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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**The Employment Equality (Sexual  
Orientation) Regulations 2003**

**PART V**

**ENFORCEMENT**

**Restriction of proceedings for breach of Regulations**

**27.**—(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 prevent the making of an application for judicial review.

**Jurisdiction of employment tribunals**

**28.**—(1) A complaint by any person (“the complainant”) that another person (“the respondent”) —

- (a) has committed against the complainant an act to which this regulation applies; or
- (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

may be presented to an employment tribunal.

(2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part II other than—

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any enactment, regulation 16 (qualifications bodies);
- (b) regulation 20 (institutions of further and higher education); or
- (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 20, regulation 21 (relationships which have come to an end).

(3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been 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, have been unlawful.

(4) In this regulation, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

### **Burden of proof: employment tribunals**

**29.**—(1) This regulation applies to any complaint presented under regulation 28 to an employment tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the complainant an act to which regulation 28 applies; or
- (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

the tribunal shall uphold the complaint 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.

### **Remedies on complaints in employment tribunals**

**30.**—(1) Where an employment tribunal finds that a complaint presented to it under regulation 28 is well-founded, the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under regulation 31 (jurisdiction of county and sheriff courts);
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within regulation 3(1)(b), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of sexual orientation, an order may be made under paragraph (1)(b) only if the employment tribunal—

- (a) makes such order under paragraph (1)(a) (if any) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an employment tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so—

- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
- (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.

(4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996(1).

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(1) S.I.1996/2803. Regulation 1(2) of those Regulations is amended by paragraph 3 of Schedule 5 to these Regulations.

### **Jurisdiction of county and sheriff courts**

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

- (a) has committed against the claimant an act to which this regulation applies; or
- (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

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

(2) Proceedings brought under paragraph (1) shall—

- (a) in England and Wales, be brought only in a county court; and
- (b) in Scotland, be brought only in a sheriff court.

(3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of—

- (a) regulation 20 (institutions of further and higher education); or
- (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 20, regulation 21 (relationships which have come to an end).

(5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been 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, have been unlawful.

### **Burden of proof: county and sheriff courts**

**32.**—(1) This regulation applies to any claim brought under regulation 31 in a county court in England and Wales or a sheriff court in Scotland.

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

- (a) has committed against the claimant an act to which regulation 31 applies; or
- (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

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.

### **Help for persons in obtaining information etc**

**33.**—(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 28 (jurisdiction of employment tribunals) or a claim brought under regulation 31 (jurisdiction of county and sheriff courts) questions in the form set out in Schedule 2 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 3 or forms to the like effect with such variation as the circumstances require.

- (2) Where the person aggrieved 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 or tribunal 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 in England or Wales or a sheriff court in Scotland, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—
- (a) where it was 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) In proceedings before an employment tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—
- (a) where it was served before a complaint had been presented to the tribunal, if it was so served within the period of three months beginning when the act complained of was done;
  - (b) where it was served when a complaint had been presented to the tribunal, either—
    - (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented, or
    - (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.
- (5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved—
- (a) by delivering it to him;
  - (b) by sending it by post to him at his usual or last-known residence or place of business;
  - (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(2), by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
  - (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
  - (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.
- (6) This regulation is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (7) In this regulation "respondent" includes a prospective respondent.

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(2) 1992 c. 52.

### **Period within which proceedings to be brought**

**34.**—(1) An employment tribunal shall not consider a complaint under regulation 28 unless it is presented to the tribunal before the end of—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which regulation 36(7) (armed forces) applies, the period of six months so beginning.

(2) A county court or a sheriff court shall not consider a claim brought under regulation 31 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

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

(4) For the purposes of this regulation and regulation 33 (help for persons in obtaining information etc)—

- (a) when the making of a contract is, by reason of the inclusion of any term, 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,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, 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.