
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c. 68), implement (in Great Britain) Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p. 16) so far as it relates to discrimination on grounds of sexual orientation. The Regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation and harassment.

Sexual orientation is defined in regulation 2 as meaning a sexual orientation towards persons of the same sex, persons of the opposite sex, or to both persons of the same sex and of the opposite sex.

Direct discrimination, defined in regulation 3(1)(a), occurs where a person is treated less favourably than another on grounds of sexual orientation. Indirect discrimination, defined in regulation 3(1)(b), occurs where a provision, criterion or practice, which is applied generally, puts persons of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations. Harassment, defined in regulation 5, occurs where a person is subjected to unwanted conduct on grounds of sexual orientation with the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Regulations 6 to 21 prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular, they protect employees (regulation 6), contract workers (regulation 8), office-holders (including constables) (regulations 10 and 11), and partners in firms. They not only prohibit discrimination etc by employers, but also by trade organisations (regulation 15), bodies conferring professional and trade qualifications (regulation 16), training providers (regulation 17), employment agencies (regulation 18), and further and higher education institutions (regulation 20). By virtue of regulation 21, discrimination, victimisation or harassment occurring after the relevant relationship has ended is unlawful if it arises out of, and is closely connected to, the relationship. The Regulations also apply to Crown servants and Parliamentary staff (regulations 36 to 38). Regulation 35 and Schedule 4 address the validity of discriminatory terms in contracts and collective agreements.

Not all differences of treatment on grounds of sexual orientation are unlawful. There are exceptions in regulations 24 to 26 for differences of treatment related to national security, to benefits which are dependent on marital status, and positive action. Regulation 7 provides an exception where being of a particular sexual orientation is a genuine and determining occupational requirement for a post, if it is proportionate to apply the requirement in the particular case. Regulation 7 also provides an exception for employment for purposes of an organised religion, where a requirement related to sexual orientation is applied so as to comply with the doctrines of the religion or to avoid conflicting with the religious convictions of its followers.

Regulations 27 to 34 provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 29 and 32, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has

Status: *This is the original version (as it was originally made).*

been committed by the respondent. Regulation 33 and Schedules 2 and 3 also include a questionnaire procedure to assist complainants in obtaining information from respondents.

A full Regulatory Impact Assessment report of the effect that these Regulations would have on the costs to business and a Transposition Note are freely available to the public from the Selected Employment Rights Branch, UG65, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.