

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT (SEXUAL ORIENTATION) (AMENDMENT No 2)
REGULATIONS (NORTHERN IRELAND) 2007

SR 2007 No. 261

1. This explanatory memorandum has been prepared by The Office of the First Minister and deputy First Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The Order was made on 30th April 2007 and amends the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439)

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Equality Act (Sexual Orientation) (Amendment No 2) Regulations (Northern Ireland) 2007, deal with the areas highlighted as deficient by the JCSI in its report of 24 January 2007.
- 3.2 The JCSI highlighted one area concerning regulation 44 of Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439). This concerned the specification of the consequence of a person contravening an undertaking not to commit a discriminatory act.
- 3.3 In its response to the JCSI, OFMDFM indicated that it would bring forward an amendment to clarify this position. However, on further consideration of the powers available to it in this regard, OFMDFM does not have the vires to make this clarification at this time. The Race Relations (Northern Ireland) Order 1997, on which Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439) are based, does not specify the consequence of such action. OFMDFM cannot therefore amend this provision in these Regulations.
- 3.4 OFMDFM will, however, look at this issue in both pieces of legislation as part of the Northern Ireland Single Equality Bill.

4. **Legislative Background**

- 4.1 These Regulations are made under section 82 of the Equality Act 2006 and are subject to the affirmative resolution procedure of the Northern Ireland Assembly. During suspension of the Assembly, they are subject to negative resolution under paragraph 7(3) of the schedule to the Northern Ireland Act 2000 and are to be laid before Parliament. They come into operation on 1st June 2007.
- 4.2 The Regulations do not have any EU implications

5. Territorial Extent and Application

These Regulations apply only to Northern Ireland

6. European Convention on Human Rights

As the Regulations are subject to negative resolution procedure at Westminster and do not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Equality Act 2006 at section 82 gave the Department a power to make Regulations, based on the Race Relations (Northern Ireland) Order 1997, to outlaw discrimination on the basis of sexual orientation in the provision of goods, facilities, services, education, public functions and the disposal of property.
- 7.2 The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439) came into force on 1st January 2007 and protect people from direct discrimination i.e. where a person treats another person less favourably because of his sexual orientation. They also prohibit indirect discrimination, where the discrimination is often an unintended consequence of the action and harassment on the ground of sexual orientation. They also prohibit victimisation, to ensure no-one feels that they cannot bring, or support a claim, under these Regulations.
- 7.3 The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439) contained a number of minor typographical errors which were highlighted in the report of the Joint Committee on Statutory Instruments.
- 7.4 These Regulations amend The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439) in respect of the issues highlighted in the JCSI report.
- 7.5 They also make one further amendment at regulation 5 to regulation 16(8) of The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439) to clarify that the regulation applies to organisations acting on behalf or under the auspices of an organisation relating to religion and belief.

8. Impact

These Regulations are amending Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR2006/439). Therefore they do not have any impact beyond that outlined in the original Regulatory Impact Assessment and Equality Impact Assessment. The original Regulatory Impact Assessment and the original Equality Impact Assessment are available by writing to the Equality, Rights and Social Needs Directorate, Office of the First and deputy First Minister, Room E3.17, Castle Buildings, Stormont Estate, Belfast BT4 3SR. Copies have also been placed in the library of the Northern Ireland Assembly and the libraries of the Houses of Parliament.

9. Contact

Alastair James, at the Office of the First Minister and deputy First Minister Tel: 02890523154 or e-mail: Alastair.james@ofmdfmni.gov.uk, can address any queries regarding the Regulations.