
STATUTORY INSTRUMENTS

2006 No. 1031

The Employment Equality (Age) Regulations 2006

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Employment Equality (Age) Regulations 2006, and shall come into force on 1st October 2006.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) Subject to that, these Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of age), regulation 4 (discrimination by way of victimisation) or regulation 5 (instructions to discriminate) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 6 (harassment on grounds of age).

(2) In these Regulations—

“1996 Act” means the Employment Rights Act 1996⁽¹⁾;

“act” includes a deliberate omission;

“benefit”, except in regulation 11 and Schedule 2 (pension schemes), includes facilities and services;

“commencement date” means 1st October 2006;

“Crown employment” means —

(a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or

(b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body;

“detriment” does not include harassment within the meaning of regulation 6;

“employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions (such as “employee” and “employer”) shall be construed accordingly, but this definition does not apply in relation to regulation 30 (exception for retirement) or to Schedules 2, 6, 7 and 8;

“Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

(1) 1996 c. 18.

“Minister of the Crown” includes the Treasury and the Defence Council;

“proprietor”, in relation to a school, has the meaning given by section 579 of the Education Act 1996(2);

“relevant member of the House of Commons staff” means any person who was appointed by the House of Commons Commission or who is a member of the Speaker’s personal staff;

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“school”, in England and Wales, has the meaning given by section 4 of the Education Act 1996(3), and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980(4), and references to a school are to an institution in so far as it is engaged in the provision of education under those sections;

“service for purposes of a Minister of the Crown or government department” does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(5);

“statutory body” means a body set up by or in pursuance of an enactment, and “statutory office” means an office so set up; and

“worker” in relation to regulations 32 and 34 and to Schedule 2, means, as the case may be—

- (a) an employee;
- (b) a person holding an office or post to which regulation 12 (office-holders etc) applies;
- (c) a person holding the office of constable;
- (d) a partner within the meaning of regulation 17 (partnerships);
- (e) a member of a limited liability partnership within the meaning of that regulation;
- (f) a person in Crown employment;
- (g) a relevant member of the House of Commons staff;
- (h) a relevant member of the House of Lords staff.

(3) In these Regulations references to “employer”, in their application to a person at any time seeking to employ another, include a person who has no employees at that time.

Discrimination on grounds of age

3.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if—

- (a) on grounds of B’s age, A treats B less favourably than he treats or would treat other persons, or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—
 - (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and
 - (ii) which puts B at that disadvantage,

(2) 1996 c. 56; section 579 has been amended on a number of occasions. The relevant amendments for the purposes of these Regulations were those made by section 140(1) of, and paragraph 183(a)(iii) of Schedule 30 to, the School Standards and Framework Act 1998 (c. 31) and regulation 3 of S.I.2003/2045.

(3) Section 4 was amended by section 51 of the Education Act 1997 (c. 44) and Part 3 of Schedule 22 to the Education Act 2002 (c. 32).

(4) 1980 c. 44.

(5) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(3) In this regulation—

- (a) "age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and
- (b) the reference in paragraph (1)(a) to B's age includes B's apparent age.

Discrimination by way of victimisation

4.—(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under or by virtue of these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under or by virtue of these Regulations;
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

Instructions to discriminate

5. For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that—

- (a) B has not carried out (in whole or in part) an instruction to do an act which is unlawful by virtue of these Regulations, or
- (b) B, having been given an instruction to do such an act, complains to A or to any other person about that instruction.

Harassment on grounds of age

6.—(1) For the purposes of these Regulations, a person ("A") subjects another person ("B") to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

PART 2

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

Applicants and employees

7.—(1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Great Britain, to discriminate against that person—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Subject to paragraph (5), paragraph (1)(a) and (c) does not apply in relation to a person—

- (a) whose age is greater than the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65; or
- (b) who would, within a period of six months from the date of his application to the employer, reach the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65.

(5) Paragraph (4) only applies to a person to whom, if he was recruited by the employer, regulation 30 (exception for retirement) could apply.

(6) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

(7) In paragraph (2)(d) reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(8) In paragraph (4) “normal retirement age” is an age of 65 or more which meets the requirements of section 98ZH of the 1996 Act⁽⁶⁾.

Exception for genuine occupational requirement etc

8.—(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age)—

- (a) regulation 7(1)(a) or (c) does not apply to any employment;
- (b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
- (c) regulation 7(2)(d) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) possessing a characteristic related to age is a genuine and determining occupational requirement;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

Contract workers

9.—(1) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to subject a contract worker to harassment.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal’s employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) In this regulation—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

(6) Section 98ZH of the 1996 Act is inserted into that Act by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.

“contract worker” means any individual who is supplied to the principal under such a contract.

Meaning of employment and contract work at establishment in Great Britain

10.—(1) For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Great Britain if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Great Britain;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Great Britain—

- (i) at the time when he applies for or is offered the employment, or
- (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship only if the ship is registered at a port of registry in Great Britain, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain.

(4) Subject to paragraph (5), for the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, this regulation has effect as if references to Great Britain included—

- (a) any area designated under section 1(7) of the Continental Shelf Act 1964⁽⁷⁾ except an area or part of an area in which the law of Northern Ireland applies; and
- (b) in relation to employment concerned with the exploration or exploitation of the Frigg Gas Field, the part of the Norwegian sector of the Continental Shelf described in Schedule 1.

(5) Paragraph (4) shall not apply to employment which is concerned with the exploration or exploitation of the Frigg Gas Field unless the employer is—

- (a) a company registered under the Companies Act 1985⁽⁸⁾;
- (b) an overseas company which has established a place of business within Great Britain from which it directs the exploration or exploitation in question; or
- (c) any other person who has a place of business within Great Britain from which he directs the exploration or exploitation in question.

(6) In this regulation—

“the Frigg Gas Field” means the naturally occurring gas-bearing sand formations of the lower Eocene age located in the vicinity of the intersection of the line of latitude 59 degrees 53 minutes North and of the dividing line between the sectors of the Continental Shelf of the United Kingdom and the Kingdom of Norway and includes all other gas-bearing strata from which gas at the start of production is capable of flowing into the above-mentioned gas-bearing sand formations;

“overseas company” has the same meaning as in section 744 of the Companies Act 1985.

(7) 1964 c. 29.

(8) 1985 c. 6.

(7) This regulation applies in relation to contract work within the meaning of regulation 9 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 9.

Pension schemes

11.—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into force of these Regulations, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 2 (pension schemes) shall have effect for the purposes of—

- (a) defining terms used in this regulation and in that Schedule;
- (b) exempting certain rules and practices in or relating to pension schemes from Parts 2 and 3 of these Regulations;
- (c) treating every occupational pension scheme as including a non-discrimination rule;
- (d) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (e) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an employment tribunal under regulation 36 (jurisdiction of employment tribunals).

Office-holders etc

12.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or

(d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This regulation applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration,

but not to a political office or a case where regulation 7 (applicants and employees), 9 (contract workers), 15 (barristers), 16 (advocates) or 17 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.

(9) For the purposes of paragraph (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the function of the office or post; or

- (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.
- (10) In this regulation—
- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
- (i) any office of the House of Commons held by a member of it;
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958⁽⁹⁾, or any office of the House of Lords held by a member of it;
 - (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975⁽¹⁰⁾;
 - (iv) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975⁽¹¹⁾;
 - (v) any office of the Scottish Parliament held by a member of it;
 - (vi) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998⁽¹²⁾, or a junior Scottish Minister within the meaning of section 49 of that Act;
 - (vii) any office of the National Assembly for Wales held by a member of it;
 - (viii) in England, any office of a county council, a London borough council, a district council, or a parish council held by a member of it;
 - (ix) in Wales, any office of a county council, a county borough council, or a community council held by a member of it;
 - (x) in relation to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994⁽¹³⁾ or a community council established under section 51 of the Local Government (Scotland) Act 1973⁽¹⁴⁾, any office of such a council held by a member of it;
 - (xi) any office of the Greater London Authority held by a member of it;
 - (xii) any office of the Common Council of the City of London held by a member of it;
 - (xiii) any office of the Council of the Isles of Scilly held by a member of it;
 - (xiv) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
- (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
 - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;

⁽⁹⁾ 1958 c. 21.

⁽¹⁰⁾ 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

⁽¹¹⁾ 1975 c. 27.

⁽¹²⁾ 1998 c. 46.

⁽¹³⁾ 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

⁽¹⁴⁾ 1973 c. 65; section 51 was amended by the Local Government etc (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.

- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

Police

13.—(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
- (b) by the police authority as respects any act done by it in relation to a constable or that office.

(2) For the purposes of regulation 25 (liability of employers and principals)—

- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of the police fund—

- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
- (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.

(4) Any proceedings under these Regulations which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraph (3) to the chief officer of police shall be construed accordingly.

(5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, costs or expenses awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
- (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(6) Paragraphs (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(7) Subject to paragraph (8), in this regulation—

“chief officer of police”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996⁽¹⁵⁾;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967⁽¹⁶⁾, means the chief constable of the relevant police force;
- (c) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;

⁽¹⁵⁾ 1996 c. 16.

⁽¹⁶⁾ 1967 c. 77.

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act;
- (c) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within sub-paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996;
- (b) in any other case means money provided by the police authority; and

“specified Act” means the Metropolitan Police Act 1829⁽¹⁷⁾, the City of London Police Act 1839⁽¹⁸⁾ or the Police Act 1996.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

(9) This regulation is subject to regulation 14.

Serious Organised Crime Agency

14.—(1) For the purposes of this Part, any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as employed by SOCA.

(2) For the purposes of regulation 25 (liability of employers and principals)—

- (a) the secondment of any constable or other person to SOCA to serve as a member of its staff shall be treated as employment by SOCA (and not as employment by any other person); and
- (b) anything done by a person so seconded in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) In this regulation “SOCA” means the Serious Organised Crime Agency established under section 1 of, and Schedule 1 to, the Serious Organised Crime and Police Act 2005⁽¹⁹⁾.

Barristers

15.—(1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—

- (a) in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which it is offered; or
- (c) by refusing, or deliberately not offering, it to him.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the set of chambers in question, to discriminate against him—

⁽¹⁷⁾ 1829 c. 44.

⁽¹⁸⁾ 2 & 3 Vict c. xciv.

⁽¹⁹⁾ 2005 c. 15.

- (a) in respect of any terms applicable to him as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating his pupillage, or by subjecting him to any pressure to leave the chambers or other detriment.

(3) It is unlawful for a barrister or barrister’s clerk, in relation to a pupillage or tenancy in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil or tenant.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

- “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk;
- “pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and
- “tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but also include reference to any barrister permitted to work in a set of chambers who is not a tenant.

(6) This regulation extends to England and Wales only.

Advocates

16.—(1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing to take, or deliberately not taking, a person as his pupil.

(2) It is unlawful for an advocate, in relation to a person who is his pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating the relationship, or by subjecting him to any pressure to terminate the relationship or other detriment.

(3) It is unlawful for an advocate, in relation to a person who is his pupil or taking any person as his pupil, to subject such a person to harassment.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

- “advocate” means a member of the Faculty of Advocates practising as such; and

“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

(6) This regulation extends to Scotland only.

Partnerships

17.—(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing to offer, or deliberately not offering, him that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.

(3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

(4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907⁽²⁰⁾.

(6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.

(7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890⁽²¹⁾.

(8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference—

- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

Trade organisations

18.—(1) It is unlawful for a trade organisation to discriminate against a person—

- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
- (b) by refusing to accept, or deliberately not accepting, his application for membership.

⁽²⁰⁾ 1907 c. 24.

⁽²¹⁾ 1890 c. 39.

(2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him—

- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

(3) It is unlawful for a trade organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.

(4) In this regulation—

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

“profession” includes any vocation or occupation; and

“trade” includes any business.

Qualifications bodies

19.—(1) It is unlawful for a qualifications body to discriminate against a person—

- (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
- (b) by refusing or deliberately not granting any application by him for such a qualification; or
- (c) by withdrawing such a qualification from him or varying the terms on which he holds it.

(2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.

(3) In this regulation—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) a proprietor of a school;

“confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the same meaning as in regulation 18.

The provision of vocational training

20.—(1) It is unlawful, in relation to a person seeking or undergoing training, for any training provider to discriminate against him—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer training;
- (b) in the terms on which the training provider affords him access to any training;
- (c) by refusing or deliberately not affording him such access;
- (d) by terminating his training; or

(e) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation—

“professional or trade qualification” has the same meaning as in regulation 19;

“registered pupil” has the meaning given by section 434 of the Education Act 1996⁽²²⁾;

“training” means—

(a) all types and all levels of training which would help fit a person for any employment;

(b) vocational guidance;

(c) facilities for training;

(d) practical work experience provided by an employer to a person whom he does not employ; and

(e) any assessment related to the award of any professional or trade qualification;

“training provider” means any person who provides, or makes arrangements for the provision of, training, but it does not include—

(a) an employer in relation to training for persons employed by him;

(b) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or

(c) a proprietor of a school in relation to any registered pupil.

Employment agencies, careers guidance etc

21.—(1) It is unlawful for an employment agency to discriminate against a person—

(a) in the terms on which the agency offers to provide any of its services;

(b) by refusing or deliberately not providing any of its services; or

(c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this regulation if it proves that—

(a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful; and

(b) it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(22) 1996 c. 56.

- (6) For the purposes of this regulation—
- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
 - (i) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
 - (ii) a proprietor of a school; and
 - (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

Assisting persons to obtain employment etc

22.—(1) It is unlawful for the Secretary of State to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 2 of the Employment and Training Act 1973(**23**) (arrangements for assisting persons to obtain employment).

(2) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(**24**) (arrangements analogous to arrangements in pursuance of the said Act of 1973).

- (3) This regulation does not apply in a case where—
- (a) regulation 20 (the provision of vocational training) applies or would apply but for the operation of any other provision of these Regulations, or
 - (b) the Secretary of State is acting as an employment agency within the meaning of regulation 21 (employment agencies, careers guidance etc).

Institutions of further and higher education

23.—(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
 - (i) in the way it affords him access to any benefits,
 - (ii) by refusing or deliberately not affording him access to them, or
 - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(23) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19), and amended by the Employment Act 1989 (c. 38), Schedule 7, Part 1, and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(24) 1990 c. 35.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in England and Wales, namely—

- (a) an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992⁽²⁵⁾);
- (b) a university;
- (c) an institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

(5) This regulation applies to the following educational establishments in Scotland, namely—

- (a) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992⁽²⁶⁾ under the management of a board of management within the meaning of Part I of that Act;
- (b) a college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980⁽²⁷⁾;
- (c) any other educational establishment (not being a school) which provides further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992;
- (d) an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992);
- (e) a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980).

(6) In this regulation—

“education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;

“governing body” includes—

- (a) the board of management of a college referred to in paragraph (5)(a), and
- (b) the managers of a college or institution referred to in paragraph (5)(b) or (e);

“student” means any person who receives education at an educational establishment to which this regulation applies; and

“university” includes a university college and the college, school or hall of a university.

Relationships which have come to an end

24.—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.

(2) Where a relevant relationship has come to an end, it is unlawful for A—

- (a) to discriminate against B by subjecting him to a detriment; or
- (b) to subject B to harassment;

where the discrimination or harassment arises out of and is closely connected to that relationship.

⁽²⁵⁾ 1992 c. 13.

⁽²⁶⁾ 1992 c. 37.

⁽²⁷⁾ 1980 c. 44.

(3) In paragraph (1), reference to an act of discrimination or harassment which is 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, be unlawful.

PART 3

OTHER UNLAWFUL ACTS

Liability of employers and principals

25.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.

(3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

Aiding unlawful acts

26.—(1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 25 (or would be so liable but for regulation 25(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this regulation knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3) (a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 4

GENERAL EXCEPTIONS FROM PARTS 2 AND 3

Exception for statutory authority

27.—(1) Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision.

(2) In this regulation “statutory provision” means any provision (whenever enacted) of—

- (a) an Act or an Act of the Scottish Parliament;

- (b) an instrument made by a Minister of the Crown under an Act;
- (c) an instrument made under an Act or an Act of the Scottish Parliament by the Scottish Ministers or a member of the Scottish Executive.

Exception for national security

28. Nothing in Part 2 or 3 shall render unlawful an act done for the purpose of safeguarding national security, if the doing of the act was justified by that purpose.

Exceptions for positive action

- 29.**—(1) Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with—
- (a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or
 - (b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work;

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work.

(2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with—

- (a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular age or age group to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts.

(3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with encouraging only persons of a particular age or age group to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members.

Exception for retirement

30.—(1) This regulation applies in relation to an employee within the meaning of section 230(1) of the 1996 Act, a person in Crown employment, a relevant member of the House of Commons staff, and a relevant member of the House of Lords staff.

(2) Nothing in Part 2 or 3 shall render unlawful the dismissal of a person to whom this regulation applies at or over the age of 65 where the reason for the dismissal is retirement.

(3) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with sections 98ZA to 98ZF of the 1996 Act(28).

Exception for the national minimum wage

31.—(1) Nothing in Part 2 or 3 shall render it unlawful for a relevant person (“A”) to be remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where—

- (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and
- (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998⁽²⁹⁾.

(2) Nothing in Part 2 or 3 shall render it unlawful for an apprentice who is not a relevant person to be remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work.

(3) In this regulation—

“apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999⁽³⁰⁾, is to be treated as employed under such a contract;

“relevant person” means a person who qualifies for the national minimum wage⁽³¹⁾ (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998 or at a different rate).

Exception for provision of certain benefits based on length of service

32.—(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C.

(2) Where B’s length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, fulfils a business need of his undertaking (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).

(3) In calculating a worker’s length of service for these purposes, A shall calculate—

- (a) the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the worker, for example, in terms of effort, skills and decision making); or
- (b) the length of time the worker has been working for him in total;

and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service.

(4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him—

- (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him;

⁽²⁹⁾ 1998 c. 39. The hourly rate is prescribed in regulation 11 of the National Minimum Wage Regulations 1999 (S.I. 1999/584) and that rate has most recently been amended by regulation 2 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2005 (S.I. 2005/2019).

⁽³⁰⁾ S.I. 1999/584, to which relevant amendments have been made by S.I. 2000/1989 and S.I. 2004/1930.

⁽³¹⁾ A person qualifies for the national minimum wage if he is a person who – (a) is a worker; (b) is working, or ordinarily works, in the UK under a contract; and (c) has ceased to be of compulsory school age: see s.1(2) of the National Minimum Wage Act 1998.

- (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers' absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so;
- (c) A may discount any period of time during which the worker was present at work (“the relevant period”) where—
 - (i) the relevant period preceded a period during which the worker was absent from work, and
 - (ii) in all the circumstances (including the length of the worker’s absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to discount the relevant period.
- (5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if—
 - (a) that period is treated as a period of employment with A for the purposes of the 1996 Act by virtue of the operation of section 218 of that Act; or
 - (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to “relevant service” within the meaning of section 155 of that Act.
- (6) In paragraph (5)—
 - (a) the reference to being made redundant is a reference to being dismissed by reason of redundancy for the purposes of the 1996 Act;
 - (b) the reference to section 155 of that Act is a reference to that section as modified by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999(32).
- (7) In this regulation—
 - “benefit” does not include any benefit awarded to a worker by virtue of his ceasing to work for A; and
 - “year” means a year of 12 calendar months.

Exception for provision of enhanced redundancy payments to employees

- 33.—(1) Nothing in Part 2 or 3 shall render it unlawful for an employer—
 - (a) to give a qualifying employee an enhanced redundancy payment which is less in amount than the enhanced redundancy payment which he gives to another such employee if both amounts are calculated in the same way;
 - (b) to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (a) or (c)(i) of the definition of qualifying employee below.
- (2) In this regulation—
 - “the appropriate amount”, “a redundancy payment” and “a week’s pay” have the same meaning as they have in section 162 of the 1996 Act(33);

(32) S.I. 1999/2277. See Schedule 2, Part 1, paragraph 2.

(33) Subsections (4), (5) and (8) of section 162 of the 1996 Act have been repealed by regulation 49 of, and paragraph 32 of Schedule 8 to, these Regulations. Subsection (6) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a). Subsection (7) was repealed by the Employment Relations Act 1999 (c. 26), sections 9 and 44 and Schedule 4, Part 3, paragraphs 5 and 30.

“enhanced redundancy payment” means a payment of an amount calculated in accordance with paragraph (3) or (4);

“qualifying employee” means—

- (a) an employee who is entitled to a redundancy payment by virtue of section 135 of the 1996 Act;
- (b) an employee who would have been so entitled but for the operation of section 155 of that Act;
- (c) an employee who agrees to the termination of his employment in circumstances where, had he been dismissed—
 - (i) he would have been a qualifying employee by virtue of sub-paragraph (a) of this definition; or
 - (ii) he would have been a qualifying employee by virtue of sub-paragraph (b).

(3) For an amount to be calculated in accordance with this paragraph it must be calculated in accordance with section 162(1) to (3) of the 1996 Act.

(4) For an amount to be calculated in accordance with this paragraph—

- (a) it must be calculated as in paragraph (3);
- (b) however, in making that calculation, the employer may do one or both of the following things—
 - (i) he may treat a week’s pay as not being subject to a maximum amount or as being subject to a maximum amount above the amount laid down in section 227 of the 1996 Act⁽³⁴⁾;
 - (ii) he may multiply the appropriate amount allowed for each year of employment by a figure of more than one;
- (c) having made the calculation as in paragraph (3) (whether or not in making that calculation he has done anything mentioned in sub-paragraph (b)) the employer may increase the amount thus calculated by multiplying it by a figure of more than one.

(5) For the purposes of paragraphs (3) and (4), the reference to “the relevant date” in section 162(1)(a) of the 1996 Act is to be read, in the case of a qualifying employee who agrees to the termination of his employment, as a reference to the date on which that termination takes effect.

Exception for provision of life assurance cover to retired workers

34.—(1) Where a person (“A”) arranges for workers to be provided with life assurance cover after their early retirement on grounds of ill health, nothing in Part 2 or 3 shall render it unlawful—

- (a) where a normal retirement age applied in relation to any such workers at the time they took early retirement, for A to arrange for such cover to cease when such workers reach that age;
- (b) in relation to any other workers, for A to arrange for such cover to cease when the workers reach the age of 65.

(2) In this regulation, “normal retirement age”, in relation to a worker who has taken early retirement, means the age at which workers in A’s undertaking who held the same kind of position as the worker held at the time of his retirement were normally required to retire.

⁽³⁴⁾ The amount laid down in section 227 may be increased or decreased by Order made by the Secretary of State under section 34 of the Employment Relations Act 1999. The amount laid down in section 227 is currently £290: see S.I. [2005/3352](#).

PART 5

ENFORCEMENT

Restriction of proceedings for breach of Regulations

35.—(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 or the investigation or determination of any matter in accordance with Part 10 (investigations: the Pensions Ombudsman) of the Pension Schemes Act 1993⁽³⁵⁾ by the Pensions Ombudsman.

Jurisdiction of employment tribunals

36.—(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 25 (liability of employers and principals) or 26 (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 2 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 19 (qualifications bodies);
- (b) regulation 23 (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 23, regulation 24 (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

37.—(1) This regulation applies to any complaint presented under regulation 36 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 36 applies; or

⁽³⁵⁾ 1993 c. 48.

(b) is by virtue of regulation 25 (liability of employers and principals) or 26 (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

38.—(1) Where an employment tribunal finds that a complaint presented to it under regulation 36 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 39 (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) (discrimination on the grounds of age), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of age, 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(36).

(5) This regulation has effect subject to paragraph 6 of Schedule 2 (pension schemes).

Jurisdiction of county and sheriff courts

39.—(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 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

(36) S.I. 1996/2803. Regulation 1(2) of those Regulations is amended by paragraph 56 of, and Schedule 8 to, these Regulations.

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 23 (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 23, regulation 24 (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

40.—(1) This regulation applies to any claim brought under regulation 39 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 39 applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (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

41.—(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 36 (jurisdiction of employment tribunals) or a claim brought under regulation 39 (jurisdiction of county and sheriff courts) questions in the form set out in Schedule 3 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 4 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 so served when a complaint had been presented to the tribunal, either—
 - (i) if it was 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⁽³⁷⁾, 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.

Period within which proceedings to be brought

42.—(1) An employment tribunal shall not consider a complaint under regulation 36 unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done.

(37) 1992 c. 52.

(2) A county court or a sheriff court shall not consider a claim brought under regulation 39 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 41 (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.

PART 6

SUPPLEMENTAL

Validity of contracts, collective agreements and rules of undertakings

43. Schedule 5 (validity of contracts, collective agreements and rules of undertakings) shall have effect.

Application to the Crown etc

44.—(1) These Regulations apply—

(a) to an act done by or for purposes of a Minister of the Crown or government department; or

(b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) These Regulations apply to Crown employment as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service and references to dismissal included references to termination of Crown employment.

(3) Paragraphs (1) and (2) have effect subject to paragraph (4) and regulations 13 (police) and 14 (Serious Organised Crime Agency).

(4) These regulations do not apply to service in any of the naval, military or air forces of the Crown.

(5) Regulation 10(3) (meaning of employment and contract work at establishment in Great Britain) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft specified in regulation 10(3)(a) or (b).

(6) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947⁽³⁸⁾ shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal and transfer of proceedings) shall not apply.

(7) The provisions of Part 5 of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations the proviso to section 44 of that Act (proceedings against the Crown in the Sheriff Court) shall not apply.

Application to House of Commons staff

45.—(1) Subject to paragraphs (2) and (3), these Regulations apply in relation to employment as a relevant member of the House of Commons staff as they apply in relation to other employment.

(2) These Regulations apply to employment as such a member as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of employment of such a member and references to dismissal included references to termination of such employment.

(3) In relation to employment as such a member, subsections (6) to (12) of section 195 of the 1996 Act⁽³⁹⁾ (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of these Regulations.

Application to House of Lords staff

46.—(1) These Regulations apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) Section 194(7) of the 1996 Act (continuity of employment) applies for the purposes of this regulation.

Duty to consider working beyond retirement

47. Schedule 6, which sets out the procedure to be followed if an employee (within the meaning of that Schedule) is to be retired, shall have effect.

Duty to consider working beyond retirement - transitional provisions

48. Schedule 7, which sets out transitional provisions in relation to the duty to consider working beyond retirement, shall have effect.

Amendments, transitionals, repeals and revocations

49.—(1) Schedule 8, which contains amendments to and repeals of legislation and related transitional provisions, shall have effect.

(2) Schedule 9, which contains repeals and revocations, shall have effect.

⁽³⁸⁾ 1947 c. 44.

⁽³⁹⁾ Employment Rights Act 1996 (c. 18); subsection (8) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a).

3rd April 2006

Gerry Sutcliffe
Parliamentary Under-Secretary of State for
Employment Relations and Consumer Affairs
Department of Trade and Industry