
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 82 of the Equality Act 2006, make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, education and public functions.

Sexual orientation is defined in regulation 2 as meaning 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), 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 a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Regulation (3)(1)(c) deals with discrimination where a requirement or condition is applied which cannot be justified. Regulation (3)(3) defines harassment, which occurs when a person engages in unwanted conduct which has the purpose of violating the other's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. 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.

Regulations 5 to 17 prohibit discrimination in the provision of goods, facilities, services, premises, education and public functions. In particular they define examples (although not exclusively) of the sorts of facilities and services that might be covered by the Regulations. They deal also with the disposal and management of premises (regulation 6) and the various exceptions that apply to that area (regulations 7 & 8). They also extend the protections to those accessing education and educational facilities (regulation 9) and to those accessing public authorities (regulation 12), subject to certain exceptions (regulations 13, 14 & 15). Regulation 16 provides an exception to organisations relating to religion and belief, where the sole purpose of the unlawful action was to practice a religion or belief, to advance a religion or belief, to teach the principles of a religion or belief, to enable persons of a religion or belief to engage in any activity or receive a benefit within the framework of that religion or belief. It does not however extend the exception to organisations whose sole or main purpose is commercial. The Regulations also extend to associations and private members clubs (regulation 17).

Regulations 19 to 25 deal with other unlawful acts, including discriminatory advertising (regulation 20), instructing others to commit unlawful acts (regulation 21) or pressuring others to commit unlawful acts (regulation 22). Regulation 23 deals with liability of employers and principals and makes acts committed by an employee treated as if they had been done by his employer as well by as him. Regulation 24 makes it an offence to aid an act made unlawful by virtue of these Regulations and regulation 25 makes a contract, or terms of a contract, void if they include an act made unlawful by these Regulations.

Regulation 26 deals with charities and provides an exception for them from any provision contained within regulations 5 to 17 in so far as the charity was established to confer a benefit on a particular group by virtue of sexual orientation.

Regulations 27 to 34 deal with the role of the Equality Commission for Northern Ireland. Amongst other things they provide the ECNI with a duty to promote equality of opportunity between persons of differing sexual orientations, provides them with the power to undertake or assist research and education and provide assistance (regulation 28) and with the power to issue codes of practice

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if they think fit (regulation 29). They are also given the power to conduct formal investigations (regulation 30).

Regulations 36 to 48 deal with the enforcement of the Regulations. As these Regulations deal with matters that fall only to goods, facilities and services, any legal recourse will be for a claim in tort for breach of a statutory duty, except where specific criminal offences are created (regulations 20-22). In both cases recourse will be through the county court. The ECNI is given powers to issue non-discrimination notices (regulation 37) and to deal with the compliance of those notices (regulation 39). Enforcement of regulations 19-22 will only be by the ECNI (regulation 43). Regulation 42 and Schedules 1 and 2 include a questionnaire procedure to assist complainants in obtaining information from respondents, and regulation 45 provides the ECNI with power to provide assistance (legal or otherwise) to claimants under these Regulations. Regulation 46 deals with the timescales within which cases should be brought.

Regulations 49 to 51 provide general exceptions to the Regulations for differences of treatment related to safeguarding national security or protecting public order and public safety. They also provide exceptions for indirect access to benefits, and acts done under statutory authority. Regulation 52 deals with burden of proof in the county court and regulation 53 deals with Crown application. Regulation 54 covers the extent of the Regulations.

A Regulatory Impact Assessment and an Equality Impact Assessment in relation to these Regulations has been placed in the Library of the Northern Ireland Assembly. Copies may be obtained from: Equality, Rights and Social Needs Division, Office of the First Minister and deputy First Minister, Room E3.19, Castle Buildings, Stormont, Belfast BT4 3SR.