
EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which are made under section 2(2)(a) and (b) of the European Communities Act 1972, implement Council Directive 2000/43 EC of 29 June 2000 (“the Directive”) and include provision for matters arising out of or relating to such implementation. The Directive is concerned with the principle of equal treatment between persons, irrespective of racial or ethnic origins, in the areas of employment (and related matters), social protection, social advantage, education and access to and supply of, goods and services which are available to the public, including housing.

The Directive necessitates amendment of the Race Relations (Northern Ireland) Order 1997 (“the Order”), in particular to reflect the provisions of the Directive which deal with the definition of indirect discrimination, harassment, genuine and determining occupational requirements, the burden of proof in proceedings and abolition of statutory provisions which are contrary to the principle of equal treatment.

Regulation 4 sets out a new definition of indirect discrimination on grounds of race or ethnic or national origins, in those areas with which the Directive is concerned.

Regulation 5 sets out a new definition of harassment, on the grounds of a person’s race or ethnic or national origins, which will apply in the areas with which the Directive is concerned.

Regulation 6 amends Article 5 of the Order to provide that the amendments made by these Regulations apply to the Irish Traveller community as defined in the Order.

Regulation 7 makes it unlawful for an employer to subject to harassment an employee or an applicant for employment, and removes, partially, the exceptions (from the discrimination in employment provisions) for employment in a private household or for training in skills to be exercised outside Northern Ireland.

Regulation 8 makes it unlawful for a person with statutory power to select employees for others to subject to harassment a person whom he is selecting or nominating.

Regulations 9 and 10 provide for a new exception (from the discrimination in employment provisions) where being of a particular race or of particular ethnic or national origins is a genuine and determining requirement for the employment in question.

Regulation 11 makes it unlawful for a principal to subject a contract worker to harassment and removes, partially, the exception (from the contract workers provisions) for work to provide training in skills to be exercised outside Northern Ireland.

Regulation 12 contains an expanded definition of “work at an establishment in Northern Ireland”.

Regulation 13 removes the lower limit on the size of partnerships which can discriminate unlawfully on grounds of race or ethnic or national origins and makes it unlawful for partnerships to subject to harassment partners or applicants for partnership.

Regulations 14 to 17 make it unlawful for bodies such as trade organisations, qualifying bodies, providers of vocational training and employment agencies to subject persons to harassment.

Regulations 18 and 19 make it unlawful for bodies concerned with education or vocational training or guidance to subject persons to harassment.

Regulation 20 makes it unlawful for public authorities concerned with the provision of health, welfare or other services to discriminate on grounds of race or ethnic or national origins or to subject persons to harassment. The Regulation provides for certain exemptions from the definition

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

of “public authority”, namely the Northern Ireland Assembly and proceedings in that Assembly, and the intelligence agencies. The Regulation also provides an exemption for judicial and legislative acts, for acts in relation to the carrying out of immigration functions and for decisions not to institute criminal proceedings or, where such proceedings have been instituted, for decisions to terminate or not to continue the proceedings.

Regulations 21 to 23 make it unlawful for persons concerned with the provision of goods, facilities or services, or accommodation, to subject persons to harassment.

Regulation 24 makes consequential amendments.

Regulation 25 makes it unlawful for barristers to subject to harassment a person who is, or has applied to be, his pupil.

Regulation 26 extends the application of Article 20A so that it applies to the grant or refusal of entry clearance outside the United Kingdom.

Regulation 27 provides that, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject to a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 28 makes consequential amendments to the provisions dealing with discriminatory practices.

Regulation 29 extends to office holders the application of Article 30 of the Order dealing with instructions to discriminate or harass.

Regulation 30 extends to office holders the application of Article 31 of the Order which makes it unlawful to induce someone to commit an unlawful act of discrimination or harassment.

Regulation 31 removes the exception for charities to discriminate in employment.

Regulation 32 removes, partially, the exception for education or training of persons who are not going to stay in Northern Ireland.

Regulation 33 makes a consequential amendment.

Regulation 34 removes, partially, the exception for acts which are done under statutory authority.

Regulation 35 makes it the duty of the Equality Commission for Northern Ireland (“the ECNI”) to work towards the elimination of harassment (in addition to its existing duty in respect of discrimination).

Regulation 36 adds harassment to the matters which can be the subject of a code of practice.

Regulation 37 adds harassment to the matters in respect of which the ECNI can require information for the purposes of a formal investigation.

Regulation 38 makes a consequential amendment.

Regulation 39 provides that claims of unlawful discrimination on grounds of race, ethnic or national origins, or harassment, by or against barristers, or in the appointment of certain office holders, are to be heard by industrial tribunals.

Regulation 40 alters the burden of proof in tribunal proceedings relating to discrimination on grounds of race or ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Paragraph (2) of Regulation 41 amends the provisions for bringing complaints in the courts in consequence of certain matters being transferred to industrial tribunals.

Paragraph (3) of Regulation 41 removes the requirement to delay the institution of proceedings in respect of a claim of unlawful discrimination on the grounds of race or ethnic or national origins, or harassment, involving an educational body.

Paragraph (4) of Regulation 41 provides that a county court shall have jurisdiction to entertain proceedings with respect to an act done outside the United Kingdom in relation to granting entry clearance.

Regulation 42 makes provision for claims of unlawful discrimination or harassment which have been the subject of immigration proceedings.

Regulation 43 alters the burden of proof in court proceedings relating to discrimination on grounds of race or ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Regulation 44 adds harassment to the matters which can be the subject of a non-discrimination notice.

Regulation 45 provides for a non-discrimination notice in respect of an immigration decision to be appealed in the county court.

Regulation 46 includes harassment in the provisions dealing with unlawful persistent discrimination. It also provides that a finding of unlawful discrimination by the Immigration Appellate Authority in an immigration case may be the subject of an injunction.

Regulation 47 makes a consequential amendment.

Regulation 48 ensures that, in certain cases, respondents must reply to a claimants preliminary questions within eight weeks of being served with them.

Regulation 49 provides that the ECNI may provide assistance to claimants in certain immigration proceedings.

Regulation 50 makes provision for time limits in respect of complaints in relation to immigration matters.

Regulation 51 makes a consequential amendment.

Regulation 52 extends the provisions of the Order relating to unlawful contracts so as to include harassment.

Regulation 53 applies to collective agreements and rules of undertakings the provisions of the Order relating to unlawful contracts, insofar as the grounds of race or ethnic or national origins are concerned.

Regulation 54 provides that certain provisions of the Order bind the Crown.

Regulation 55 makes a consequential amendment.

Regulation 56 makes it unlawful to discriminate against a person on grounds of race or ethnic or national origins, or to subject him to harassment in making a recommendation, or giving or refusing an approval or making arrangements for determining who should be recommended or approved, for appointment to certain offices or posts.

Regulations 57 to 60 make consequential amendments.

A copy of the Regulatory Impact Assessment relating to these regulations has been placed in the library of the Northern Ireland Assembly and can be obtained from Anti-Discrimination Division, Office of the First Minister and deputy First Minister, Room E3.06, Castle Buildings, Stormont, Belfast BT4 3SR.