; or
- (b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this regulation shall be brought only by the Commission in accordance with regulations 37 to 40.

Discriminatory advertisements

20.—(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an act of discrimination, whether the doing of that act by him would be lawful, or by virtue of these Regulations, unlawful.

(2) Paragraph (1) does not apply to an advertisement if the intended act would be lawful by virtue of regulations 17(5), 26 and 49.

(3) The publisher of an advertisement made unlawful by paragraph (1) shall not be subject to any liability under that paragraph in respect of the publication of the advertisement if he proves —

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of paragraph (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(4) a person who knowingly or recklessly makes a statement such as is mentioned in paragraph (3) (a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Instructions to commit unlawful acts

21. It is unlawful for a person —

- (a) who has authority over another person; or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of any provision contained within regulations 5 to 17 or procure or attempt to procure the doing by him of such an act.

Pressure to commit unlawful acts

22.—(1) It is unlawful to induce, or attempt to induce, a person to any act which contravenes any provision contained within regulations 5 to 17.

(2) An attempted inducement is not prevented from falling with paragraph (1) because it is not made directly to the person in question, if it is made in such a way as he is likely to hear it.

Liability of employers and principals

23.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.

(3) Paragraph (2) applies whether the authority was —

- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) Paragraphs (1) and (2) do not apply in relation to offences under these Regulations.

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

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

Aiding unlawful acts

24.—(1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purposes of these Regulations as himself doing the same kind of unlawful act.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 23 (or would be so liable but for regulation 23(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this regulation, a person does not knowingly aid another to do an unlawful act if —

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and
- (b) it would be reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is mentioned in paragraph (3)(a) which in a material respect is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Validity and revision of contracts

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

- (a) its inclusion renders the making of a contract unlawful by virtue of these Regulations; or
- (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, or harassment of, 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 36 (Claims under regulations 5 to 17).

(5) On the application of a person interested in a contract to which paragraph (1) applies, a county court may make an order for 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.

Charities

26.—(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) In this regulation “charitable instrument” means a statutory provision or other instrument (whenever taking effect) so far as it relates to purposes which are exclusively charitable according to the law of Northern Ireland.

General duty of the Equality Commission for Northern Ireland

27. It shall be the duty of the Commission —

- (a) to work towards the elimination of discrimination and harassment;
- (b) to promote equality of opportunity between persons of differing sexual orientations; and
- (c) to keep under review the working of these Regulations and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending these Regulations.

Research, education and assistance to organisations

28.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of regulation 27.

(2) The Commission may make charges for educational or other facilities or services made available by it.

(3) The Commission may give financial or other assistance to any organisation appearing to the Commission to be concerned with the promotion of equality of opportunity between persons of different sexual orientations.

(4) The Commission shall not give any financial assistance under paragraph (3) out of money appropriated by Measure except with the approval of the Department given with the consent of the Department of Finance and Personnel.

Codes of practice

29.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for —

- (a) the elimination of discrimination and harassment in the field of housing;
- (b) the promotion of equality of opportunity in the field of housing between persons of different sexual orientations.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this regulation may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for providers of goods, facilities or services to take for the purpose of preventing acts made unlawful by these Regulations.

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice relating to the field of housing for eventual publication under paragraph (3) the Commission shall consult with such organisations or bodies as appear to the Commission to be appropriate having regard to the content of the proposed code.

(5) The Commission may from time to time revise the whole or any part of a code of practice issued under this regulation and issue that revised code, and paragraphs (3) and (4) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

Power to conduct formal investigations

30.—(1) Without prejudice to its general power to do anything requisite for the performance of its duties under regulation 27, the Commission may if it thinks fit, and shall if required by the Department, conduct a formal investigation for any purpose connected with the carrying out of those duties.

(2) The Commission may, with the approval of the Department, appoint, on a full time or part-time basis, one or more individuals as additional Commissioners for the purpose of a formal investigation.

(3) The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on its behalf, and may delegate any of its functions in relation to the investigation to the persons so nominated.

Terms of reference

31.—(1) The Commission shall not embark on a formal investigation unless the requirements of this regulation have been complied with.

(2) The terms of reference for the investigation shall be drawn up by the Commission or, if the Commission was required by the Department to conduct the investigation, by the Department after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

(4) Where the terms of reference of the investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by these Regulations which it believes that a person so named may have done, the Commission shall —

- (a) inform that person of its belief and of its proposal to investigate the act in question; and
- (b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit).

(5) A person who avails himself of an opportunity under paragraph (4) of making oral representations may be represented —

- (a) by counsel or a solicitor; or
- (b) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.

(6) The Commission or, if the Commission was required by the Department to conduct the investigation, the Department after consulting with the Commission may from time to time revise the terms of reference; and paragraphs (1) and (3) to (5) shall apply to the revised investigation and the terms of reference as they applied to the original.

Power to obtain information

32.—(1) For the purpose of a formal investigation the Commission, by notice in the prescribed form served on him in the prescribed manner —

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and in the manner and form in which, the information is to be furnished;
- (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by regulation 39, a notice shall be served under paragraph (1) only where —

- (a) service of the notice was authorised by an order made by the Department; or
- (b) the terms of reference of the investigation state that the Commission believes that person named in them may have done or may be doing acts of all or any of the following descriptions —
 - (i) unlawful acts of discrimination or harassment;
 - (ii) contraventions of regulation 19; and
 - (iii) contraventions of regulations 20, 21 or 22, and confine the investigation to those acts.

(3) A notice under paragraph (1) shall not require a person —

- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court; or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under paragraph (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to a county court for an order requiring him to comply with it or with such directions for the like purposes as may be contained in the order.

(5) If a person fails, without reasonable excuse, to comply with an order made by the county court under paragraph (4), he may be dealt with by the county court as if he had failed to comply with a witness summons issued in accordance with county court rules.

(6) A person who —

- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this regulation to produce; or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Proceedings for an offence under paragraph (6) may (without prejudice to any jurisdiction exercisable apart from this paragraph) be instituted —

- (a) against any person at any place at which he has an office or other place of business;
- (b) against an individual at any place where he resides, or at which he is for the time being.

Recommendations and reports on formal investigations

33.—(1) If in the light of any of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion —

- (a) to make any person, with a view to promoting equality of opportunity between persons of different sexual orientations, who are affected by any of his activities, recommendations for changes in his policies or procedures, or as to any other matters; or
- (b) to make to the Department any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Department —

- (a) the Commission shall deliver the report to the Department; and
- (b) the Department shall cause the report to be published,

and, unless required by the Department, the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Department, the Commission shall either publish the report, or make it available for inspection in accordance with paragraph (5).

(5) Where under paragraph (4) a report is to be made available for inspection, any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission —

- (a) to inspect the report during ordinary office hours and take copies of all or any part of the report; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may, if it thinks fit, determine that the right conferred by paragraph (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give a general notice of the place or places where, and the times when, reports may be inspected under paragraph (5).

Restriction on disclosure of information

34.—(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, or by any person who is or has been a Commissioner, additional Commissioner or employee of the Commission, except —

- (a) on the order of any court; or
- (b) with the informant’s consent; or
- (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates; or
- (d) in a report of the investigation published by the Commission or made available for inspection under regulation 33(5); or
- (e) to the Commissioners, additional Commissioners, or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (f) for the purpose of any civil proceedings under these Regulations to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its duties and the object of the report, any matter which relates to the private affairs of any individual or the business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

Restriction of proceedings for breach of Regulations

35.—(1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.

- (2) Paragraph (1) does not preclude the making of an application for judicial review.

Claims under regulations 5 to 17

36.—(1) A claim by any person (“the claimant”) that another person (“the respondent”) —

- (a) has committed an act against the claimant which is unlawful by virtue of any provision contained within regulations 5 to 17; or
- (b) is by virtue of regulation 23 and regulation 24 to be treated as having committed such an act against the claimant,

may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) Proceedings under paragraph (1) shall be brought only in a county court; but all such remedies shall be obtainable in such proceedings as, apart from this paragraph and regulation 35, would be obtainable in the High Court.

(3) As respects an unlawful act of discrimination falling within regulation 3(1)(b) or 3(1)(c), no award of damages shall be made if the respondent proves that the requirement or condition in question, or as the case may be provision, criteria or practice, was not applied with the intention of treating the claimant unfairly on the grounds of sexual orientation.

(4) Damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.

(5) Civil proceedings in respect of a claim by any person that he has been discriminated against in contravention of regulations 9 and 10 by a body to which regulation 11(1) applies shall not be instituted unless —

- (a) the claimant has given notice to the Department of Education; and
- (b) either —
 - (i) the Department of Education has by notice informed the claimant that it does not need further time to consider the matter; or
 - (ii) the period of 2 months has elapsed since the claimant gave notice to the Department of Education.

(6) Nothing in paragraph (5) applies —

- (a) to a claim against the Department of Education; or
- (b) a counterclaim.

(7) For the purposes of proceedings under paragraph (1) —

- (a) Article 33(1) (power of judge to appoint assessors) of the County Courts (Northern Ireland) Order 1980(7) shall apply with the omission of the words “on the application of any party”; and
- (b) the remuneration of assessors appointed under that Article shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and may be defrayed as part of the expenses of the Lord Chancellor.

(8) A county court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its division, including such an act done outside Northern Ireland.

(9) A county court shall have jurisdiction to entertain proceedings under these Regulations with respect to an act done outside the United Kingdom where regulation 12 applies in relation to such an act by virtue of regulation 54(2).

Issue of a non-discrimination notice

37.—(1) This regulation applies to —

- (a) an unlawful act of discrimination or harassment; and
- (b) an act contravening regulation 19; and
- (c) an act contravening regulation 20, 21 or 22,

and so applies whether or not formal proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form (“a non-discrimination notice”) requiring him —

- (a) not to commit any such acts; and
- (b) where compliance with sub-paragraph (a) involves changes in any of his practices or other arrangements —
 - (i) to inform the Commission that he has effected those changes and what those changes are; and
 - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than 5 years after the notice has become final.

(5) The Commission shall not serve a non-discrimination notice in respect of any person unless it has first —

- (a) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so; and
- (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice; and
- (c) taken account of any representations so made by him.

(6) Paragraph (2) does not apply to any acts in respect of which the Department of Education could exercise the powers conferred on it by regulation 11(2); but if the Commission becomes aware of any such acts it shall give notice of the acts to the Department of Education.

(7) Regulation 32(4) shall apply to requirements under paragraph (2)(b), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under regulation 32(1).

Appeal against non-discrimination notice

38.—(1) Not later than 6 weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice to a county court, so far as the requirement relates to acts which are within the jurisdiction of the court and are not within the jurisdiction of an industrial tribunal.

(2) Where the court considers a requirement in respect of which an appeal is brought under paragraph (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the court shall quash the requirement.

(3) On quashing a requirement under paragraph (2) the court may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Paragraph (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under paragraph (3).

Investigation as to compliance with a non-discrimination notice

39.—(1) If —

- (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination are being or have been carried out, but regulation 32(2)(b) does not apply; and
- (b) Regulation 31(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of 5 years beginning when the non-discrimination notice became final,

the Commission may within the period referred to in paragraph (2) serve notices under regulation 32(1) for the purposes of the investigation without the authorisation mentioned in paragraph 32(2)(a).

(2) The said period begins on the commencement date and ends on the later of the following dates —

- (a) the date on which the period of 5 years mentioned in paragraph (1)(b) expires;
- (b) the date of 2 years after the commencement date.

Register of non-discrimination notices

40.—(1) The Commission shall establish and maintain a register (“the register”) of non-discrimination notices which have become final.

(2) Any person shall be entitled to, on payment of such a fee (if any) as may be determined by the Commission —

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by paragraph (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Persistent discrimination

41. If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely —

- (a) a non-discrimination notice served on him; or
- (b) a finding by a court under regulation 36 that he has done an unlawful act of discrimination or harassment,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within sub-paragraph (b), or contravening regulation 19, the Commission may apply to a county court for an injunction restraining him from doing so; and the court if satisfied that the application is well founded, may grant the injunction in the terms applied for or in more limited terms.

Help for persons in obtaining information etc.

42.—(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 36 (Claims under regulations 5 to 17) questions in the form set out in Schedule 1 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 2 or forms to the like effect with such variation as the circumstances require.

(2) Where the aggrieved person questions the respondent (whether in accordance with paragraph (1) or not) —

- (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) In proceedings before a county court a question shall only be admissible as evidence in pursuance of paragraph (2)(a) —

- (a) where it has been served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.

(4) A question and any reply may be served on the respondent or, as the case may be, on the person aggrieved.

(5) This regulation is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(6) In this regulation “respondent” includes a prospective respondent.

Enforcement of regulations 19 to 22

43.—(1) Proceedings in respect of a contravention of regulation 19, 20, 21 or 22 shall be brought only by the Commission in accordance with the following provisions of this regulation.

(2) The proceedings shall be —

- (a) an application for a decision whether the alleged contravention occurred; or
- (b) an application under paragraph (4),

or both.

(3) An application under paragraph (2)(a) shall be made in a case based on any provision contained within regulations 5 to 17, to a county court.

(4) If it appears to the Commission —

- (a) that a person has done an act which by virtue of regulation 19, 20, 21 or 22 was unlawful; and
- (b) that unless restrained he is likely to do further acts which by virtue of that regulation are unlawful,

the Commission may apply to a county court for an injunction restraining him from doing such acts; and the court, if satisfied that the application is well founded, may grant the injunction in the terms applied for or more limited terms.

(5) In proceedings under paragraph (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful under these Regulations and within the jurisdiction of a county court unless a finding by a county court that he did that act has become final.

Undertakings by persons contravening these Regulations

44.—(1) This regulation applies to —

- (a) an unlawful discriminatory act;
- (b) an act contravening regulation 19;
- (c) an act contravening regulation 20, 21 or 22,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If the Commission is satisfied that a person is committing or has committed any such act the Commission may, for the purpose of preventing that commission by that person of any further such act, seek to obtain from that person an undertaking —

- (a) that he will do, or refrain from doing, certain acts specified in the undertaking;
- (b) that he will institute certain practices or arrangements so specified; or
- (c) that he will change his existing practices or arrangements in a manner so specified.

(3) An undertaking given by any person under this regulation shall —

- (a) be in writing;
- (b) be in such terms as may be agreed between that person and the Commission;
- (c) contain such terms as appear to the Commission to be necessary or appropriate for the purpose mentioned in paragraph (2); and
- (d) have effect for such period as may be specified therein.

(4) If it appears to the Commission that a person who has given an undertaking under this regulation has, at any time within the period specified therein by virtue of paragraph (3)(d), failed to comply with the undertaking, the Commission may apply to the county court for a decision as to whether that person has failed to comply with the undertaking.

(5) Paragraph (2) does not apply to any act in respect of which the Department of Education could exercise powers conferred on it by regulation 11(2); but if the Commission becomes aware of any such act it shall give notice to the Department of Education.

Assistance by the Commission

45.—(1) Where, in relation to proceedings or prospective proceedings under these Regulations, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this regulation, the Commission shall consider the application and may grant if it thinks fit to do so —

- (a) on the ground the case raises a question of principle; or
- (b) on the ground that it is unreasonable, having regard to the complexity of the case, or to the applicant's position in relation to the respondent or another person involved, or to any other matter, to expect the applicant to deal with the case unaided; or
- (c) by reason of any other special consideration.

(2) Assistance under this regulation may include —

- (a) giving advice;
- (b) procuring or attempting to procure the settlement of any matter in dispute;
- (c) arranging for the giving of advice or assistance by a solicitor or counsel;
- (d) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
- (e) any other form of assistance which the Commission may consider appropriate,

but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.

(3) Where under paragraph (1) an application for assistance under this Article is made in writing, the Commission shall, within the period of 2 months beginning when the application is received —

- (a) consider the application after making such enquiries as it thinks fit;
- (b) decide whether or not to grant it; and
- (c) inform the applicant of its decision, stating whether or not assistance under this regulation is to be provided by the Commission and, if so, what form it will take.

(4) If, in a case where paragraph (3) applies, the Commission within the period of 2 months there mentioned gives notice to the applicant that, in relation to his application —

- (a) the period of 2 months allowed it by that paragraph is by virtue of the notice extended to 3 months; and
- (b) the reference to 2 months in regulation 46(2) is by virtue of the notice to be read as a reference to 3 months,

paragraph (3) and regulation 46(2) shall have effect accordingly.

(5) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this regulation, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules and regulations) shall constitute a first charge for the benefit of the Commission —

- (a) on any costs which (whether by virtue of a judgement or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(6) The charge conferred by paragraph (3) is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(8) and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(7) In this regulation “respondent” includes a prospective respondent and “rules or regulations” in relation to county court proceedings, means county court rules.

Period within which proceedings to be brought

46.—(1) Subject to paragraph (2) a county court shall not consider a claim under these Regulations unless proceedings in respect of the claim are instituted before the end of —

- (a) a period of 6 months beginning when the act complained of was done; or
- (b) in a case to which regulation 36(5) applies, the period of 8 months so beginning.

(2) Where, in relation to proceedings or prospective proceedings by way of a claim under regulation 36, an application for assistance under regulation 45 is made to the Commission before the end of the period of 6 or, as the case may be, 8 months in sub-paragraph (a) or (b) of paragraph (1), the period allowed by that sub-paragraph for instituting proceedings in respect of the claim shall be extended by 2 months.

(3) A county court shall not consider an application under regulation 43(2)(a) unless it is made before the end of the period of 6 months beginning when the act to which it relates was done; and a county court shall not consider an application under regulation 43(4) unless it is made before the end of the period of 5 years so beginning.

(4) A court shall not consider an application under regulation 44(4) in relation to an undertaking under that regulation unless it is made before the end of the period specified in the undertaking by virtue of paragraph (3)(d) of that regulation.

(5) A court may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of this regulation —

- (a) when the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(7) In the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission —

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Evidence

47.—(1) Any finding by a court under these Regulations in respect of any act shall, if it has become final, be treated as conclusive in any proceedings under these Regulations.

(2) In any proceedings under these Regulations —

- (a) a certificate signed by or on behalf of a Minister of the Crown or a government department and certifying that any condition, requirement or arrangement specified in the certificate was imposed, made or approved by that Minister or that department (as the case may be) and was in operation at a time or throughout a time so specified;
- (b) a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security or of protecting public safety or public order,

shall be conclusive evidence of the matters certified.

(3) A document purporting to be a certificate such as is mentioned in paragraph (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

Indirect access to benefits etc.

48.—(1) References in these Regulations to the affording by any person of access to benefits are not limited to benefits provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits provided by any other person (the "actual provider").

(2) Where by any regulation of these Regulations the affording by any person of access to benefits in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the regulation shall extend also to the liability under these Regulations of any actual provider.

Acts done under statutory authority etc.

49.—(1) Nothing in any provision of regulations 5 to 25 shall render unlawful any act of discrimination done —

- (a) in pursuance of any statutory provision; or
- (b) in order to comply with any condition or requirement imposed by a Minister of the Crown or government department by virtue of any statutory provision.

(2) Nothing in any provision of regulations 5 to 25 shall render unlawful any act whereby a person discriminates against another on the basis of that other's sexual orientation, if that act is done —

- (a) in pursuance of any statutory provision; or
- (b) in order to comply with any requirement imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department by virtue of any statutory provision; or
- (c) in pursuance of any arrangements made by or with the approval of, or for the time being approved by, a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department; or
- (d) in order to comply with any condition imposed by a Minister of the Crown, a Northern Ireland Minister (including the First Minister and deputy First Minister) or government department.

(3) This regulation applies whether the statutory provision, condition, requirement or arrangement in question was passed, made or imposed (as the case may be) before or after the making of these Regulations.

Acts safeguarding national security etc.

50. No act done by any person shall be treated for the purposes of any provision of regulations 5 to 25 as unlawfully discriminating if —

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of that act is justified by that purpose.

Effect of certificates by Secretary of State

51.—(1) This regulation applies where in any proceedings —

- (a) a person claims that an act discriminated against him in contravention of any provision of regulations 5 to 25; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying —
 - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
 - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with the rules under section 91 of the Northern Ireland Act 1998, appeal against a certificate to the tribunal established under that section.

(3) If on an appeal under paragraph (2) the tribunal determines —

(a) that the act specified in the certificate was done for the certified purpose; and
 (b) that the doing of the act was justified by that purpose,
 the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If —

- (a) the claimant does not appeal against the certificate; or
- (b) the certificate is upheld on appeal,

the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this regulation as they apply in relation to appeals under section 90 of that Act.

(6) In this regulation —

- “claim” includes complaint; and
- “claimant” includes complainant.

Burden of proof: county court

52.—(1) This regulation applies where a claim is brought under regulation 36 and the claim is that the respondent —

- (a) has committed an act of discrimination, on the ground of sexual orientation which is unlawful by virtue of any provision of these Regulations; or
- (b) has committed an act of harassment.

(2) Where on hearing the claim, the claimant proves facts from which a court could, apart from this regulation, conclude in the absence of an adequate explanation from the respondent —

- (a) has committed such an act of discrimination or harassment against the claimant; or
- (b) is by virtue of regulation 23 or 24 to be treated as having committed such an act of discrimination or harassment against the claimant,

the court shall uphold the claim unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed that act.

Application to Crown etc.

53.—(1) These Regulations apply —

- (a) to an act done by or for the purposes of a Minister of the Crown, a Northern Ireland Minister or government department; or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) These Regulations apply to —

- (a) service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department, other than service of a person holding a statutory office; or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
- (c) service in the armed forces,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included reference to the terms of service.

(3) Paragraphs (1) and (2) do not apply in relation to the provisions mentioned in paragraph (4).

(4) Regulations 12 to 15 bind the Crown and the other provisions of these Regulations so far as they relate to those provisions shall be construed accordingly.

(5) Paragraph (4) of regulation 54 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft such as is mentioned subparagraph (a) or (b) of the paragraph in question.

(6) The provisions of Parts II to IV of the Crown Proceedings Act 1947⁽⁹⁾ shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(7) In this regulation —

“armed forces” means any of the naval, military or air forces of the Crown;

“service for purposes of a Minister of the Crown, a Northern Ireland Minister or a government department” does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975⁽¹⁰⁾; and

“statutory body” means a body set up in pursuance of a statutory provision, and “statutory office” means an office so set up.

Extent

54.—(1) Regulations 9 to 11 do not apply to benefits outside Northern Ireland except —

- (a) travel on a ship registered at a port of registry in Northern Ireland; and
- (b) benefits provided on a ship so registered.

(2) Regulation 5(1) —

- (a) does not apply to goods, facilities or services outside Northern Ireland except as provided in paragraphs (3) and (4); and
- (b) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Northern Ireland.

(3) Regulation 5(1) applies to the provision of facilities for travel outside Northern Ireland where the refusal or omission occurs in Northern Ireland or on a ship, aircraft or hovercraft within paragraph (4).

(4) Regulation 5(1) applies on and in relation to —

- (a) any ship registered at a port of registry in Northern Ireland; and
- (b) any aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland,

even if the ship, aircraft or hovercraft is outside Northern Ireland.

(5) This regulation shall not render unlawful an act done in or over a country outside the United Kingdom, or in or over that country’s territorial waters, for the purpose of complying with the laws of that country.

⁽⁹⁾ 1947 c.44

⁽¹⁰⁾ 1975 c.24

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 8th November 2006

Regulation 42(1)

Form of Questions by Claimant or Potential Claimant

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

1.-(1) I(name of questioner) of(address) consider that you may have discriminated against me contrary to the Equality Act (Sexual Orientation)(Northern Ireland) Regulations 2006.

(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 42 of the Equality Act (Sexual Orientation)(Northern Ireland) Regulations 2006 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.

SCHEDULE I

Regulation 42(1)

Form of Reply by 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 are The 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 II



EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 82 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 and public functions.

Sexual orientation is defined in regulation 2 as meaning sexual orientation towards persons of the same sex, persons of the opposite sex, or to both persons of the same sex and of the opposite sex.

Direct discrimination, defined in regulation (3), occurs where a person is treated less favourably than another on grounds of sexual orientation. Indirect discrimination, defined in regulation (3)(1)(b), 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)(1)(c) deals with discrimination where a requirement or condition is applied which cannot be justified. Regulation (3)(3) defines harassment, which occurs when a person engages in unwanted conduct which has the purpose of violating the other's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations.

Regulations 5 to 17 prohibit discrimination in the provision of goods, facilities, services, premises, education and public functions. In particular they define examples (although not exclusively) of the sorts of facilities and services that might be covered by the Regulations. They deal also with the disposal and management of premises (regulation 6) and the various exceptions that apply to that area (regulations 7 & 8). They also extend the protections to those accessing education and educational facilities (regulation 9) and to those accessing public authorities (regulation 12), subject to certain exceptions (regulations 13, 14 & 15). Regulation 16 provides an exception to organisations relating to religion and belief, where the sole purpose of the unlawful action was to practice a religion or belief, to advance a religion or belief, to teach the principles of a religion or belief, 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 does not however extend the exception to organisations whose sole or main purpose is commercial. The Regulations also extend to associations and private members clubs (regulation 17).

Regulations 19 to 25 deal with other unlawful acts, including discriminatory advertising (regulation 20), instructing others to commit unlawful acts (regulation 21) or pressuring others to commit unlawful acts (regulation 22). Regulation 23 deals with liability of employers and principals and makes acts committed by an employee treated as if they had been done by his employer as well by as him. Regulation 24 makes it an offence to aid an act made unlawful by virtue of these

Regulations and regulation 25 makes a contract, or terms of a contract, void if they include an act made unlawful by these Regulations.

Regulation 26 deals with charities and provides an exception for them from any provision contained within regulations 5 to 17 in so far as the charity was established to confer a benefit on a particular group by virtue of sexual orientation.

Regulations 27 to 34 deal with the role of the Equality Commission for Northern Ireland. Amongst other things they provide the ECNI with a duty to promote equality of opportunity between persons of differing sexual orientations, provides them with the power to undertake or assist research and education and provide assistance (regulation 28) and with the power to issue codes of practice if they think fit (regulation 29). They are also given the power to conduct formal investigations (regulation 30).

Regulations 36 to 48 deal with the enforcement of the Regulations. As these Regulations deal with matters that fall only to goods, facilities and services, any legal recourse will be for a claim in tort for breach of a statutory duty, except where specific criminal offences are created (regulations 20-22). In both cases recourse will be through the county court. The ECNI is given powers to issue non-discrimination notices (regulation 37) and to deal with the compliance of those notices (regulation 39). Enforcement of regulations 19-22 will only be by the ECNI (regulation 43). Regulation 42 and Schedules 1 and 2 include a questionnaire procedure to assist complainants in obtaining information from respondents, and regulation 45 provides the ECNI with power to provide assistance (legal or otherwise) to claimants under these Regulations. Regulation 46 deals with the timescales within which cases should be brought.

Regulations 49 to 51 provide general exceptions to the Regulations for differences of treatment related to safeguarding national security or protecting public order and public safety. They also provide exceptions for indirect access to benefits, and acts done under statutory authority. Regulation 52 deals with burden of proof in the county court and regulation 53 deals with Crown application. Regulation 54 covers the extent of the Regulations.

A Regulatory Impact Assessment and an Equality Impact Assessment in relation to these Regulations has been placed in the Library of the Northern Ireland Assembly. Copies may be obtained from: Equality, Rights and Social Needs Division, Office of the First Minister and deputy First Minister, Room E3.19, Castle Buildings, Stormont, Belfast BT4 3SR.