
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Employment Equality (Age) Regulations 2006

PART 2

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

Applicants and employees

7.—(1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Great Britain, to discriminate against that person—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Subject to paragraph (5), paragraph (1)(a) and (c) does not apply in relation to a person—

- (a) whose age is greater than the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65; or
- (b) who would, within a period of six months from the date of his application to the employer, reach the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65.

(5) Paragraph (4) only applies to a person to whom, if he was recruited by the employer, regulation 30 (exception for retirement) could apply.

(6) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or

(c) the benefits relate to training.

(7) In paragraph (2)(d) reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(8) In paragraph (4) "normal retirement age" is an age of 65 or more which meets the requirements of section 98ZH of the 1996 Act⁽¹⁾.

Exception for genuine occupational requirement etc

8.—(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age)—

- (a) regulation 7(1)(a) or (c) does not apply to any employment;
- (b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
- (c) regulation 7(2)(d) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) possessing a characteristic related to age is a genuine and determining occupational requirement;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

Contract workers

9.—(1) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to subject a contract worker to harassment.

(1) Section 98ZH of the 1996 Act is inserted into that Act by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) In this regulation—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

Meaning of employment and contract work at establishment in Great Britain

10.—(1) For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Great Britain if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Great Britain;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Great Britain—
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship only if the ship is registered at a port of registry in Great Britain, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain.

(4) Subject to paragraph (5), for the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, this regulation has effect as if references to Great Britain included—

- (a) any area designated under section 1(7) of the Continental Shelf Act 1964⁽²⁾ except an area or part of an area in which the law of Northern Ireland applies; and
- (b) in relation to employment concerned with the exploration or exploitation of the Frigg Gas Field, the part of the Norwegian sector of the Continental Shelf described in Schedule 1.

(5) Paragraph (4) shall not apply to employment which is concerned with the exploration or exploitation of the Frigg Gas Field unless the employer is—

- (a) a company registered under the Companies Act 1985⁽³⁾;
- (b) an overseas company which has established a place of business within Great Britain from which it directs the exploration or exploitation in question; or

(2) 1964 c. 29.

(3) 1985 c. 6.

(c) any other person who has a place of business within Great Britain from which he directs the exploration or exploitation in question.

(6) In this regulation—

“the Frigg Gas Field” means the naturally occurring gas-bearing sand formations of the lower Eocene age located in the vicinity of the intersection of the line of latitude 59 degrees 53 minutes North and of the dividing line between the sectors of the Continental Shelf of the United Kingdom and the Kingdom of Norway and includes all other gas-bearing strata from which gas at the start of production is capable of flowing into the above-mentioned gas-bearing sand formations;

“oversea company” has the same meaning as in section 744 of the Companies Act 1985.

(7) This regulation applies in relation to contract work within the meaning of regulation 9 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 9.

Pension schemes

11.—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into force of these Regulations, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 2 (pension schemes) shall have effect for the purposes of—

- (a) defining terms used in this regulation and in that Schedule;
- (b) exempting certain rules and practices in or relating to pension schemes from Parts 2 and 3 of these Regulations;
- (c) treating every occupational pension scheme as including a non-discrimination rule;
- (d) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (e) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an employment tribunal under regulation 36 (jurisdiction of employment tribunals).

Office-holders etc

12.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
 - (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.
- (3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—
- (a) in the terms of the appointment;
 - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
 - (c) by terminating the appointment; or
 - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—
- (a) who has been appointed to the office or post;
 - (b) who is seeking or being considered for appointment to the office or post; or
 - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).
- (5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment.
- (6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—
- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
 - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
 - (c) the benefits relate to training.
- (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
 - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (8) This regulation applies to—
- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
 - (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration,

but not to a political office or a case where regulation 7 (applicants and employees), 9 (contract workers), 15 (barristers), 16 (advocates) or 17 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.

- (9) For the purposes of paragraph (8)(a) the holder of an office or post—
- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
 - (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the function of the office or post; or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.
- (10) In this regulation—
- (a) appointment to an office or post does not include election to an office or post;
 - (b) “political office” means—
 - (i) any office of the House of Commons held by a member of it;
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958(4), or any office of the House of Lords held by a member of it;
 - (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(5);
 - (iv) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975(6);
 - (v) any office of the Scottish Parliament held by a member of it;
 - (vi) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998(7), or a junior Scottish Minister within the meaning of section 49 of that Act;
 - (vii) any office of the National Assembly for Wales held by a member of it;
 - (viii) in England, any office of a county council, a London borough council, a district council, or a parish council held by a member of it;
 - (ix) in Wales, any office of a county council, a county borough council, or a community council held by a member of it;
 - (x) in relation to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994(8) or a community council established under section 51 of the Local Government (Scotland) Act 1973(9), any office of such a council held by a member of it;
 - (xi) any office of the Greater London Authority held by a member of it;
 - (xii) any office of the Common Council of the City of London held by a member of it;

(4) 1958 c. 21.

(5) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

(6) 1975 c. 27.

(7) 1998 c. 46.

(8) 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(9) 1973 c. 65; section 51 was amended by the Local Government etc (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.

- (xiii) any office of the Council of the Isles of Scilly held by a member of it;
- (xiv) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
 - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
 - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

Police

13.—(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
 - (b) by the police authority as respects any act done by it in relation to a constable or that office.
- (2) For the purposes of regulation 25 (liability of employers and principals)—
- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
 - (b) anything done by a person holding such an office 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) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
 - (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.

(4) Any proceedings under these Regulations which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraph (3) to the chief officer of police shall be construed accordingly.

(5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, costs or expenses awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
- (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(6) Paragraphs (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(7) Subject to paragraph (8), in this regulation—

“chief officer of police”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996⁽¹⁰⁾;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967⁽¹¹⁾, means the chief constable of the relevant police force;
- (c) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act;
- (c) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within sub-paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996;
- (b) in any other case means money provided by the police authority; and

“specified Act” means the Metropolitan Police Act 1829⁽¹²⁾, the City of London Police Act 1839⁽¹³⁾ or the Police Act 1996.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

(9) This regulation is subject to regulation 14.

Serious Organised Crime Agency

14.—(1) For the purposes of this Part, any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as employed by SOCA.

(2) For the purposes of regulation 25 (liability of employers and principals)—

- (a) the secondment of any constable or other person to SOCA to serve as a member of its staff shall be treated as employment by SOCA (and not as employment by any other person); and
- (b) anything done by a person so seconded in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) In this regulation “SOCA” means the Serious Organised Crime Agency established under section 1 of, and Schedule 1 to, the Serious Organised Crime and Police Act 2005⁽¹⁴⁾.

⁽¹⁰⁾ 1996 c. 16.

⁽¹¹⁾ 1967 c. 77.

⁽¹²⁾ 1829 c. 44.

⁽¹³⁾ 2 & 3 Vict c. xciv.

⁽¹⁴⁾ 2005 c. 15.

Barristers

15.—(1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—

- (a) in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which it is offered; or
- (c) by refusing, or deliberately not offering, it to him.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the set of chambers in question, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating his pupillage, or by subjecting him to any pressure to leave the chambers or other detriment.

(3) It is unlawful for a barrister or barrister’s clerk, in relation to a pupillage or tenancy in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil or tenant.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; “pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and “tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but also include reference to any barrister permitted to work in a set of chambers who is not a tenant.

(6) This regulation extends to England and Wales only.

Advocates

16.—(1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing to take, or deliberately not taking, a person as his pupil.

(2) It is unlawful for an advocate, in relation to a person who is his pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or

- (d) by terminating the relationship, or by subjecting him to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for an advocate, in relation to a person who is his pupil or taking any person as his pupil, to subject such a person to harassment.
- (4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.
- (5) In this regulation—
 - “advocate” means a member of the Faculty of Advocates practising as such; and
 - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (6) This regulation extends to Scotland only.

Partnerships

- 17.**—(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—
- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
 - (b) in the terms on which they offer him that position;
 - (c) by refusing to offer, or deliberately not offering, him that position; or
 - (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.
- (2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.
- (3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.
- (4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).
- (5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907(15).
- (6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.
- (7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890(16).
- (8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference—
- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and

(15) 1907 c. 24.

(16) 1890 c. 39.

- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

Trade organisations

- 18.**—(1) It is unlawful for a trade organisation to discriminate against a person—
- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
 - (b) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in relation to a member of the organisation, 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;
 - (b) by depriving him of membership, or varying the terms on which he is a member; or
 - (c) by subjecting him to any other detriment.
- (3) It is unlawful for a trade organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.
- (4) 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.

Qualifications bodies

- 19.**—(1) It is unlawful for a qualifications body to discriminate against a person—
- (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
 - (b) by refusing or deliberately not granting any application by him for such a qualification; or
 - (c) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.
- (3) In this regulation—
- “qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—
- (a) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
 - (b) a proprietor of a school;
- “confer” includes renew or extend;
 - “professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;
 - “profession” and “trade” have the same meaning as in regulation 18.

The provision of vocational training

20.—(1) It is unlawful, in relation to a person seeking or undergoing training, for any training provider to discriminate against him—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer training;
- (b) in the terms on which the training provider affords him access to any training;
- (c) by refusing or deliberately not affording him such access;
- (d) by terminating his training; or
- (e) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation—

“professional or trade qualification” has the same meaning as in regulation 19;

“registered pupil” has the meaning given by section 434 of the Education Act 1996⁽¹⁷⁾;

“training” means—

- (a) all types and all levels of training which would help fit a person for any employment;
- (b) vocational guidance;
- (c) facilities for training;
- (d) practical work experience provided by an employer to a person whom he does not employ; and
- (e) any assessment related to the award of any professional or trade qualification;

“training provider” means any person who provides, or makes arrangements for the provision of, training, but it does not include—

- (a) an employer in relation to training for persons employed by him;
- (b) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
- (c) a proprietor of a school in relation to any registered pupil.

Employment agencies, careers guidance etc

21.—(1) It is unlawful for an employment agency to discriminate against a person—

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing or deliberately not providing any of its services; or
- (c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(17) 1996 c. 56.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this regulation if it proves that—

- (a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful; and
- (b) it was reasonable for it to rely on the statement.

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

(6) For the purposes of this regulation—

- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
 - (i) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
 - (ii) a proprietor of a school; and
- (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

Assisting persons to obtain employment etc

22.—(1) It is unlawful for the Secretary of State to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 2 of the Employment and Training Act 1973(**18**) (arrangements for assisting persons to obtain employment).

(2) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(**19**) (arrangements analogous to arrangements in pursuance of the said Act of 1973).

(3) This regulation does not apply in a case where—

- (a) regulation 20 (the provision of vocational training) applies or would apply but for the operation of any other provision of these Regulations, or
- (b) the Secretary of State is acting as an employment agency within the meaning of regulation 21 (employment agencies, careers guidance etc).

Institutions of further and higher education

23.—(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;

(18) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19), and amended by the Employment Act 1989 (c. 38), Schedule 7, Part 1, and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(19) 1990 c. 35.

- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
 - (i) in the way it affords him access to any benefits,
 - (ii) by refusing or deliberately not affording him access to them, or
 - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in England and Wales, namely—

- (a) an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992⁽²⁰⁾);
- (b) a university;
- (c) an institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

(5) This regulation applies to the following educational establishments in Scotland, namely—

- (a) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992⁽²¹⁾ under the management of a board of management within the meaning of Part I of that Act;
- (b) a college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980⁽²²⁾;
- (c) any other educational establishment (not being a school) which provides further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992;
- (d) an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992);
- (e) a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980).

(6) In this regulation—

“education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;

“governing body” includes—

- (a) the board of management of a college referred to in paragraph (5)(a), and
- (b) the managers of a college or institution referred to in paragraph (5)(b) or (e);

“student” means any person who receives education at an educational establishment to which this regulation applies; and

“university” includes a university college and the college, school or hall of a university.

⁽²⁰⁾ 1992 c. 13.

⁽²¹⁾ 1992 c. 37.

⁽²²⁾ 1980 c. 44.

Relationships which have come to an end

24.—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.

- (2) Where a relevant relationship has come to an end, it is unlawful for A—
- (a) to discriminate against B by subjecting him to a detriment; or
 - (b) to subject B to harassment;

where the 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 has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, be unlawful.