
STATUTORY INSTRUMENTS

1999 No. 1102

The Sex Discrimination (Gender Reassignment) Regulations 1999

Exceptions for genuine occupational qualifications

4.—(1) After section 7 of the 1975 Act (exception where sex is a genuine occupational qualification) there shall be inserted the following sections—

““Corresponding exception relating to gender reassignment.”

7A.—(1) In their application to discrimination falling within section 2A, subsections (1) and (2) of section 6 do not make unlawful an employer’s treatment of another person if—

- (a) in relation to the employment in question—
 - (i) being a man is a genuine occupational qualification for the job, or
 - (ii) being a woman is a genuine occupational qualification for the job, and
 - (b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant paragraph of section 7(2) and any other relevant circumstances.
- (2) In subsection (1) the reference to the employment in question is a reference—
- (a) in relation to any paragraph of section 6(1), to the employment mentioned in that paragraph;
 - (b) in relation to section 6(2)—
 - (i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;
 - (ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.

(3) In determining for the purposes of subsection (1) whether being a man or being a woman is a genuine occupational qualification for a job, section 7(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

“Supplementary exceptions relating to gender reassignment.”

7B.—(1) In relation to discrimination falling within section 2A—

- (a) section 6(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job,
- (b) section 6(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment, and
- (c) section 6(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.

(2) Subject to subsection (3), there is a supplementary genuine occupational qualification for a job only if—

- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;
 - (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—
 - (i) the degree of physical or social contact with a person living in the home, or
 - (ii) the knowledge of intimate details of such a person's life,
 which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;
 - (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
 - (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and
 - (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or
 - (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.
- (3) Paragraphs (c) and (d) of subsection (2) apply only in relation to discrimination against a person who—
- (a) intends to undergo gender reassignment, or
 - (b) is undergoing gender reassignment.”
- (2) In section 9 of the 1975 Act (discrimination against contract workers), in subsection (3) at the beginning there shall be inserted the words “Subject to subsection (3A),”.
- (3) After that subsection there shall be inserted the following subsections—
- “(3A) Subsection (3) does not apply in relation to discrimination falling within section 2A.
- (3B) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—
- (a) he does it at a time when, if the work were to be done by a person taken into his employment—
 - (i) being a man would be a genuine occupational qualification for the job, or
 - (ii) being a woman would be a genuine occupational qualification for the job,
 and
 - (b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.
- (3C) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.”
- (4) In section 11 of the 1975 Act (partnerships), in subsection (3) at the beginning there shall be inserted the words “Subject to subsection (3A),”.

(5) After that subsection there shall be inserted the following subsections—

“(3A) Subsection (3) does not apply in relation to discrimination falling within section 2A.

(3B) In relation to discrimination falling within section 2A, subsection (1) does not make unlawful a firm’s treatment of a person in relation to a position as partner where—

(a) if it were employment—

(i) being a man would be a genuine occupational qualification for the job, or

(ii) being a woman would be a genuine occupational qualification for the job,
and

(b) the firm can show that the treatment is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within section 2A, subsection (1)(a), (c) and, so far as it relates to expulsion, (d)(ii) do not apply to a position as partner where, if it were employment, there would be a supplementary genuine occupational qualification for the job.”

(6) In section 82 of the 1975 Act (general interpretation provisions) in the definition of “genuine occupational qualification” at the end there shall be inserted the words “, except in the expression “supplementary genuine occupational qualification”, which shall be construed in accordance with section 7B(2);”.